
Labor & Workplace Standards Committee

SSB 5935

Brief Description: Concerning noncompetition covenants.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Stanford, Keiser, Conway, Dhingra, Frame, Kuderer, Lias, Nobles and Saldaña).

Brief Summary of Substitute Bill

- Amends the definition of "noncompetition covenant" to: (1) include agreements that directly or indirectly prohibit the acceptance or transaction of business with a customer; and (2) exclude covenants where the person signing the covenant purchases, sells, acquires, or disposes of an interest representing one percent or more of the business.
- Makes changes related to: (1) circumstances under which noncompetition covenants are void and unenforceable; (2) causes of action by aggrieved persons; (3) displacement of other laws; and (4) statutory construction.

Hearing Date: 2/14/24

Staff: Trudes Tango (786-7384).

Background:

A noncompetition covenant (covenant or noncompete) is a written or oral agreement by which an employee or independent contractor is prohibited or restrained from engaging in a lawful profession, trade, or business of any kind. Certain agreements are declared not to be noncompetes, including nonsolicitation agreements and covenants entered into by persons

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purchasing, selling acquiring, or disposing of an ownership interest in the business.

A nonsolicitation agreement is an agreement that prohibits an employee, upon termination of employment, from soliciting other employees to leave the employer or from soliciting customers to cease or reduce doing business with the employer.

There are certain circumstances under which a noncompete is void and unenforceable. For example, a noncompete is void and unenforceable against an employee unless: (1) the employer discloses the covenant's terms in writing to the prospective employee before acceptance of the employment offer; or (2) the employee's earnings exceed a certain amount; or (3) enforcement of the noncompete includes compensation to the employee, if the employee is being laid off.

A provision in a noncompete signed by an employee or independent contractor who is Washington-based is void and unenforceable if the provision requires the employee or independent contractor to adjudicate the noncompete outside the state and to the extent it deprives the employee or independent contractor the protections or benefits of Washington's noncompete statutes.

For violations of the noncomplete statutes, a person aggrieved by a noncompete to which the person is a party may bring a cause of action for damages. However, a cause of action may not be brought on a noncompete signed prior to January 1, 2020, if the noncompete is not being enforced.

The noncompete statutes displace conflicting tort, restitutionary, contract, and other laws related to liability for competition by employees or independent contractors.

Summary of Bill:

Definitions.

The definition of a "noncompetition covenant" is expanded to include agreements that directly or indirectly prohibit the acceptance or transaction of business with a customer. A noncompetition covenant does not include a covenant where the person signing the covenant purchases, sells, acquires, or disposes of an interest representing 1 percent or more of the business. Language is also added to specify that nonsolicitation agreements apply to current customers.

Void and Unenforceable Provisions.

The provision making a noncompete void and unenforceable unless the employer discloses it to a prospective employee before acceptance of the offer of employment is amended to specify the acceptance includes an initial oral or written acceptance.

A provision in a noncompete is void and unenforceable if it allows or requires the application of choice of law principles or the substantive law of any jurisdiction other than Washington.

Changes are made to specify that noncompetition covenants are void and unenforceable, rather

than void and unenforceable "against an employee."

Cause of Action.

For purposes of bringing a cause of action for violations, the requirement that the aggrieved person be a party to the noncompete is removed.

A cause of action may not be brought for a noncompete signed prior to January 1, 2020, if the noncompete is not being explicitly leveraged.

Displacement of Other Laws.

A provision is added to specify that contract principles relating to discharge by assent or alteration are also displaced by the noncompete statutes.

Statutory Construction.

Language is added to the intent section to specify that the provisions of the act must be liberally construed and exceptions narrowly construed.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.