SENATE BILL REPORT
EHB 1967

As of March 23, 2017

Title: An act relating to noncompetition agreements.

Brief Description: Concerning noncompetition agreements.

Sponsors: Representatives Stanford, Ormsby and Pollet.

Brief History: Passed House: 3/08/17, 97-0.
Committee Activity: Commerce, Labor & Sports: 3/23/17.

Brief Summary of Bill

- Provides that an unreasonable noncompetition agreement is void and unenforceable; a court may reform, or modify, it.
- Requires that for a noncompetition agreement to be enforceable, the employer must disclose the terms of the agreement in writing to the prospective employee no later than the time of the acceptance of the employment offer or provided independent consideration.
- Allows recovery of damages, attorneys' fees, and costs to an employee if an employer requires that an employee enter into a noncompetition agreement knowing the terms are unenforceable.
- Provides that reformation or unenforceability does not affect the enforceability of any confidentiality or nonsolicitation agreement.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Staff: Susan Jones (786-7404)

Background: Noncompetition agreements or clauses are provisions in employment contracts that impose post-employment restrictions on an employee. Typically, a noncompetition agreement restricts a person's ability to work within a specific geographic area, or industry, for a specific period of time.

Courts in Washington enforce reasonable noncompetition agreements, taking into consideration the following three factors:

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- whether the restraint is necessary to protect the employer's business or goodwill;
- whether it imposes on the employee any greater restraint than is reasonably necessary to secure the employer's business or goodwill; or
- whether enforcing the covenant would injure the public through loss of the employee's service and skill to the extent that the court should not enforce the covenant.

The courts have modified (reformed) unreasonable restraints in noncompetition agreements, often related to the length of time or the geographic restrictions in the agreements.

In addition, if a noncompetition agreement is agreed to after an employee is hired, the agreement is enforceable only if the employer provides independent consideration, such as increased wages, promotion, bonus, or a fixed term of employment.

Washington law provides that noncompetition agreements are void with respect to certain broadcast industry employees.

A number of states have laws restricting the use of noncompetition agreements in certain situations.

Summary of Bill: An unreasonable noncompetition agreement is void and unenforceable. A noncompetition agreement means an agreement between an employer and an employee that is specifically designed to impede the ability of an employee to compete with the employer upon the termination of the employment relationship.

If a court finds a noncompetition agreement unreasonable, it may reform the agreement to make it reasonable and enforceable. If a court reforms an agreement, the party seeking to declare the agreement void must be deemed the prevailing party for purposes of the agreement and under law.

For a noncompetition agreement to be enforceable, the employer must disclose the terms of the agreement in writing to the prospective employee no later than the time of the acceptance of the offer of employment or, if the agreement is entered into after the commencement of employment, the employer must provide independent consideration for the agreement. If an employer requires an employee to enter into a noncompetition agreement containing provisions the employer knows are unenforceable, the employee may recover actual damages, together with statutory damages of $5,000 and reasonable attorneys' fees and costs.

The reformation or unenforceability of a noncompetition agreement does not affect the enforceability of any form of confidentiality, nonsolicitation agreements, or any other terms and conditions between the parties, even if they are contained in the same document as a noncompetition agreement. The restrictions on noncompetition agreements do not restrict the right of an employer from entering into a confidentiality or nonsolicitation agreement with an employee.

This act applies to agreements entered into on or after the effective date.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Noncompetition agreements used to be the domain of highly compensated executives. In the last decade, they have really spread throughout the American economy. As of 2015, about 20 percent of the workers were subject to some kind noncompetition agreements. That includes all walks of life: janitors, fast food workers, grocery workers, musicians, tech workers, hair stylists, and more. The problem is that a lot of these agreements are written in overly broad ways. They really may be unreasonable as written. When they go to court, the court reforms them. The bill addresses the issue of them being overly broad. The worker should be able to challenge them in court and be considered the prevailing party if it is reformed. This bill gets at a fundamental freedom that workers should be able to pursue another job, whether it is for better wages or more responsibility. It is part of our economy. The stakeholders worked on this and there is no opposition. The bill was amended on the floor to resolve some objections.

We are thankful to the sponsor for working with the stakeholders. We are neutral. This is a good bill.

OTHER: We would like to see legislation that eliminates noncompetes altogether. In any form, we believe they are not good for workers. We believe nondisclosure agreements, like used in California, would accomplish what objectors to this bill are trying to protect. Workers in Washington who make less than $50,000 or, in the case of grocery store workers, make less than $30,000 should never be bound to stay in a job that pays them minimum wage. Some of those workers are still threatened by noncompete agreements. Consider eliminating them, at least in low income jobs where workers do not know trade secrets. We do like the Pearson bill.

Persons Testifying: PRO: Representative Derek Stanford, Prime Sponsor; Lisa Thatcher, Washington State Hospital Association.

OTHER: Debbie Gath , Teamsters Local 38.

Persons Signed In To Testify But Not Testifying: No one.