
SENATE BILL 5478

State of Washington **66th Legislature** **2019 Regular Session**

By Senators Lias, Keiser, Conway, Hunt, Pedersen, Kuderer, and McCoy

Read first time 01/22/19. Referred to Committee on Labor & Commerce.

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, plus the value of the publicly traded stock
18 awarded, annualized and calculated as of the date a noncompetition
19 covenant is signed by both parties. The value of publicly traded
20 stock shall be determined as follows:

1 (a) For shares fully vested on the grant date, the value is the
2 number of shares multiplied by the market price on the date the
3 covenant is signed; and

4 (b) For unvested shares, the value is the number of shares
5 multiplied by the market price on the date the covenant is signed,
6 divided by the vesting period and then divided by two.

7 (3) "Employee" and "employer" have the same meanings as in RCW
8 49.17.020.

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

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

21 (6) "Nonsolicitation agreement" means an agreement between an
22 employer and employee that prohibits solicitation by an employee,
23 upon termination of employment: (a) Of any employee of the employer
24 to leave the employer; or (b) of any customer of the employer to
25 cease or reduce the extent to which it is doing business with the
26 employer.

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

30 NEW SECTION. **Sec. 3.** (1) Subject to section 11 of this act, a
31 noncompetition covenant is void and unenforceable against an
32 employee:

33 (a)(i) Unless the employer discloses the terms of the covenant in
34 writing to the prospective employee no later than the time of the
35 acceptance of the offer of employment and, if the agreement becomes
36 enforceable only at a later date due to changes in the employee's
37 compensation, the employer specifically discloses that the agreement
38 may be enforceable against the employee in the future; or

1 (ii) If the covenant is entered into after the commencement of
2 employment, unless the employer provides independent consideration
3 for the covenant.

4 (b) Unless the employee's earnings from the party seeking
5 enforcement exceed three times the average annual wage.

6 (c) If the employee is terminated as the result of a layoff,
7 unless enforcement of the noncompetition covenant includes
8 compensation equivalent to the employee's base salary at the time of
9 termination for the period of enforcement minus compensation earned
10 through subsequent employment during the period of enforcement.

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

17 NEW SECTION. **Sec. 4.** Subject to section 11 of this act:

18 (1) A noncompetition covenant is void and unenforceable against
19 an independent contractor unless the independent contractor's
20 earnings from the party seeking enforcement exceed four times the
21 average annual wage.

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

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

28 (1) If the covenant requires the employee or independent
29 contractor to adjudicate a noncompetition covenant outside of this
30 state; and

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

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

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

4 NEW SECTION. **Sec. 7.** An employer may not restrict, restrain, or
5 prohibit an employee earning less than one and one-half times the
6 average annual wage from having an additional job, supplementing
7 their income by working for another employer, working as an
8 independent contractor, or being self-employed.

9 NEW SECTION. **Sec. 8.** (1) The legislature finds that the
10 practices covered by this chapter are matters vitally affecting the
11 public interest for purposes of applying the consumer protection act,
12 chapter 19.86 RCW. A violation of this chapter is not reasonable in
13 relation to the development and preservation of business and is an
14 unfair or deceptive act in trade or commerce, an unfair method of
15 competition, and an unreasonable restraint of trade for purposes of
16 applying the consumer protection act, chapter 19.86 RCW.

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

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

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

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

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

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

5 NEW SECTION. **Sec. 11.** The state, including an institution of
6 higher education, and a local government may not impose a
7 noncompetition covenant on an employee or independent contractor. Any
8 noncompetition covenant with an employee or independent contractor in
9 effect or entered into on or after the effective date of this section
10 is void and unenforceable.

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

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

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

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

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