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**HOUSE BILL 2931**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Stanford and Ormsby

AN ACT Relating to noncompetition agreements; adding a new section to chapter 49.44 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 49.44 RCW to read as follows:

(1) An unreasonable noncompetition agreement is void and unenforceable in its entirety. A court may not reform an unreasonable noncompetition agreement.

(2) An employment noncompetition agreement is unreasonable and void and unenforceable if the employee is:

(a) A temporary or seasonal employee; or

(b) Terminated without just cause or laid off by action of the employer.

(3) A rebuttable presumption is established that an employment noncompetition agreement is unreasonable and void and unenforceable if:

(a) The employee is restricted from competing for more than one year after termination of employment; or

(b) The employee is not an executive employee.

(4) A noncompetition agreement between an entity engaging an independent contractor and an independent contractor is unreasonable and void and unenforceable.

(5) This section does not restrict the right of an employer or entity engaging an independent contractor to enter a confidentiality or nonsolicitation agreement.

(6) For purposes of this section:

(a) "Confidentiality agreement" means an agreement between an employer and employee that protects proprietary and confidential information including sales information, business strategies and plans, customer information, price information, and trade secrets as defined in RCW 19.108.010.

(b) "Employee" means an employee of an employer.

(c) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other entity that engages in any business, industry, profession, or activity in this state and employs one or more employees, and includes the state, counties, cities, all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations.

(d) "Executive employee" means any employee:

(i) Whose primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof;

(ii) Who customarily and regularly directs the work of two or more employees;

(iii) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change in the status of other employees will be given particular weight;

(iv) Who customarily and regularly exercises discretionary powers; and

(v) Who does not devote more than twenty percent, or in the case of an employee at a retail or service establishment who does not devote as much as forty percent, of his or her hours worked in a workweek to activities which are not directly and closely related to the performance of the work described in (d)(i) through (iv) of this subsection (6). This subsection (6)(d)(v) does not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a twenty percent interest in the enterprise in which he or she is employed.

(e) "Noncompetition agreement" means an agreement between: (i) An employer and an employee that is specifically designed to impede the ability of an employee to compete with the employer upon the termination of the employment relationship; (ii) a hiring entity and an independent contractor that is specifically designed to impede the ability of an independent contractor to compete with the hiring entity upon termination of the relationship with the hiring entity. A "noncompetition agreement" does not include a confidentiality agreement or a nonsolicitation agreement.

(f) "Nonsolicitation agreement" means an agreement between an employer and employee that prohibits solicitation by an employee, upon termination of employment (i) of any employee of the employer to leave the employer, or (ii) of any customer of the employer to cease doing business with the employer or to compete with the employer.

NEW SECTION. **Sec.**  This act applies to agreements entered into on or after the effective date of this section.

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