

SHB 1450 - H AMD 230

By Representative Stanford

ADOPTED 03/12/2019

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 compensation reflected on box one of the
11 employee's United States internal revenue service form W-2 that is
12 paid to an employee over the prior year, or portion thereof for which
13 the employee was employed, annualized and calculated as of the
14 earlier of the date enforcement of the noncompetition covenant is
15 sought or the date of separation from employment. "Earnings" also
16 means payments reported on internal revenue service form 1099-MISC
17 for independent contractors.

18 (2) "Employee" and "employer" have the same meanings as in RCW
19 49.17.020.

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

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

1 covenant entered into by a franchisee when the franchise sale
2 complies with RCW 19.100.020(1).

3 (5) "Nonsolicitation agreement" means an agreement between an
4 employer and employee that prohibits solicitation by an employee,
5 upon termination of employment: (a) Of any employee of the employer
6 to leave the employer; or (b) of any customer of the employer to
7 cease or reduce the extent to which it is doing business with the
8 employer.

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

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

14 (a)(i) Unless the employer discloses the terms of the covenant in
15 writing to the prospective employee no later than the time of the
16 acceptance of the offer of employment and, if the agreement becomes
17 enforceable only at a later date due to changes in the employee's
18 compensation, the employer specifically discloses that the agreement
19 may be enforceable against the employee in the future; or

20 (ii) If the covenant is entered into after the commencement of
21 employment, unless the employer provides independent consideration
22 for the covenant;

23 (b) Unless the employee's earnings from the party seeking
24 enforcement, when annualized, exceed one hundred thousand dollars per
25 year. This dollar amount must be adjusted annually in accordance with
26 section 5 of this act;

27 (c) If the employee is terminated as the result of a layoff,
28 unless enforcement of the noncompetition covenant includes
29 compensation equivalent to the employee's base salary at the time of
30 termination for the period of enforcement minus compensation earned
31 through subsequent employment during the period of enforcement.

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

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

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

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

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

22 (1) If the covenant requires the employee or independent
23 contractor to adjudicate a noncompetition covenant outside of this
24 state; and

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

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

30 (2) No franchisor may restrict, restrain, or prohibit in any way
31 a franchisee from soliciting or hiring any employee of the
32 franchisor.

33 NEW SECTION. **Sec. 8.** (1) Subject to subsection (2) of this
34 section, an employer may not restrict, restrain, or prohibit an
35 employee earning less than twice the applicable state minimum hourly
36 wage from having an additional job, supplementing their income by

1 working for another employer, working as an independent contractor,
2 or being self-employed.

3 (2) (a) This section shall not apply to any such additional
4 services when the specific services to be offered by the employee
5 raise issues of safety for the employee, coworkers, or the public, or
6 interfere with the reasonable and normal scheduling expectations of
7 the employer.

8 (b) This section does not alter the obligations of an employee to
9 an employer under existing law, including the common law duty of
10 loyalty and laws preventing conflicts of interest and any
11 corresponding policies addressing such obligations.

12 NEW SECTION. **Sec. 9.** (1) Upon a violation of this chapter, the
13 attorney general, on behalf of a person or persons, may pursue any
14 and all relief. A person aggrieved by a noncompetition covenant to
15 which the person is a party may bring a cause of action to pursue any
16 and all relief provided for in subsections (2) and (3) of this
17 section.

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

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

29 (4) A cause of action may not be brought regarding a
30 noncompetition covenant signed prior to the effective date of this
31 section if the noncompetition covenant is not being enforced.

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

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

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

3 NEW SECTION. **Sec. 11.** This chapter applies to all proceedings
4 commenced on or after the effective date of this section, regardless
5 of when the cause of action arose. To this extent, this chapter
6 applies retroactively, but in all other respects it applies
7 prospectively.

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

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

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

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

18 Correct the title.

EFFECT: Modifies the definition of earnings to: (1) The compensation reflected on box one of the employee's IRS form W-2 that is paid to an employee over the prior year, or portion thereof for which the employee was employed, annualized and calculated as of the earlier of the date enforcement of the covenant is sought or the date of separation from employment; or (2) 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: (a) \$100,000, annualized, per year for employee's earnings and (b) \$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, or interfere with the reasonable and normal scheduling expectations of the employer; 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. Limits a private right of action to a person aggrieved by a noncompetition covenant to which the person is a party. Allows the attorney general to pursue any and all relief. Provides that a cause

of action may not be brought for a covenant signed prior to the effective date if the covenant is not being enforced. Removes the definition of average annual wage.

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