Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Labor & Workplace Standards Committee

HB 2931

Brief Description: Restricting the use of noncompetition agreements.

Sponsors: Representatives Stanford and Ormsby.

Brief Summary of Bill

- Provides that courts may not reform noncompetition agreements.
- Makes noncompetition agreements with temporary or seasonal employees, employees terminated without just cause or laid off, or with independent contractors void.
- Creates a rebuttable presumption that a noncompetition agreement for more than one year or for employees who are not executives is unreasonable and void.

Hearing Date: 2/1/16

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.

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:

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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 non-enforcement of the agreement.

In evaluating the reasonableness of an agreement, the courts examine the time and geographic scope of the restraint. If a court finds that an agreement is unreasonable, the court may reform the terms of the agreement.

Summary of Bill:

A court may not reform a noncompetition agreement. Unreasonable noncompetition agreements are void and unenforceable in their entirety.

Noncompetition agreements between employers and employees are unreasonable and void and unenforceable if the employee is:

- a temporary or seasonal employee; or
- terminated without just cause or laid off.

Noncompetition agreements with independent contractors are also void and unenforceable.

For other types of agreements, a rebuttable presumption is established that the agreement is unreasonable. These are:

- restrictions on competing for more than one year after termination of employment; or
- for employees who are not executives.

The provisions do not restrict the right of an employer or entity engaging an independent contractor to enter a confidentiality or non-solicitation agreement.

A "noncompetition agreement" is an agreement between an employer and an employee, or between a hiring entity and an independent contractor, that is specifically designed to impede the ability of the employee or independent contractor respectively, to compete with the employer or hiring entity upon termination of the relationship.

An "executive employee" is an employee:

- whose primary duty is managing the enterprise or a department or subdivision;
- who customarily and regularly directs the work of two or more employees, and who has hiring and firing authority, or whose suggestions are given particular weight;
- who customarily and regularly exercises discretionary powers; and
- who does not devote more than certain specified amounts of time to activities which are not directly related to executive work.

Definitions are also provided for "employee," "employer," "confidentiality agreement," and "non-solicitation agreement."

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.