

**HB 2903 - H AMD 982**

By Representative Manweller

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 49.44  
4 RCW to read as follows:

5 (1) An unreasonable noncompetition agreement is void and  
6 unenforceable. If a court finds a noncompetition agreement  
7 unreasonable, it may reform the agreement to make it reasonable and  
8 enforceable. If a court reforms an agreement, the party seeking to  
9 declare the agreement void shall be deemed the prevailing party for  
10 purposes of the agreement and under law.

11 (2) For a noncompetition agreement to be enforceable, the  
12 employer must disclose the terms of the agreement in writing to the  
13 prospective employee no later than the time of the acceptance of the  
14 offer of employment or, if the agreement is entered into after the  
15 commencement of employment, the employer must provide independent  
16 consideration for the agreement.

17 (3) The reformation or unenforceability of a noncompetition  
18 agreement does not affect the enforceability of any form of  
19 confidentiality, nonsolicitation, or other agreement, or any other  
20 terms and conditions between the parties, regardless of whether the  
21 other agreement or terms or conditions are contained in the same  
22 document as a noncompetition agreement.

23 (4) If an employer requires an employee to enter into a  
24 noncompetition agreement containing provisions the employer knows are  
25 unenforceable, the employee may recover actual damages, together with  
26 statutory damages of five thousand dollars and reasonable attorneys'  
27 fees and costs.

28 (5) A noncompetition agreement between an employer and employee  
29 is void and unenforceable if the employee earns fifty-five thousand  
30 dollars per year or less in gross wages. The amount provided in this  
31 subsection shall be adjusted for inflation every year,  
32 beginning January 1, 2019, based upon changes in the consumer price  
33 index during that time period. As used in this subsection, "consumer

1 price index" means the consumer price index compiled by the bureau of  
2 labor statistics, United States department of labor for the state of  
3 Washington. If the bureau of labor statistics develops more than one  
4 consumer price index for areas within the state, the index covering  
5 the greatest number of people, covering areas exclusively within the  
6 boundaries of the state, and including all items shall be used.

7 (6) For purposes of this section:

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

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

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

20 (d) "Noncompetition agreement" means an agreement between an  
21 employer and an employee that is specifically designed to impede the  
22 ability of an employee to compete with the employer upon the  
23 termination of the employment relationship. A "noncompetition  
24 agreement" does not include a confidentiality agreement or a  
25 nonsolicitation agreement.

26 (e) "Nonsolicitation agreement" means an agreement between an  
27 employer and employee that prohibits solicitation by an employee,  
28 upon termination of employment: (i) Of any employee of the employer  
29 to leave the employer; or (ii) of any customer of the employer to  
30 cease doing business with the employer or to compete with the  
31 employer.

32 (7) Except as provided in this section, this section does not  
33 restrict the right of an employer from entering into a  
34 confidentiality or nonsolicitation agreement, or other terms and  
35 conditions of the employment or engagement, with an employee."

36 NEW SECTION. **Sec. 2.** This act applies to agreements entered  
37 into on or after the effective date of this section."

38 Correct the title.

EFFECT: Strikes the underlying bill and provides that:

(1) A noncompetition agreement is void and unenforceable if the employee earns \$55,000 per year or less in gross wages. The amount must be adjusted for inflation every year beginning January 1, 2019, based on the Consumer Price Index.

(2) An unreasonable noncompetition agreement is void and unenforceable. If the court reforms an agreement, the party seeking to declare the agreement void is deemed the prevailing party for purposes of the contract and under law.

(3) For an agreement to be enforceable, the employer must disclose the terms in writing to a prospective employee no later than the acceptance of the offer of employment or must provide independent consideration.

(4) An employer who requires an employee to enter into a noncompetition agreement with provisions the employer knows are unenforceable is liable for actual damages, \$5,000 statutory damages, and reasonable attorneys' fees and costs.

(5) The provisions do not otherwise restrict the right of an employer to enter other agreements with an employee, or other terms and conditions. Further, the reformation or unenforceability of a noncompetition agreement does not affect the enforceability of any other agreement or any other terms and conditions, regardless of whether the other agreement or other terms and conditions are in the same document as the noncompetition agreement.

(6) A "noncompetition agreement" is an agreement between an employer and an employee that is specifically designed to impede the ability of the employee to compete with the employer upon termination of the relationship. Additional terms are defined.

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

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