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**SUBSTITUTE SENATE BILL 5478**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Lias, Keiser, Conway, Hunt, Pedersen, Kuderer, and McCoy)

READ FIRST TIME 02/15/19.

1 AN ACT Relating to restraints, including noncompetition  
2 covenants, on persons engaging in lawful professions, trades, or  
3 businesses; adding a new chapter to Title 49 RCW; and providing an  
4 effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

10 NEW SECTION. **Sec. 2.** The definitions in this section apply  
11 throughout this chapter unless the context clearly requires  
12 otherwise.

13 (1) "Average annual wage" means the average annual wage as  
14 established under RCW 50.04.355.

15 (2) "Earnings" means the unconditionally promised monetary  
16 compensation and educational debt repayment, excluding all other  
17 benefits or remuneration.

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

1 (4) "Franchisor" and "franchisee" have the same meanings as in  
2 RCW 19.100.010.

3 (5) "Noncompetition covenant" includes every written or oral  
4 covenant, agreement, or contract by which an employee or independent  
5 contractor is prohibited or restrained from engaging in a lawful  
6 profession, trade, or business of any kind. A "noncompetition  
7 covenant" does not include: (a) A nonsolicitation agreement; (b) a  
8 confidentiality agreement; (c) a covenant prohibiting use or  
9 disclosure of trade secrets or inventions; (d) a covenant entered  
10 into by a person selling the goodwill of a business or otherwise  
11 disposing of an ownership interest; or (e) a covenant entered into by  
12 a franchisee when the franchise sale complies with RCW 19.100.020(1).

13 (6) "Nonsolicitation agreement" means an agreement between an  
14 employer and employee that prohibits solicitation by an employee,  
15 upon termination of employment: (a) Of any employee of the employer  
16 to leave the employer; or (b) of any customer of the employer to  
17 cease or reduce the extent to which it is doing business with the  
18 employer.

19 (7) "Party seeking enforcement" means the named plaintiff or  
20 claimant in a proceeding to enforce a noncompetition covenant or the  
21 defendant in an action for declaratory relief.

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

24 (a) (i) Unless the employer discloses the terms of the covenant in  
25 writing to the prospective employee no later than the time of the  
26 acceptance of the offer of employment and, if the agreement becomes  
27 enforceable only at a later date due to changes in the employee's  
28 compensation, the employer specifically discloses that the agreement  
29 may be enforceable against the employee in the future; or

30 (ii) If the covenant is entered into after the commencement of  
31 employment, unless the employer provides independent consideration  
32 for the covenant.

33 (b) Unless the employee's earnings from the party seeking  
34 enforcement exceed two times the average annual wage.

35 (c) If the employee is terminated as the result of a layoff,  
36 unless enforcement of the noncompetition covenant includes  
37 compensation equivalent to the employee's base salary at the time of  
38 termination for the period of enforcement minus compensation earned  
39 through subsequent employment during the period of enforcement.

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

7 NEW SECTION. **Sec. 4.** (1) A noncompetition covenant is void and  
8 unenforceable against an independent contractor unless the  
9 independent contractor's earnings from the party seeking enforcement  
10 exceed four times the average annual wage.

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

14 NEW SECTION. **Sec. 5.** A provision in a noncompetition covenant  
15 signed by an employee or independent contractor who is Washington-  
16 based is void and unenforceable:

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

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

22 NEW SECTION. **Sec. 6.** (1) No franchisor may restrict, restrain,  
23 or prohibit in any way a franchisee from soliciting or hiring any  
24 employee of a franchisee of the same franchisor.

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

28 NEW SECTION. **Sec. 7.** An employer may not restrict, restrain, or  
29 prohibit an employee earning less than twice the applicable state  
30 minimum hourly wage from having an additional job, supplementing  
31 their income by working for another employer, working as an  
32 independent contractor, or being self-employed.

33 NEW SECTION. **Sec. 8.** (1) The attorney general, on behalf of a  
34 person or persons, or a person aggrieved by a violation of this

1 chapter may bring a cause of action to pursue any and all relief  
2 provided for in subsections (2) and (3) of this section.

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

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

14 NEW SECTION. **Sec. 9.** (1)(a) Subject to (b) of this subsection,  
15 this chapter displaces conflicting tort, restitutionary, contract,  
16 and other laws of this state pertaining to liability for competition  
17 by employees or independent contractors with their employers or  
18 principals, as appropriate.

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

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

22 NEW SECTION. **Sec. 10.** This act applies to all proceedings  
23 commenced on or after the effective date of this section, regardless  
24 of when the cause of action arose. To this extent, this act applies  
25 retroactively, but in all other respects it applies prospectively.

26 NEW SECTION. **Sec. 11.** This chapter is an exercise of the  
27 state's police power and shall be construed liberally for the  
28 accomplishment of its purposes.

29 NEW SECTION. **Sec. 12.** This act takes effect January 1, 2020.

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

1        NEW SECTION.    **Sec. 14.**    Sections 1 through 12 of this act  
2    constitute a new chapter in Title 49 RCW.

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