

HOUSE BILL REPORT

HB 2406

As Reported by House Committee On: Labor & Workplace Standards

Title: An act relating to employment noncompetition agreements.

Brief Description: Addressing employment noncompetition agreements.

Sponsors: Representatives Manweller, Sells, Stanford, Magendanz, Tarleton, Moscoso, Ormsby and S. Hunt.

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/1/16, 2/2/16 [DP].

Brief Summary of Bill

- Makes noncompetition agreements void and unenforceable for hair designers, cosmetologists, barbers, manicurists, estheticians, drywall applicators, musicians, and individuals who work in a fast-food establishment.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 5 members: Representatives Sells, Chair; Manweller, Ranking Minority Member; McCabe, Moeller and Ormsby.

Minority Report: Without recommendation. Signed by 1 member: Representative Gregerson, Vice Chair.

Staff: Joan Elgee (786-7106).

Background:

Washington disfavors restraints on trade. However, restraints on trade are permitted in some circumstances. A noncompetition agreement, one type of restraint, is an agreement between parties where one party promises not to compete with the other party for a specific period of time, and sometimes within a specified geographic area. Statutory law addresses noncompetition agreements only in the broadcasting industry.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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 nonenforcement of the agreement.

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

Summary of Bill:

Noncompetition agreements are void and unenforceable for certain workers. These are persons who work as hair designers, cosmetologists, barbers, manicurists, estheticians, drywall applicators, musicians, or in a fast-food establishment.

A noncompetition agreement is defined as an agreement between an employer and employee, or a company or person and their independent contractor, that is specifically designed to impede the ability of the individual to compete with the party imposing the agreement.

Definitions are also provided for "drywall applicator," "employee," "employer," "fast-food establishment," and "musician."

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

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Different approaches were tried but the best means found was to identify industries. This is a "noah's ark" approach in which future legislatures could add more industries.

(Opposed) None.

(Other) This bill is a big improvement and a good start. It protects people without bargaining power. Musicians have to deal with blackout dates, which sometimes extend into Oregon and Canada. The gigs may be low paying. These clauses inhibit musicians, who may be young immigrants, from developing their art and also harm the economy as a whole. Other industries may need to be added to the ark. The same problem of worker inability to negotiate happens in sales and software. Others who need protection include janitors, ticket takers, and parking lot attendants. A distinction with nondisclosure and nonsolicits should be added.

Persons Testifying: (In support) Representative Manweller, prime sponsor.

(Other) Jesse Wing, Employment Lawyers Association and Washington State Association for Justice; Dan Kalish, Washington Employment Lawyers Association; Eric Gonzalez Alfaro, Washington State Labor Council; Nate Omdal, American Federation of Musicians 76-493; Robert Battles, Association of Washington Business; and Seamus Petrie, UFCW United Council of WA.

Persons Signed In To Testify But Not Testifying: None.