

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1795

67th Legislature
2022 Regular Session

Passed by the House February 9, 2022
Yeas 56 Nays 40

**Speaker of the House of
Representatives**

Passed by the Senate March 3, 2022
Yeas 29 Nays 20

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1795** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1795

Passed Legislature - 2022 Regular Session

State of Washington 67th Legislature 2022 Regular Session

By House Labor & Workplace Standards (originally sponsored by Representatives Berry, Walen, Sells, Fitzgibbon, Bateman, Davis, Macri, Tharinger, Valdez, Pollet, Ormsby, Hackney, and Frame)

READ FIRST TIME 01/28/22.

1 AN ACT Relating to prohibiting nondisclosure and nondisparagement
2 provisions from employers regarding illegal acts of discrimination,
3 harassment, retaliation, wage and hour violations, and sexual
4 assault; adding a new section to chapter 49.44 RCW; creating new
5 sections; repealing RCW 49.44.210; and prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** The legislature recognizes that there
8 exists a strong public policy in favor of the disclosure of illegal
9 discrimination, illegal harassment, illegal retaliation, wage and
10 hour violations, and sexual assault, that is recognized as illegal
11 under Washington state, federal, or common law, or that is recognized
12 as against a clear mandate of public policy, that occurs at the
13 workplace, at work-related events coordinated by or through the
14 employer, between employees, or between an employer and an employee,
15 whether on or off the employment premises. Nondisclosure and
16 nondisparagement provisions in agreements between employers and
17 current, former, prospective employees, and independent contractors
18 have become routine and perpetuate illegal conduct by silencing those
19 who are victims or who have knowledge of illegal discrimination,
20 illegal harassment, illegal retaliation, wage and hour violations, or
21 sexual assault. It is the intent of the legislature to prohibit

1 nondisclosure and nondisparagement provisions in agreements, which
2 defeat the strong public policy in favor of disclosure.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.44
4 RCW to read as follows:

5 (1) A provision in an agreement by an employer and an employee
6 not to disclose or discuss conduct, or the existence of a settlement
7 involving conduct, that the employee reasonably believed under
8 Washington state, federal, or common law to be illegal
9 discrimination, illegal harassment, illegal retaliation, a wage and
10 hour violation, or sexual assault, or that is recognized as against a
11 clear mandate of public policy, is void and unenforceable. Prohibited
12 nondisclosure and nondisparagement provisions in agreements concern
13 conduct that occurs at the workplace, at work-related events
14 coordinated by or through the employer, between employees, or between
15 an employer and an employee, whether on or off the employment
16 premises. Prohibited nondisclosure and nondisparagement provisions
17 include those contained in employment agreements, independent
18 contractor agreements, agreements to pay compensation in exchange for
19 the release of a legal claim, or any other agreement between an
20 employer and an employee.

21 (2) This section does not prohibit the enforcement of a provision
22 in any agreement that prohibits the disclosure of the amount paid in
23 settlement of a claim.

24 (3) It is a violation of this section for an employer to
25 discharge or otherwise discriminate or retaliate against an employee
26 for disclosing or discussing conduct that the employee reasonably
27 believed to be illegal harassment, illegal discrimination, illegal
28 retaliation, wage and hour violations, or sexual assault, that is
29 recognized as illegal under state, federal, or common law, or that is
30 recognized as against a clear mandate of public policy, occurring in
31 the workplace, at work-related events coordinated by or through the
32 employer, between employees, or between an employer and an employee,
33 whether on or off the employment premises.

34 (4) It is a violation of this section for an employer to request
35 or require that an employee enter into any agreement provision that
36 is prohibited by this section.

37 (5) It is a violation of this section for an employer to attempt
38 to enforce a provision of an agreement prohibited by this section,
39 whether through a lawsuit, a threat to enforce, or any other attempt

1 to influence a party to comply with a provision in any agreement that
2 is prohibited by this section.

3 (6) This section does not prohibit an employer and an employee
4 from protecting trade secrets, proprietary information, or
5 confidential information that does not involve illegal acts.

6 (7) An employer who violates this section after the effective
7 date of this section is liable in a civil cause of action for actual
8 or statutory damages of \$10,000, whichever is more, as well as
9 reasonable attorneys' fees and costs.

10 (8) For the purposes of this section, "employee" means a current,
11 former, or prospective employee or independent contractor.

12 (9) A nondisclosure or nondisparagement provision in any
13 agreement signed by an employee who is a Washington resident is
14 governed by Washington law.

15 (10) The provisions of this section are to be liberally construed
16 to fulfill its remedial purpose.

17 (11) As an exercise of the state's police powers and for remedial
18 purposes, this section is retroactive from the effective date of this
19 section only to invalidate nondisclosure or nondisparagement
20 provisions in agreements created before the effective date of this
21 section and which were agreed to at the outset of employment or
22 during the course of employment. This subsection allows the recovery
23 of damages only to prevent the enforcement of those provisions. This
24 subsection does not apply to a nondisclosure or nondisparagement
25 provision contained in an agreement to settle a legal claim.

26 NEW SECTION. **Sec. 3.** The repeal in section 4 of this act does
27 not affect any existing right acquired or liability or obligation
28 incurred under the statute repealed in this act or under any rule or
29 order adopted under that statute, nor does it affect any proceeding
30 instituted under that statute.

31 NEW SECTION. **Sec. 4.** RCW 49.44.210 (Nondisclosure agreements
32 that prevent disclosure of sexual assault or sexual harassment
33 prohibited—Settlement agreement exception) and 2018 c 117 s 1 are
34 each repealed.

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