

**HB 2903 - H AMD 1058**

By Representative Stanford

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

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4 NEW SECTION. **Sec. 1.** The legislature finds that workforce  
5 mobility is important to economic growth and development. Further,  
6 the legislature finds that agreements limiting competition or hiring  
7 may be contracts of adhesion that may be unreasonable.

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9 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.44  
10 RCW to read as follows:

11 (1) For a noncompetition agreement to be enforceable:

12 (a) The employer must disclose the terms of the agreement in  
13 writing to the prospective employee no later than the time of the  
14 acceptance of the offer of employment and, if the agreement becomes  
15 enforceable only at a later date due to changes in the employee's  
16 compensation, the employer must specifically disclose that the  
17 agreement may be enforceable against the employee in the future; or

18 (b) If the agreement is entered into after the commencement of  
19 employment, the employer must provide independent consideration for  
20 the agreement.

21 (2) A noncompetition agreement is unreasonable and unenforceable  
22 at the time of enforcement:

23 (a) If the annual compensation, excluding benefits, of the  
24 employee is less than one and seventy-five hundredths times the  
25 average annual wage; or

26 (b) If the employee is terminated due to a reduction in force,  
27 unless enforcement of the noncompetition agreement includes

1 compensation equivalent to the employee's base salary at the time of  
2 termination for the period of enforcement minus compensation earned  
3 through subsequent employment during the period of enforcement.

4 (3) A rebuttable presumption is established that a  
5 noncompetition agreement is unreasonable and unenforceable for any  
6 period of time beyond an eighteen month duration. To rebut the  
7 presumption of unreasonableness for a duration longer than eighteen  
8 months, a party must prove by clear and convincing evidence that the  
9 agreement is reasonably necessary to protect the business or  
10 goodwill of the party.

11 (4) A provision in a contract or agreement signed by an employee  
12 who primarily resides and works in Washington state is subject to  
13 the limitations in this section and the definitions in section 3 of  
14 this act.

15 (5) A noncompetition agreement between a performer and a  
16 performance space, or a third party scheduling the performer for a  
17 performance space, may not restrict the performer from performing in  
18 a geographic region for a period longer than three days.

19 (6) A noncompetition agreement between an entity engaging an  
20 independent contractor and an independent contractor is unreasonable  
21 and unenforceable unless the annual compensation, excluding  
22 benefits, the independent contractor receives from the entity is  
23 more than four times the average annual wage at the time of entering  
24 into the contract.

25 (7) Except as otherwise expressly provided, this section does  
26 not revoke, modify, or impede the development of the common law.

27 (8) An employee or independent contractor aggrieved by a  
28 violation of this section has a cause of action for actual damages;  
29 statutory damages equal to the actual damages or five thousand  
30 dollars, whichever is greater; and costs and reasonable attorneys'  
31 fees.

32 (9) This section applies to noncompetition agreements entered  
33 into on or after the effective date of this section.

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

3        The definitions in this section apply throughout this section  
4 and section 2 of this act unless the context clearly requires  
5 otherwise.

6        (1) "Average annual wage" means the average annual wage as  
7 established under RCW 50.04.355.

8        (2) "Employee" and "employer" have the same meanings as in RCW  
9 49.17.020.

10       (3) "Noncompetition agreement" includes every written or oral  
11 covenant, agreement, or contract by which an employee or independent  
12 contractor is prohibited or restrained from engaging in a lawful  
13 profession, trade, or business of any kind. A "noncompetition  
14 agreement" does not include: (a) A nonsolicitation agreement; (b) a  
15 confidentiality agreement; (c) an agreement prohibiting use or  
16 disclosure of trade secrets; or (d) a covenant, agreement, or  
17 contract entered into by an employee with an ownership interest in a  
18 limited liability company or in a partnership.

19       (4) "Nonsolicitation agreement" means an agreement between an  
20 employer and employee that prohibits solicitation by an employee,  
21 upon termination of employment: (a) Of any employee of the employer  
22 to leave the employer; or (b) of any customer of the employer to  
23 cease doing business with the employer.

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25       NEW SECTION.    **Sec. 4.** This act takes effect January 1, 2019."

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27       Correct the title.

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EFFECT: Strikes the underlying bill and:

- Specifies that for a noncompetition agreement (noncompete) to be enforceable, the employer must disclose the terms of the agreement in writing to the prospective employee no later than when the offer is accepted and, if the agreement is enforceable only if the employee's compensation changes, that the agreement may be enforceable against the employee in the future. Requires

independent consideration for a noncompete entered into after the commencement of employment.

- Makes noncompetes unreasonable and unenforceable if:
  - The employee's annual compensation, excluding benefits, is less than 1.75 times the average annual wage.
  - The employee is terminated due to a reduction in force, unless the employer provides compensation equivalent to the employee's base salary for the period of enforcement less compensation earned through subsequent employment.
- Creates a rebuttable presumption, which may be rebutted by clear and convincing evidence, that a noncompete for longer than 18 months is unreasonable and unenforceable.
- Provides that a noncompete between a performer and a performance space, or a third party scheduling the performance, may not restrict the performer from performing in a geographic region for longer than three days.
- Makes noncompetes for an independent contractor unreasonable and unenforceable unless the annual compensation, excluding benefits, the contractor receives is more than four times the average annual wage.
- Provides that the provisions do not affect the development of the common law except as otherwise expressly provided.
- Creates a cause of action for an aggrieved employee or independent contractor for actual damages, statutory damages of the greater of the actual damages or \$5,000, and costs and reasonable attorneys' fees.
- States that the provisions apply to an agreement signed by an employee who primarily resides and works in Washington.
- Defines terms.
- Takes effect January 1, 2019.

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