HOUSE BILL REPORT
HB 1577

As Reported by House Committee On:
Labor

Title: An act relating to employment noncompetition agreements.

Brief Description: Restricting employment noncompetition agreements.

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

Brief History:
Committee Activity:
Labor: 2/3/15, 2/17/15 [DP].

Brief Summary of Bill

- Provides that an employment noncompetition agreement is void if the employee: (1) is entitled to overtime compensation; (2) earns $39,500 per year or less in gross wages; (3) is restricted from competing for an unreasonable length of time; or (4) is terminated without just cause or laid off, unless the agreement is part of a severance agreement.
- Establishes a presumption that an agreement not to compete for six months or longer is unreasonable.
- Requires a showing of actual harm for an employer to prevail in an action to enforce a noncompetition agreement.

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: Joan Elgee (786-7106).

Background:

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.

A noncompetition agreement may be used to restrict a former employee from competing with his or her former employer. Statutory law addresses noncompetition agreements only for certain broadcasting industry employees.

Under the common law, Washington courts will enforce a noncompetition agreement if the agreement is reasonable. Whether an agreement is reasonable involves consideration of three factors: (1) whether the restraint is necessary for the protection of the business or goodwill of the employer; (2) whether the restraint imposes on the employee any greater restraint than is reasonably necessary to secure the employer's business or goodwill; and (3) whether the degree of injury to the public is such loss of the service and skill of the employee as to warrant nonenforcement of the agreement. In evaluating the reasonableness of an agreement, the courts examine the time and geographic scope of the restraint.

Under the federal Fair Labor Standards Act and the state Minimum Wage Act, most hourly and some salaried employees are entitled to overtime for hours worked in excess of 40 per week. Certain exemptions apply.

Summary of Bill:

A noncompetition agreement between an employer and employee is unenforceable if the employee:

- is entitled to overtime compensation under either state or federal wage and hour law;
- earns $39,500 per year or less in gross wages;
- is restricted from competing for an unreasonable length of time; or
- is terminated without just cause or laid off, unless the noncompetition agreement is part of a severance agreement.

A rebuttable presumption is created that an agreement not to compete for six months or longer is unreasonable. The Department of Labor and Industries must annually adjust the gross wage amount based on the consumer price index for urban wage earners and clerical workers (CPI-W).

In any cause of action by an employer to enforce a noncompetition agreement, the employer must prove actual harm to prevail.

A "noncompetition agreement" is an agreement that is specifically designed to impede the ability of an employee to compete with an employer upon the termination of an employment relationship.

The provisions apply to agreements entered into on or after the effective date.

Appropriation: None.

Fiscal Note: Available.

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) The expanding use of noncompete clauses is inappropriate. Industries where the clauses are used include: plumbing, hair styling, and technology industries. Labor has a fundamental right to offer labor to the highest bidder. The bill makes it fair, and is narrowly focused on hourly wage earners who make $39,500 a year or less, with the amount tied to inflation. The six-month limitation was not intended and there will be amendments. Attorney's fees prevent workers from fighting noncompetes and the fear of lawsuits and harassment keeps workers from seeking another job. These workers don't have access to trade secrets.

(Opposed) Noncompete clauses protect business interests. Problems in the security industry come from workers earning $10 to $12 an hour. Guards have set up competing companies using insider trader information. Security businesses have lost contracts because of former employees. Guards learn all the details of a home. Noncompetes do not deprive guards of their careers because it's only for six months and they typically have another career. The court system works well to protect employers and employees. Noncompetes for sandwich makers and hair stylists would be struck down. Businesses invest thousands of hours training employees. If noncompetes can't be used, employees will be hurt because they will not receive training. The bill will open up the floodgates and leave businesses exposed. Private investigator and security businesses should be excluded from the bill.

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

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

Persons Signed In To Testify But Not Testifying: None.