

SENATE BILL REPORT

ESB 6373

As Passed Senate, February 16, 2002

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

Brief Description: Prohibiting noncompetition agreements in the broadcasting industry.

Sponsors: Senators Keiser, Winsley, Prentice, Hochstatter, Franklin, Rasmussen, Kline and Spanel.

Brief History:

Committee Activity: Labor, Commerce & Financial Institutions: 2/5/02 [DP, DNP].
Passed Senate: 2/16/02, 25-23 (2/19/02 notice to reconsider).

SENATE COMMITTEE ON LABOR, COMMERCE & FINANCIAL INSTITUTIONS

Majority Report: Do pass.

Signed by Senators Prentice, Chair; Keiser, Vice Chair; Fairley, Franklin, Rasmussen, Regala and Winsley.

Minority Report: Do not pass.

Signed by Senators Hochstatter and Honeyford.

Staff: Matthew Adams (786-7784)

Background: A noncompetition agreement restricts a former employee from competing against his or her former employer for a specific period of time within a specific geographical area. To be enforceable, the agreement must not impose unreasonable restrictions on the employee and must be necessary for the protection of the employer's business.

Under current law, an employee who has not signed a noncompetition agreement is free to compete against his or her former employer. A former employee may use general knowledge, skills, and experience acquired during the prior employment in competing with a former employer. A former employee may not, however, use or disclose trade secrets belonging to a former employer.

In Washington, the broadcasting industry remains in a competitive market for distributing news, entertainment, and informational programming. Employers have included noncompetition clauses in employment contracts to restrict employees from competing against the employer after the prior employment.

Summary of Bill: Generally, a broadcasting industry employer is prohibited from requiring an applicant, employee, or independent contractor to enter an employment contract containing a noncompetition clause. The term "employee" does not include sales or management employees.

Under limited circumstances, a noncompetition clause may be enforced by a broadcasting industry employer. First, a noncompetition clause is enforceable against an employee who breaches an employment contract. Second, a noncompetition clause in an existing employment contract is enforceable unless the employee is terminated without cause before the expiration of the contract. This termination releases an employee from the employment contract, thereby allowing the employee to work in direct competition with the former employer.

A broadcasting industry employer providing for an impermissible noncompetition clause in an employment contract is subject to civil liability and reasonable attorneys' fees and costs.

A broadcasting industry employer maintains the right to protect trade secrets or other proprietary information by lawful means.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: A "non-negotiable" noncompete clause in a broadcast industry employment contract is fundamentally unfair to employees and serves no legitimate employer interest. This bill helps eliminate a barrier to free market competition for the services and style of broadcast industry employees.

Testimony Against: Broadcast industry employers invest a substantial amount of money in training their workforce. Washington courts have upheld noncompete agreements, and this bill will not enhance the economic vitality of the broadcasting industry.

Testified: PRO: John Sandifer, AFTRA; Thomas Carpenter, AFTRA; Eric Heintz, AFTRA; Mike James, AFTRA; Robby Stern, WSLC; CON: Ken Messer, KIMA TV; Mark Allen, WSAB; Becky Bogard, WSAB.