

1 **2ESSB 5526 - H COMM AMD ADOPTED 03/03/92**

2 By Committee on Commerce & Labor

3 Strike everything after the enacting clause and insert the
4 following:

5 "NEW SECTION. **Sec. 1.** (1) An agreement, written or oral,
6 express or implied, between an employer and employee under which
7 the employee agrees not to compete, either alone or as an employee
8 of another, with the employer in providing products, processes, or
9 services after termination of employment with the employer, entered
10 into after the effective date of this act, is unenforceable unless:

11 (a)(i) The agreement is bargained for and agreed to as a
12 condition of initial employment of the employee by the employer; or

13 (ii) The agreement is bargained for during employment and
14 additional consideration is provided by the employer to the
15 employee for entering into the agreement; and

16 (b) The agreement is reasonable under all the circumstances
17 existing at the time the agreement was entered into.

18 (2) Whether the agreement is reasonable under all the
19 circumstances existing at the time the agreement was entered into
20 shall be determined giving consideration to at least the following
21 factors:

1 (a) The agreement is necessary for the protection of the
2 business or goodwill of the employer;

3 (b) The agreement imposes upon the employee no greater
4 restraint than is reasonably necessary to secure the employer's
5 business or goodwill; and

6 (c) The degree of injury to the public from the loss of the
7 service and skill of the employee is not so great that it warrants
8 nonenforcement of the agreement.

9 (3) Continued employment by itself shall not be considered
10 additional consideration for the purposes of subsection (1)(a)(ii)
11 of this section.

12 (4) This section does not restrict the right of a person to
13 protect trade secrets or other proprietary information by lawful
14 means under applicable law."

15 "NEW SECTION. **Sec. 2.** The provisions of section 1 of this
16 act are intended to be additional to other remedies permitted by
17 law and shall be liberally construed to carry out the purposes of
18 section 1 of this act."

19 "NEW SECTION. **Sec. 3.** Sections 1 and 2 of this act are each
20 added to chapter 49.44 RCW."

21 "NEW SECTION. **Sec. 4.** This act shall take effect July 1,
22 1992."

1 "NEW SECTION. **Sec. 5.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected."

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7 On page 1, line 1 of the title, after "agreements;" strike the
8 remainder of the title and insert "adding new sections to chapter
9 49.44 RCW; and providing an effective date."