SENATE BILL REPORT

2ESSB 5526

AS PASSED SENATE, JANUARY 24, 1992

Brief Description: Governing employee noncompetition clauses.

SPONSORS: Senate Committee on Commerce & Labor (originally sponsored by Senators Bauer, Newhouse, Moore, Nelson and Johnson).

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: That Substitute Senate Bill No. 5526 be substituted therefor, and the substitute bill do pass.
Signed by Senators Matson, Chairman; Anderson, Vice Chairman; McMullen, Moore, and Murray.

Staff: Forrest Bathurst (786-7429)

Hearing Dates: February 26, 1991; March 6, 1991

HOUSE COMMITTEE ON COMMERCE & LABOR

BACKGROUND:

Job applicants are often asked to sign noncompetition contracts with potential employers as a precondition for being hired.

Workers entering into noncompetition agreements have argued in the past that they did not fully understand how their future working and business activities would be affected by the contracts.

SUMMARY:

Employee noncompetition agreements entered into after December 31, 1992, are void and unenforceable by any court of this state unless:

(a) The agreement is entered into on the initial employment of the employee by the employer; or

(b) Additional consideration is provided by the employer to the employee for entering into the agreement;

(c) The agreement is fair and reasonable under prior decisions of the courts of this state; and

(d) "Additional consideration" shall not be continued employment.

Nothing in this bill restricts the right of a person to protect trade secrets or other proprietary information by lawful means.

Appropriation: none

Revenue: none

Fiscal Note: none requested

TESTIMONY FOR:

The business community does not oppose the bill.

TESTIMONY AGAINST: None

TESTIFIED: PRO: Clif Finch, Association of Washington Business; Gary Smith, Independent Business Association

HOUSE AMENDMENT(S):

Employee noncompetition agreements entered into after July 1, 1992, are unenforceable unless certain conditions are met. An employee noncompetition agreement is an agreement, written or oral, express or implied, in which the employee agrees not to compete with the employer in providing products or services after termination of employment.

To be enforceable, the agreement must: (1) either be bargained for and agreed to as a condition of initial employment of the employee by the employer, or be bargained for during employment, with the employer providing additional consideration to the employee for entering into the agreement; and (2) be reasonable under all the circumstances existing at the time the agreement was entered into. Continued employment by itself is not additional consideration.

Whether an agreement is reasonable under all the circumstances is determined by giving consideration to at least: (1) whether the agreement is necessary for the protection of the business or goodwill of the employer; (2) whether the agreement imposes upon the employee no greater restraint than is reasonably necessary to secure the employer's business or goodwill; and (3) whether the degree of injury to the public from the loss of the service and skill of the employee is not so great that it warrants nonenforcement of the agreement.

The act does not restrict the right of a person to protect trade secrets or other proprietary information by lawful means. The act is intended to be additional to other remedies and is to be liberally construed.