

SSB 5478 - S AMD 125
By Senator Liiias

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1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that workforce
4 mobility is important to economic growth and development. Further,
5 the legislature finds that agreements limiting competition or hiring
6 may be contracts of adhesion that may be unreasonable.

7 NEW SECTION. **Sec. 2.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires
9 otherwise.

10 (1) "Earnings" means the taxable wages reported on internal
11 revenue service form W-2 for employees, or payments reported on
12 internal revenue service form 1099-MISC for independent contractors.

13 (2) "Employee" and "employer" have the same meanings as in RCW
14 49.17.020.

15 (3) "Franchisor" and "franchisee" have the same meanings as in
16 RCW 19.100.010.

17 (4) "Noncompetition covenant" includes every written or oral
18 covenant, agreement, or contract by which an employee or independent
19 contractor is prohibited or restrained from engaging in a lawful
20 profession, trade, or business of any kind. A "noncompetition
21 covenant" does not include: (a) A nonsolicitation agreement; (b) a
22 confidentiality agreement; (c) a covenant prohibiting use or
23 disclosure of trade secrets or inventions; (d) a covenant entered
24 into by a person purchasing or selling the goodwill of a business or
25 otherwise acquiring or disposing of an ownership interest; or (e) a
26 covenant entered into by a franchisee when the franchise sale
27 complies with RCW 19.100.020(1).

28 (5) "Nonsolicitation agreement" means an agreement between an
29 employer and employee that prohibits solicitation by an employee,
30 upon termination of employment: (a) Of any employee of the employer
31 to leave the employer; or (b) of any customer of the employer to

1 cease or reduce the extent to which it is doing business with the
2 employer.

3 (6) "Party seeking enforcement" means the named plaintiff or
4 claimant in a proceeding to enforce a noncompetition covenant or the
5 defendant in an action for declaratory relief.

6 NEW SECTION. **Sec. 3.** (1) A noncompetition covenant is void and
7 unenforceable against an employee:

8 (a) (i) Unless the employer discloses the terms of the covenant in
9 writing to the prospective employee no later than the time of the
10 acceptance of the offer of employment and, if the agreement becomes
11 enforceable only at a later date due to changes in the employee's
12 compensation, the employer specifically discloses that the agreement
13 may be enforceable against the employee in the future; or

14 (ii) If the covenant is entered into after the commencement of
15 employment, unless the employer provides independent consideration
16 for the covenant;

17 (b) Unless the employee's earnings from the party seeking
18 enforcement exceed one hundred twenty thousand dollars per year. This
19 dollar amount must be adjusted annually in accordance with section 5
20 of this act;

21 (c) If the employee is terminated as the result of a layoff,
22 unless enforcement of the noncompetition covenant includes
23 compensation equivalent to the employee's base salary at the time of
24 termination for the period of enforcement minus compensation earned
25 through subsequent employment during the period of enforcement.

26 (2) A court or arbitrator must presume that any noncompetition
27 covenant with a duration exceeding eighteen months after termination
28 of employment is unreasonable and unenforceable. A party seeking
29 enforcement may rebut the presumption by proving by clear and
30 convincing evidence that a duration longer than eighteen months is
31 necessary to protect the party's business or goodwill.

32 NEW SECTION. **Sec. 4.** (1) A noncompetition covenant is void and
33 unenforceable against an independent contractor unless the
34 independent contractor's earnings from the party seeking enforcement
35 exceed two hundred fifty thousand dollars per year. This dollar
36 amount must be adjusted annually in accordance with section 5 of this
37 act.

1 (2) The duration of a noncompetition covenant between a performer
2 and a performance space, or a third party scheduling the performer
3 for a performance space, must not exceed three calendar days.

4 NEW SECTION. **Sec. 5.** The dollar amounts specified in sections 3
5 and 4 of this act must be adjusted annually for inflation. Annually
6 on September 30th the department of labor and industries will adjust
7 the dollar amounts specified in this section by calculating to the
8 nearest cent using the consumer price index for urban wage earners
9 and clerical workers, CPI-W, or a successor index, for the twelve
10 months prior to each September 1st as calculated by the United States
11 department of labor. The adjusted dollar amount calculated under this
12 section takes effect on the following January 1st.

13 NEW SECTION. **Sec. 6.** A provision in a noncompetition covenant
14 signed by an employee or independent contractor who is Washington-
15 based is void and unenforceable:

16 (1) If the covenant requires the employee or independent
17 contractor to adjudicate a noncompetition covenant outside of this
18 state; and

19 (2) To the extent it deprives the employee or independent
20 contractor of the protections or benefits of this chapter.

21 NEW SECTION. **Sec. 7.** (1) No franchisor may restrict, restrain,
22 or prohibit in any way a franchisee from soliciting or hiring any
23 employee of a franchisee of the same franchisor.

24 (2) No franchisor may restrict, restrain, or prohibit in any way
25 a franchisee from soliciting or hiring any employee of the
26 franchisor.

27 NEW SECTION. **Sec. 8.** An employer may not restrict, restrain, or
28 prohibit an employee earning less than twice the applicable state
29 minimum hourly wage from having an additional job, supplementing
30 their income by working for another employer, working as an
31 independent contractor, or being self-employed: Provided, that this
32 section shall not apply to any such additional services when the
33 specific services to be offered by the employee raise issues of
34 safety for the employee, coworkers, or the public. This section does
35 not alter the obligations of an employee to an employer under
36 existing law, including the common law duty of loyalty and laws

1 preventing conflicts of interest and any corresponding policies
2 addressing such obligations.

3 NEW SECTION. **Sec. 9.** (1) The attorney general, on behalf of a
4 person or persons, or a person aggrieved by a violation of this
5 chapter may bring a cause of action to pursue any and all relief
6 provided for in subsections (2) and (3) of this section.

7 (2) If a court or arbitrator determines that a noncompetition
8 covenant violates this chapter, the violator must pay the aggrieved
9 person the greater of his or her actual damages or a statutory
10 penalty of five thousand dollars, plus reasonable attorneys' fees,
11 expenses, and costs incurred in the proceeding.

12 (3) If a court or arbitrator reforms, rewrites, modifies, or only
13 partially enforces any noncompetition covenant, the party seeking
14 enforcement must pay the aggrieved person the greater of his or her
15 actual damages or a statutory penalty of five thousand dollars, plus
16 reasonable attorneys' fees, expenses, and costs incurred in the
17 proceeding.

18 NEW SECTION. **Sec. 10.** (1)(a) Subject to (b) of this subsection,
19 this chapter displaces conflicting tort, restitutionary, contract,
20 and other laws of this state pertaining to liability for competition
21 by employees or independent contractors with their employers or
22 principals, as appropriate.

23 (b) This chapter does not amend or modify chapter 19.108 RCW.

24 (2) Except as otherwise provided in this chapter, this chapter
25 does not revoke, modify, or impede the development of the common law.

26 NEW SECTION. **Sec. 11.** This chapter applies to all proceedings
27 commenced on or after the effective date of this section, regardless
28 of when the cause of action arose. To this extent, this chapter
29 applies retroactively, but in all other respects it applies
30 prospectively.

31 NEW SECTION. **Sec. 12.** This chapter is an exercise of the
32 state's police power and shall be construed liberally for the
33 accomplishment of its purposes.

34 NEW SECTION. **Sec. 13.** This act takes effect January 1, 2020.

1 NEW SECTION. **Sec. 14.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 15.** Sections 1 through 13 of this act
6 constitute a new chapter in Title 49 RCW."

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7 On page 1, line 3 of the title, after "businesses;" strike the
8 remainder of the title and insert "adding a new chapter to Title 49
9 RCW; and providing an effective date."

EFFECT: Modifies the definition of earnings to taxable wages reported on internal revenue service W-2 form for employees or payments reported on form 1099-MISC for independent contractors. Modifies exclusions from noncompete covenants to also include purchasing goodwill or acquiring an ownership interest in a business. Changes the amounts for making noncompete covenants void to: (1) \$120,000 per year for employee's earnings and (2) \$250,000 per year for payments to independent contractors. Both amounts are indexed for inflation annually by the Department of Labor and Industries. Removes the application of the additional work provisions when the additional services raise safety issues for the employee, coworkers, or the public; and also provides that the provisions do not alter the employee's legal obligations to an employer, including the common law duty of loyalty and conflicts of interest laws. Removes the definition of average annual wage.

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