

HOUSE BILL REPORT

HB 2469

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to noncompetition agreements involving the broadcasting industry.

Brief Description: Prohibiting noncompetition agreements in the broadcasting industry.

Sponsors: Representatives Wood, Kenney, Dickerson, Reardon, Grant, Morris, Kessler, Chase and Conway.

Brief History:

Committee Activity:

Commerce & Labor: 1/30/02, 2/8/02 [DP].

Brief Summary of Bill

- Prohibits broadcasting industry employers from requiring certain employees to enter into noncompetition agreements.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 4 members: Representatives Conway, Chair; Wood, Vice Chair; Kenney and Lysen.

Minority Report: Do not pass. Signed by 2 members: Representatives Clements, Ranking Minority Member; and Chandler.

Staff: Jill Reinmuth (786-7134); Chris Cordes (786-7103).

Background:

Noncompetition clauses are provisions within an employment contract that restrict an employee from competing with his or her employer. These clauses typically restrict an employee from engaging in business activities in which the employee competes with the employer or accepting employment with another business that competes with the employer. They also restrict an employee's activities for a specific period of time and in a specific geographic area.

Washington courts enforce "reasonable" noncompetition clauses. Courts consider three factors when deciding if a clause is reasonable:

- Whether restraining the employee from performing services is necessary for the protection of the business or goodwill of the employer.
- Whether the clause harms the employee more than is reasonably necessary to secure the employer's business or goodwill.
- Whether the loss of the employee's services and skills injures the public to a degree warranting nonenforcement of the clause.

Courts also look at the relative bargaining power of the employee and employer upon entering the employment relationship, and the motives of both when terminating the relationship.

Summary of Bill:

Broadcasting industry employers are prohibited from requiring applicants, employees, or independent contractors from entering into noncompetition agreements. However, enforcement of noncompetition agreements is permitted for existing agreements or against employees who breach employment contracts.

Broadcasting industry employers requiring noncompetition agreements are subject to civil liability and reasonable attorneys' fees and costs.

Broadcasting industry employers maintain their rights to protect trade secrets or other proprietary information by lawful means.

"Employee" is defined as an employee of a broadcasting industry employer, but not a sales or management employee.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: The broadcasting workplace needs to be a team environment. Forcing noncompete agreements on the employees is detrimental to the workplace. Employees who refuse to sign these agreements may never see another pay raise. There is a growing problem of abuse in the use of these agreements. Employees do not have

enough bargaining power to avoid being taken advantage of. Even if unreasonable agreements would not be enforced, employees seldom go to court because of the cost. Some employees feel forced to trade away a severance package to get out of the agreement. These agreements are not limited to the highly paid personalities.

Testimony Against: This bill would make the broadcasting industry the only industry prohibited from using noncompete agreements. When an employer uses these agreements, they are narrowly tailored to fit the situation. Employers do a lot to develop a "personality" and give them exposure and name recognition with the public. It is unfair for such a person to take that identity to the employer's competitor. Employees do have leverage as has been shown by cases of movement of identifiable personalities from one station to another in the Seattle broadcasting market. This a huge challenge for the small broadcaster.

Testified: (In support) Representative Wood, prime sponsor; and John Sandifer.

(Opposed) Becky Bogard, Ken Messer, and Mark Allen, Washington State Association of Broadcasters.