

SENATE BILL REPORT

SB 5437

As of January 19, 2026

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: Senators Stanford, Dhingra, Saldaña, Valdez, Riccelli, Conway, Frame, Hasegawa, Nobles, Ramos and Shewmake.

Brief History:

Committee Activity: Labor & Commerce: 2/18/25; 1/19/26.

Brief Summary of Bill

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

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Susan Jones (786-7404)

Background: 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 non-solicitation agreement, confidentiality agreement, covenant prohibiting the use of disclosure of trade secrets or inventions, covenant involving the purchase or sale of an interest representing 1 percent or more of a business, or certain agreements related to franchises.

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.

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

State law imposes restrictions and limitations on the enforceability of noncompetition covenants.

Employees. A noncompetition covenant is void and unenforceable unless the employer complies with certain restrictions and the employee's earnings from the person seeking to enforcement covenant exceed a specified amount adjusted annually for inflation by the Department of Labor and Industries (L&I), which is currently \$126,858.83.

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 from the person seeking to enforce the covenant exceed a specified amount adjusted annually for inflation by L&I, which is currently \$317,147.09. 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 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 another 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 or statutory damages of \$5,000, attorneys' fees and costs. 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.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Definitions Expanded. 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.

Non-solicitation agreement excludes 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 enforceable, regardless of when the parties entered into the covenant.

By October 1, 2026, 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 or threaten to enforce an agreement that is prohibited against an employee or worker; represent that an employee or worker is subject to a prohibited agreement; or enter into or attempt to enter into an agreement with an employee or worker that is prohibited.

Enforcement. The attorney general or any person aggrieved by any violation of the provisions governing noncompetition covenants, moonlighting, or franchisors may bring a cause of action for damages, statutory damages, attorneys' fees, and costs.

The restrictions in the bill apply to all proceedings commenced on or after the effective date of the bill. A cause of action may not be brought based on the restrictions prior to 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.

Legislative findings are expanded and legislative intent is provided.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony (Labor & Commerce) (Regular Session 2025):

PRO: Competition is crucial for progress in our economy. Noncompetes are inherently anti-competitive. Eliminating non-competes will remove barriers, allowing employees to seek better jobs for reasons such as gaining more responsibility, better pay, or for a family need. The bill will allow employees to start their own businesses, encouraging innovation. Criticism of the bill can be addressed by non-disclosure or non-solicitation agreements.

This was a game changer for low wage worker, but not higher paying fields, restricting career mobility, innovation and research development. Big tech companies are almost always a take it or leave it for noncompetes, without room for negotiation. About half the technology workers are subject to noncompetes.

The Federal Trade Commission tried to ban most noncompetes nationwide but that is in litigation. California has this ban. Join other states in holding noncompetes void.

The current statute removed unnecessary barriers to mobility of many workers making lower wages. It reduced confusion among employers and employees. Many people predicted that there would be problems with that law, but businesses remain as competitive as ever. Abuses that led to the enactment of that statute are continuing for those who make over the threshold.

A testifier described working for an employer who did not provide the promised support and disagreed with the employer decisions. The employee left and there was no potential harm to the employer since she did not take clients or intellectual property and had a confidentiality agreement. She had to litigate in another state, not Washington where she worked, causing lost work time and financial hardship.

Even though Washington has banned noncompetes below a certain income threshold, they are still illegally included in employment contracts for broadcasters making as low as \$80,000 per year. Even if not enforced, the workers are still placed in a state of confusion requiring help of their union or an attorney. Presently some broadcast employers in this state require their employees to pay back money in order to leave a contract early. The bill would prohibit this practice.

The current framework stops short of truly freeing the labor market from these uncompetitive restrictions on the movement of labor. The bill will finally ensure equal

access to freedom for workers.

CON: People testify about challenging circumstances. However, just because contracts don't always work out the way people intended doesn't mean the Legislature should invalidate an entire form of employment contracts.

With the existing salary threshold, non-competes in Washington are contracts negotiated by sophisticated parties and the person bound by the non-compete is compensated for their agreement. No one is required to sign a non-compete. They have the option to negotiate or walk away accept employment without a non-compete. It is the employer who is being limited under the bill.

There are concerns with the bill. For example, employers wouldn't be able to contractually prohibit employees from actively working for the competition at the same time they're working for that employer. The bill should be limited to post-employment restrictions.

Fairs, as an entertainment and music venue, often include provisions in their agreement that deal with distance and time restrictions on when a performer can do another show. These terms are commonplace to protect the large investment of the fair. Fairs are non-profits and margins can be pretty thin on these concerts. Entertainers may negotiate the terms.

Persons Testifying (Labor & Commerce): PRO: Senator Derek Stanford, Prime Sponsor; Steven Bock, Computer Programmer/Digital Rights Advocate; Davis Powell, SAG-AFTRA, Seattle Local; Christoph Mair, Washington State Labor Council, AFL-CIO; Jesse Wing, Washington Employment Lawyers Association; Sung Shin; Taifa Harris; Tanya Donovan.

CON: Lindsey Hueer, Association of Washington Business; Mike Burgess, WA State Fairs Association.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony On Proposed Substitute (Labor & Commerce) (Regular Session 2026): PRO: Workers who leave a job should not be subject to the dictates of their former employer. A non-competition agreement is inherently anti-competitive. That is bad for a free market economy and consumers. Non competition agreements are very different from non disclosure and non solicitation agreements. This bill does not get rid of those agreements.

Physicians now have policy in support of the prohibition on non-competes in physician contracts. The physician community believe non competes impede their career autonomy and intensify feelings of burnout. Employers can sometimes force physicians and their families to uproot themselves from their communities. A survey found that over half of the physician respondents were subject to a non-completes, which included geographic location

and time period restrictions.

The previous legislation protects the rights of lower wage and moderate wage employees, but employees are not in a bargaining position to be able to negotiate a decent way to leave their jobs. In many situations, the employer is changing the job position, not providing adequate pay or support, reducing the ability of somebody to perform their position. The employee has no other alternative because to take a new job, they have to move their family. Non-competes are inherently harmful to employees and to the economy.

A remote worker testified that they left to take a different job. There was no potential harm to the prior employer since they did not take clients or intellectual property and abided by a confidential entity agreement. The former employer sued in the Midwest. The Midwest judge rejected Washington law's protections. The court's ruling prevented the worker from working for many months, and this caused financial burden as the worker was supporting his elderly parents and young daughter. He had to settle to avoid paying the employer's high attorneys fees.

A worker testified about applying for publicly posted position for the opportunity for career advancements. There was no impropriety involved. He was sued by his former employer. The lawsuit has caused significant emotional and financial strain.

CON: Recruiting clinicians and physicians into ownership groups often involves the investments between \$250,000 to \$500,000. It'd be devastating if a large health system or a private equity group could free ride on these investment by hiring away in-demand clinicians or lucrative specialties. Non-competes head off these kinds of practices and help clinics stay independent.

Banks do see value in preventing a vice president or a chief credit officer from soliciting the existing bank customers and possibly destabilizing a financial institution. The bill significantly weakens that definition of non-solicitation and we ask that it be removed from the bill.

Employers often make substantial long-term investments in these higher-wage individuals, including specialized training and sharing access to confidential and proprietary business information. Without the availability of narrowly tailored non-competes, employers may be less willing to invest deeply in employee development.

The 2019 compromise limited the use of non-comp agreements to higher wage owners, striking a balance between worker mobility and legitimate business interests. Non-competes remain a vital tool.

There are two primary concerns with the bill. First, it would prevent employers from restricting current employees from simultaneously working for a direct competitor. This

could create active conflicts of interest. Limit the bill to post-employment situations to avoid these conflicts. Second, we ask that the bill retain a narrow exemption for senior executives, allowing enforcement of non-competitive agreements for C-suite or similar leaders who have unique access to highly sensitive strategic, financial and product and market plans.

OTHER: The modest limitations that currently exist, including the earning thresholds, were the result of the policy that was passed by Legislature in 2019. While passing the original policy improved the situation for many workers, it stopped short of truly freeing workers from uncompetitive restrictions on the movement of labor. By setting a date after which all the non-competition agreements would be void and unenforceable in the state, it would finally ensure that all workers have the freedom to go into the marketplace, which helps to improve the economic well-being and security of workers and their families.

Persons Testifying (Labor & Commerce): PRO: Senator Derek Stanford, Prime Sponsor; Sung Shin; Taifa Harris; Jesse Wing, Washington Employment Lawyers Association (WELA); Alex Wehinger, WA State Medical Association (WSMA).

CON: Mark Mantei, Vancouver Clinic; James Crandall, AWB; Brad Tower, Community Bankers of Washington .

OTHER: Carissa Larsen, Washington State Labor Council, AFL-CIO.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.