

SENATE BILL REPORT

SB 6526

As of January 26, 2018

Title: An act relating to noncompetition agreements.

Brief Description: Concerning noncompetition agreements.

Sponsors: Senators Conway, Keiser, Hasegawa, Saldaña and Kuderer.

Brief History:

Committee Activity: Labor & Commerce: 1/25/18.

Brief Summary of Bill

- Prohibits, with certain exceptions, any contract that restrains a person from engaging in a lawful profession, trade, or business.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Jarrett Sacks (786-7448)

Background: Noncompetition agreements are provisions in an employment contract that impose post-employment restrictions on an employee's ability to work within a specific geographic area or in a particular industry for a specific period of time. Statutory law only addresses noncompetition agreements in the broadcasting industry. However, under common law, courts will enforce reasonable noncompetition agreements, taking into consideration three factors:

- whether the restraint is necessary for the protection of the business;
- whether the restraint imposed on the employee is any greater restraint than reasonably necessary to secure the employer's business; and
- whether the loss of the employee's services or skills injures the public to such a degree that the agreement should not be enforced.

In evaluating the reasonableness of an agreement, the courts examine the period of time and the geographic scope of the restraint. If a court finds an agreement is unreasonable, the court may rewrite the unreasonable terms of the agreement.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In general, if a noncompetition agreement is agreed to after an employee is hired, the agreement is enforceable only if the employer gives the employee independent consideration, such as a raise or a promotion.

Summary of Bill: A contract that restrains a person from engaging in a lawful profession, trade, or business is against public policy and void and unenforceable. However, the following persons may agree to refrain from carrying on a similar business within a specific geographic area:

- a person who sells all, or substantially all, of their ownership interest or assets in a business entity or its subsidiary;
- a partner who disassociates from a partnership or is a partner when the partnership is dissolved; or
- a member whose interest in a limited liability company is terminated.

An agreement falling under these exceptions is void if a like business is not operated in the agreement's specified geographic area.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Almost 20 percent of the U.S. population is subject to a noncompete clause. Noncompete clauses hurt competition and innovation. There are other tools and laws businesses can use instead of noncompete agreements. This bill impacts all sectors of the economy and all income brackets. Many times, noncompete clauses are used on low wage workers for no reason and the agreements are non-negotiable. Current law forces people to litigate to prove a noncompete clause is unreasonable. Noncompete clauses force workers to leave the state. Many people subject to noncompete clauses do not have the money to litigate, which is a barrier for workers to assert their rights. Noncompete clauses are used unfairly to blackout musicians for venues that are hundreds of miles away. We have seen examples of unfair noncompete clauses stifling workers at Jimmy Johns and at grocery stores. Temp agencies use noncompete clauses to prevent employees from finding permanent jobs.

CON: Banning noncompete clauses hurts innovation and prevents startups from forming in Washington. There are ways to get around trade secret laws that only noncompete clauses can prevent. The current law works just fine and is a reason why Washington is a leader in innovation. The bill that passed the House is better and is a result of compromise. This bill is a step backwards. Noncompete clauses protect a business that invests money in training new employees. The bill creates a huge penalty for valid disagreements. Trying to use California law in Washington will not work. California already has a lot of cheating to get around its law.

Persons Testifying: PRO: Jesse Wing, Washington Employment Lawyers Association; Nate Omdall, American Federation of Musicians; Michael Schendell, WashTech/Communication Workers of America; David Barnes, UFCW 21 member; Nate Omdal, AFM Local 76-493.

CON: Mike Budig, Evergreen Tree Care; Bob Battles, Association of Washington Business; Amber Carter, The Vancouver Clinic.

Persons Signed In To Testify But Not Testifying: No one.