S-4321.1

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**SUBSTITUTE SENATE BILL 5935**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Stanford, Keiser, Conway, Dhingra, Frame, Kuderer, Liias, Nobles, and Saldaña)

AN ACT Relating to noncompetition covenants; and amending RCW 49.62.005, 49.62.010, 49.62.020, 49.62.050, 49.62.080, and 49.62.090.

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

**Sec.**  RCW 49.62.005 and 2019 c 299 s 1 are each amended to read as follows:

The legislature finds that ((~~workforce~~)):

(1) Workforce mobility is important to economic growth and development((~~. Further, the legislature finds that agreements~~));

(2) Agreements limiting competition or hiring may be contracts of adhesion that may be unreasonable; and

(3) The provisions in this chapter facilitating workforce mobility and protecting employees and independent contractors need to be liberally construed and exceptions narrowly construed.

**Sec.**  RCW 49.62.010 and 2019 c 299 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Earnings" means the compensation reflected on box one of the employee's United States internal revenue service 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 noncompetition covenant is sought or the date of separation from employment. "Earnings" also means payments reported on internal revenue service form 1099-MISC for independent contractors.

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

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

(4) "Noncompetition covenant" includes every written or oral covenant, agreement, or contract by which an employee or independent contractor is prohibited or restrained from engaging in a lawful profession, trade, or business of any kind. A "noncompetition covenant" also includes an agreement that directly or indirectly prohibits the acceptance or transaction of business with a customer. A "noncompetition covenant" does not include: (a) A nonsolicitation agreement; (b) a confidentiality agreement; (c) a covenant prohibiting use or disclosure of trade secrets or inventions; (d) a covenant entered into by a person purchasing or selling the goodwill of a business or otherwise acquiring or disposing of an ownership interest, but only if the person signing the covenant purchases, sells, acquires, or disposes of an interest representing one percent or more of the business; or (e) a covenant entered into by a franchisee when the franchise sale complies with RCW 19.100.020(1).

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

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

**Sec.**  RCW 49.62.020 and 2019 c 299 s 3 are each amended to read as follows:

(1) A noncompetition covenant is void and unenforceable ((~~against an employee~~)):

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

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

(b) Unless the employee's earnings from the party seeking enforcement, when annualized, exceed one hundred thousand dollars per year. This dollar amount must be adjusted annually in accordance with RCW 49.62.040;

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

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

**Sec.**  RCW 49.62.050 and 2019 c 299 s 6 are each amended to read as follows:

A provision in a noncompetition covenant signed by an employee or independent contractor who is Washington-based is void and unenforceable:

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

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

(3) If it allows or requires the application of choice of law principles or the substantive law of any jurisdiction other than Washington state.

**Sec.**  RCW 49.62.080 and 2019 c 299 s 9 are each amended to read as follows:

(1) Upon a violation of this chapter, the attorney general, on behalf of a person or persons, may pursue any and all relief. A person aggrieved by a noncompetition covenant ((~~to which the person is a party~~)) may bring a cause of action to pursue any and all relief provided for in subsections (2) and (3) of this section.

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

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

(4) A cause of action may not be brought regarding a noncompetition covenant signed prior to January 1, 2020, if the noncompetition covenant is not being enforced or explicitly leveraged.

**Sec.**  RCW 49.62.090 and 2019 c 299 s 10 are each amended to read as follows:

(1)(a) Subject to (b) of this subsection, this chapter displaces conflicting tort, restitutionary, contract, including contract principles relating to discharge by assent or alteration, and other laws of this state pertaining to liability for competition by employees or independent contractors with their employers or principals, as appropriate.

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

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

**--- END ---**