

# HOUSE BILL REPORT

## HB 1155

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**As Reported by House Committee On:**  
Labor & Workplace Standards

**Title:** An act relating to encouraging competition and economic growth by prohibiting noncompetition agreements and clarifying nonsolicitation agreements.

**Brief Description:** Prohibiting noncompetition agreements and clarifying nonsolicitation agreements.

**Sponsors:** Representatives Berry, Walen, Ramel, Reed, Ryu, Alvarado, Mena, Macri, Farivar, Fosse, Simmons, Peterson, Goodman, Pollet, Kloba, Ormsby, Salahuddin and Hill.

**Brief History:**

**Committee Activity:**

Labor & Workplace Standards: 1/15/25, 2/7/25 [DPS].

**Brief Summary of Substitute Bill**

- Makes any noncompetition covenant void and unenforceable, regardless of when the parties entered into the covenant.

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### HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Berry, Chair; Fosse, Vice Chair; Scott, Vice Chair; Schmidt, Ranking Minority Member; Bronoske, McEntire, Obras and Ortiz-Self.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Ybarra, Assistant Ranking Minority Member.

**Staff:** Kelly Leonard (786-7147).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

### Status of Noncompetition Covenants.

A "noncompetition covenant," also referred to as a noncompetition agreement or noncompete agreement, 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. It includes an agreement that directly or indirectly prohibits the acceptance or transaction of business with a customer. It does not include a nonsolicitation agreement, confidentiality agreement, or covenant involving the purchase or sale of an interest representing 1 percent or more of a 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.

State law imposes restrictions and limitations on the enforceability of noncompetition covenants, as follows:

- *Employees.* A noncompetition covenant is void and unenforceable unless the employer complies with certain restrictions and the employee's earnings exceed a specified amount adjusted annually for inflation by the Department of Labor and Industries (L&I), which is currently \$123,394.17.
- *Broadcasting Employees.* For certain employment relationships in the broadcasting industry, any applicable noncompetition covenant is void and unenforceable if the employee is terminated without just cause or laid off by action of the employer.
- *Independent Contractors.* A noncompetition covenant is void and unenforceable against an independent contractor unless the independent contractor's earnings exceed a specified amount adjusted annually for inflation by L&I, which is currently \$308,485.43. The duration of a noncompetition covenant between a performer and a performance space, or a third party scheduling the performer for a performance space, must not exceed three calendar days.
- *Duration Exceeding 18 Months.* A court or arbitrator must presume that any noncompetition covenant with a duration exceeding 18 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 18 months is necessary to protect the party's business or goodwill.

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

- if the covenant requires the employee or independent contractor to adjudicate a noncompetition covenant outside of Washington;
- if it allows or requires the application of choice of law principles or the substantive law of any jurisdiction other than Washington; or
- to the extent it deprives the employee or independent contractor of the protections or benefits of the state laws restricting noncompetition covenants.

### Moonlighting and Franchisors.

An employer may not restrict an employee who is earning less than twice the minimum wage from having an additional job, supplementing their income by working for the employer, working as an independent contractor, or being self-employed, with some exceptions.

State law prohibits franchisors from restricting franchisees from soliciting or hiring any employee of the franchisor or a franchisee of the same franchisor.

### Enforcement.

The Attorney General may enforce the restrictions against noncompetition covenants and moonlighting, as well as the provisions applicable to franchisors.

Any person aggrieved by a noncompetition covenant may bring a cause of action for damages and attorneys' fees. 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.

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### **Summary of Substitute Bill:**

The definition of "noncompetition covenant" is expanded by specifying that it also includes:

- any provision that threatens, demands, requires, or otherwise effectuates that an individual return, repay, or forfeit any right, benefit, or compensation, as a consequence of the individual engaging in a lawful profession, trade, or business of any kind; and
- agreements between performers and performance spaces or third party schedulers.

"Nonsolicitation agreement" specifically does not include an agreement directly or indirectly prohibiting the acceptance or transaction of business with a customer.

### Status of Noncompetition Covenants.

All noncompetition covenants are void and unenforceable, regardless of when the parties entered into the covenant.

By October 1, 2025, employers must provide current and former employees and independent contractors, who are subject to a noncompetition agreement, a written notice stating that the agreement is void and unenforceable.

An employer may not enforce, attempt to enforce, or threaten to enforce against an employee or worker any noncompetition covenant, represent that the employee or worker is

subject to a noncompetition covenant, or enter into or attempt to enter into a noncompetition covenant with an employee or worker.

Enforcement.

Any person aggrieved by any violation of the provisions governing noncompetition covenants, moonlighting, or franchisors may bring a cause of action for damages and attorneys' fees.

The restrictions in the bill apply to all proceedings commenced on or after the effective date of the bill. Legal proceedings commenced before the effective date of the bill are governed by the statutes as amended prior to the effective date of the bill.

**Substitute Bill Compared to Original Bill:**

The substitute bill delays the effective date of the bill to June 30, 2026, and provides that employer notices must be sent to employees and independent contractors by October 1, 2026 (rather than October 1, 2025, as provided in the underlying bill).

The substitute bill replaces references to "prohibited agreements" with "noncompetition covenants" to provide for consistent use of terms in the underlying bill. The substitute bill removes language stating that a cause of action under the applicable statute cannot be brought prior to the effective date of the bill, but otherwise retains language providing that legal proceedings commenced before the effective date of the bill will be governed by the statute as amended prior to the effective date of the bill.

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**Appropriation:** None.

**Fiscal Note:** Requested on February 7, 2025.

**Effective Date of Substitute Bill:** The bill takes effect on June 30, 2026.

**Staff Summary of Public Testimony:**

(In support) Noncompete agreements are bad for business, workers, and the free market economy. Noncompetes are used to stifle competition and even harass former employees. The current law restricting noncompetes to high wage earners has helped with removing barriers and reducing litigation, but it does not go far enough. Other states have banned noncompete agreements, and the sky has not fallen. Businesses can and do continue to operate without imposing noncompete agreements on their workers. There are national economic interests in favor of banning this practice. The Federal Trade Commission adopted a rule to that effect in 2024, but it is currently being challenged. Washington should move forward to protect workers and entrepreneurship. The bill does not prohibit

businesses from using confidentiality agreements and nonsolicitation agreements. There are still effective means to protect intellectual property without hurting workers. The bill should go further and ban restrictions on moonlighting.

(Opposed) The current law limiting noncompetes to high wage earners is acceptable, but this bill goes too far in hindering business investments. The state needs to recognize that agreements between businesses and high wage earners involve sophisticated negotiations and tradeoffs on both sides. The bill should not include restrictions against agreements regarding fairs and performers. Date and time restrictions for these venues are important for ticket sales and profitability. The bill should also not repeal the provisions regarding broadcasters. The broadcast industry is built around specific personalities and investing in them. These are highly compensated individuals. These covenants are fairly standard when negotiating with on-air talent.

**Persons Testifying:** (In support) Representative Liz Berry, prime sponsor; Jeremiah Miller, Fair Work Center; Jeremiah Miller, Fair Work Center; Jesse Wing, Washington Employment Lawyers Association; Sung Shin; Taifa Harris; Joe Kendo, WA State Labor Council; and Tanya Donovan.

(Opposed) Lindsey Hueer, Association of Washington Business; Mike Burgess, WA State Fairs Association; and Rowland Thompson, Washington State Association of Broadcasters.

**Persons Signed In To Testify But Not Testifying:** None.