

HOUSE BILL REPORT

ESSB 5526

*As Passed House
April 18, 1991*

Title: An act relating to noncompetition agreements.

Brief Description: Governing employee noncompetition clauses.

Sponsor(s): Senate Committee on Commerce & Labor (originally sponsored by Senators Bauer, Newhouse, Moore, Nelson and Johnson).

Brief History:

Reported by House Committee on:
Commerce & Labor, April 2, 1991, DPA;
Passed House, April 18, 1991, 97-0.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *Do pass as amended.* Signed by 9 members: Representatives Cole, Vice Chair; Fuhrman, Ranking Minority Member; Lisk, Assistant Ranking Minority Member; Franklin; Jones; R. King; O'Brien; Prentice; and Vance.

Minority Report: *Without recommendation.* Signed by 2 members: Representatives Heavey, Chair; and Wilson.

Staff: Chris Cordes (786-7117).

Background: Agreements that impose restraints on trade are generally disfavored in Washington. However, Washington courts have upheld reasonable agreements between employers and employees that restrict the employee's ability to compete with the employer after leaving employment. Restrictions on competition may include prohibitions against providing services to the employer's client for a certain period of time or not soliciting work from the employer's clients or in a specified geographical area during the time period.

To determine the reasonableness of these agreements, the courts consider: (1) whether restricting the employee's activities is necessary for the protection of the employer's business; (2) whether the restrictions are greater than necessary to secure the employer's business or good will; and (3) whether the loss of the employee's services to the

public is great enough to warrant nonenforcement of the agreement.

Summary of Bill: Employee noncompetition agreements entered into after December 31, 1991, are void and unenforceable in Washington unless certain conditions are met. An "employee noncompetition agreement" is an agreement, written or oral, in which the employee agrees not to compete with the employer in providing products or services after termination of employment.

To be enforceable, the agreement must: (1) either be entered into on the initial employment of the employee by the employer, or the employer must provide additional consideration to the employee for entering into the agreement; and (2) be fair and reasonable under prior Washington court decisions. Continued employment by itself is not additional consideration.

Nothing in the act restricts the right of a person to protect trade secrets or other proprietary information by lawful means. The act does not terminate or modify any liability in existence on the act's effective date. The principles of law and equity supplement the act unless there is a specific conflict with the act.

Fiscal Note: Not requested.

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

Testimony For: Some employees have felt pressured into signing a noncompetition agreement with their employer after working for a period of time. This bill would require that the employee and employer reach a mutual agreement on the issue of noncompetition. It balances the employer's right in the business' goodwill with the employee's right to work. The bill recognizes that courts evaluate the reasonableness of these agreements and often rewrite them to protect employees. The bill also clarifies that additional consideration is required when the employer requests an employee to sign a noncompetition agreement after beginning employment.

Testimony Against: None.

Witnesses: (In favor): Senator Al Bauer, prime sponsor.
(Neutral): Gary Smith, Independent Business Association; and Clif Finch, Association of Washington Business.