

HOUSE BILL REPORT

HB 1926

As Reported by House Committee On:
Labor

Title: An act relating to noncompetition agreements.

Brief Description: Restricting noncompetition agreements.

Sponsors: Representatives Stanford, Sells, Bergquist, Reykdal and Ormsby.

Brief History:

Committee Activity:

Labor: 2/3/15, 2/17/15 [DP].

Brief Summary of Bill

- Makes noncompetition agreements void with some exceptions.

HOUSE COMMITTEE ON LABOR

Majority Report: Do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Moeller and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Manweller, Ranking Minority Member; G. Hunt, Assistant Ranking Minority Member; McCabe.

Staff: Dan Rusk (786-7290) and Joan Elgee (786-7106).

Background:

Washington disfavors restraints on trade. However, there are circumstances where restraints on trade are permitted. In certain situations, Washington allows parties to enter into noncompetition agreements. A noncompetition agreement is an agreement between parties where one party promises not to compete with the other party for a specific period of time, and sometimes within a specified geographic area. Washington courts will enforce a noncompetition agreement if it is not greater than reasonably necessary to protect the business or goodwill of a party. In order to determine whether the noncompetition agreement

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is reasonable, the Washington courts use a three-part test. The courts will enforce a noncompetition agreement if:

- the restraint is reasonably necessary to protect the business or goodwill of a party;
 - the restraint does not impose upon the individual any greater restraint than is reasonably necessary to protect the business or goodwill; and
 - the public is not injured as a result of the loss of service and skill of the individual.
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Summary of Bill:

Generally, every contract by which a person is restrained from engaging in a lawful profession, trade, or business of any kind is void. However, there are exceptions to this prohibition. A seller of a business may make an agreement with the buyer that the seller will not engage in a similar business within a specific geographic area when:

- the seller sells the goodwill of a business entity;
- the seller sells his or her entire ownership interest in a business entity; or
- the seller sells all or substantially all the operating assets and the goodwill of the business entity.

Business entity means any corporation, partnership, limited liability company, or any subsidiary or division of a business entity.

A partner may form a noncompetition agreement upon the dissolution of a partnership or disassociation of a partner from a partnership. A member of a limited liability company may form a noncompetition agreement upon the dissolution of the limited liability company or the disassociation of a member from the limited liability company.

Washington's law regarding noncompetition agreements for broadcast employees is repealed.

The provisions apply to noncompetition agreements formed on or after the effective date.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Noncompetition agreements are used too often. They appear in contracts across all sectors such as: technology, plumbing, and fast food. These agreements cause waste because they inhibit individuals from moving between jobs, and act as a form of oppression because the agreements are expensive to challenge in court.

In invalidating noncompetition agreements will have a positive effect on the economy. Additionally, it will not prevent employers from protecting legitimate business interests because this can be done through a nondisclosure agreement.

(Opposed) Employees gain access to the employer's valuable information and noncompetition agreements are needed to prevent employees from misusing this information. Nondisclosure agreements are not sufficient to protect these interests. Additionally, employers may make a substantial investment in employees, including low-wage employees, and do not want to lose their investment. This is a big issue in the security industry. Employers provide employees substantial training, and without a noncompetition agreement, these employees can use this training to steal business from the employer who trained them. Additionally, nondisclosure agreements are insufficient to protect these investments. If noncompetition agreements are banned, employers may limit the amount of training they provide new employees, which could hurt these employees in career advancement.

A bill is not needed to prevent unenforceable noncompetition agreements. An employee could go to court to get the agreement invalidated, or alternatively, employers may not attempt to enforce the noncompetition agreement because they know it is not enforceable.

Persons Testifying: (In support) Representative Stanford, prime sponsor; and Elissa Goss, Washington State Labor Council.

(Opposed) Jeff Kirby, Washington State Security Council; Aaron Rocke, Rocke Law Group; and William Cottringer.

Persons Signed In To Testify But Not Testifying: None.