Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Labor Committee

HB 1577

Brief Description: Restricting employment noncompetition agreements.

Sponsors: Representatives Manweller, Stanford, Sells, Bergquist, Reykdal and Ormsby.

Brief Summary of Bill

- Provides that an employment noncompetition agreement is void if the employee: (1) is entitled to overtime compensation; (2) earns $39,500 per year or less in gross wages; (3) is restricted from competing for an unreasonable length of time; or (4) is terminated without just cause or laid off, unless the agreement is part of a severance agreement.
- Establishes a presumption that an agreement not to compete for six months or longer is unreasonable.
- Requires a showing of actual harm for an employer to prevail in an action to enforce a noncompetition agreement.

Hearing Date: 2/3/15

Staff: Joan Elgee (786-7106).

Background:

A noncompetition agreement may be used to restrict a former employee from competing with his or her former employer. Statutory law addresses noncompetition agreements only for certain broadcasting industry employees.

Under the common law, Washington courts will enforce a noncompetition agreement if the agreement is reasonable. Whether an agreement is reasonable involves consideration of three factors: (1) whether the restraint is necessary for the protection of the business or goodwill of the employer; (2) whether the restraint imposes on the employee any greater restraint than is reasonably necessary to secure the employer's business or goodwill; and (3) whether the degree of injury to the public is such loss of the service and skill of the employee as to warrant

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nonenforcement of the agreement. In evaluating the reasonableness of an agreement, the courts examine the time and geographic scope of the restraint.

Under the federal Fair Labor Standards Act and the state Minimum Wage Act, most hourly and some salaried employees are entitled to overtime for hours worked in excess of 40 per week. Certain exemptions apply.

Summary of Bill:

A noncompetition agreement between an employer and employee is unenforceable if the employee:

- is entitled to overtime compensation under either state or federal wage and hour law;
- earns $39,500 per year or less in gross wages;
- is restricted from competing for an unreasonable length of time; or
- is terminated without just cause or laid off, unless the noncompetition agreement is part of a severance agreement.

A rebuttable presumption is created that an agreement not to compete for six months or longer is unreasonable. The Department of Labor and Industries must annually adjust the gross wage amount based on the consumer price index for urban wage earners and clerical workers (CPI-W).

In any cause of action by an employer to enforce a noncompetition agreement, the employer must prove actual harm to prevail.

A "noncompetition agreement" is an agreement that is specifically designed to impede the ability of an employee to compete with an employer upon the termination of an employment relationship.

The provisions apply to agreements entered into on or after the effective date.

Appropriation: None.

Fiscal Note: Requested on January 31, 2015.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.