
HOUSE BILL 1967

State of Washington

65th Legislature

2017 Regular Session

By Representatives Stanford, Ormsby, and Pollet

Read first time 02/06/17. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to noncompetition agreements; adding a new
2 section to chapter 49.44 RCW; and creating new sections.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that noncompetition
5 agreements are appropriate to protect information that is secret,
6 competitive, and time-sensitive. However, the legislature further
7 finds that noncompetition agreements are increasingly used in
8 situations in which an alternative restriction, such as a
9 nondisclosure agreement or a nonsolicitation agreement, may meet
10 employer needs without limiting employee mobility or otherwise
11 stifling innovation. Further, an employer's investment in an
12 employee, such as through relocation or training costs, may be
13 protected with a liquidated damages clause in an employment contract.
14 Therefore, the legislature intends to place reasonable limits on
15 noncompetition agreements to protect employees.

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

18 (1) An unreasonable noncompetition agreement is void and
19 unenforceable. If a court finds a noncompetition agreement
20 unreasonable, it may reform the agreement to make it reasonable and

1 enforceable. If a court reforms an agreement, the party seeking to
2 declare the agreement void shall be deemed the prevailing party for
3 purposes of the contract and under law.

4 (2) For a noncompetition agreement to be enforceable, the
5 employer must disclose the terms of the agreement in writing to the
6 prospective employee no later than the time of the offer of
7 employment or, if the agreement is entered into after the
8 commencement of employment, the employer must provide independent
9 consideration for the agreement.

10 (3) The reformation or unenforceability of a noncompetition
11 agreement does not affect the enforceability of any form of
12 confidentiality, nonsolicitation, or other agreement, or any other
13 terms and conditions between the parties, regardless of whether the
14 other agreement or terms or conditions are contained in the same
15 document as a noncompetition agreement.

16 (4)(a) An employment noncompetition agreement is unreasonable and
17 void and unenforceable if the employee is:

18 (i) A temporary or seasonal employee; or

19 (ii) Terminated without just cause or laid off by action of the
20 employer.

21 (b) A court may not reform a noncompetition agreement that is
22 unenforceable under this subsection (4).

23 (5) A rebuttable presumption is established that an employment
24 noncompetition agreement is unreasonable and void and unenforceable
25 if:

26 (a) The employee is restricted from competing for more than one
27 year after termination of employment; or

28 (b) The employee is not an executive employee.

29 (6) A noncompetition agreement between an entity engaging an
30 independent contractor and an independent contractor is unreasonable
31 and void and unenforceable.

32 (7) If an employer requires an employee to enter into a
33 noncompetition agreement containing provisions the employer knows or
34 reasonably should know are unenforceable, the employee may recover
35 actual damages, together with statutory damages of five thousand
36 dollars and reasonable attorneys' fees.

37 (8) For purposes of this section:

38 (a) "Confidentiality agreement" means an agreement between an
39 employer and employee that protects proprietary and confidential
40 information including sales information, business strategies and

1 plans, customer information, price information, and trade secrets as
2 defined in RCW 19.108.010.

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

4 (c) "Employer" means any person, firm, corporation, partnership,
5 business trust, legal representative, or other entity that engages in
6 any business, industry, profession, or activity in this state and
7 employs one or more employees, and includes the state, counties,
8 cities, all municipal corporations, public corporations, political
9 subdivisions of the state, and charitable organizations.

10 (d) "Executive employee" means any employee:

11 (i) Whose primary duty consists of the management of the
12 enterprise in which he or she is employed or of a customarily
13 recognized department or subdivision thereof;

14 (ii) Who customarily and regularly directs the work of two or
15 more employees;

16 (iii) Who has the authority to hire or fire other employees or
17 whose suggestions and recommendations as to the hiring or firing and
18 as to the advancement and promotion or any other change in the status
19 of other employees will be given particular weight;

20 (iv) Who customarily and regularly exercises discretionary
21 powers; and

22 (v) Who does not devote more than twenty percent, or in the case
23 of an employee at a retail or service establishment who does not
24 devote more than forty percent, of his or her hours worked in a
25 workweek to activities which are not directly and closely related to
26 the performance of the work described in (d)(i) through (iv) of this
27 subsection (8). This subsection (8)(d)(v) does not apply in the case
28 of an employee who is in sole charge of an independent establishment
29 or a physically separated branch establishment, or who owns at least
30 a twenty percent interest in the enterprise in which he or she is
31 employed.

32 (e) "Noncompetition agreement" means an agreement between: (i) An
33 employer and an employee that is specifically designed to impede the
34 ability of an employee to compete with the employer upon the
35 termination of the employment relationship; or (ii) a hiring entity
36 and an independent contractor that is specifically designed to impede
37 the ability of an independent contractor to compete with the hiring
38 entity upon termination of the relationship with the hiring entity. A
39 "noncompetition agreement" does not include a confidentiality
40 agreement or a nonsolicitation agreement.

1 (f) "Nonsolicitation agreement" means an agreement between an
2 employer and employee that prohibits solicitation by an employee,
3 upon termination of employment: (i) Of any employee of the employer
4 to leave the employer; or (ii) of any customer of the employer to
5 cease doing business with the employer or to compete with the
6 employer.

7 (9) Except as provided in this section, this section does not
8 restrict the right of an employer or any entity engaging an
9 independent contractor from entering into a confidentiality or
10 nonsolicitation agreement, or other terms and conditions of the
11 employment or engagement, with an employee or independent contractor.

12 NEW SECTION. **Sec. 3.** This act applies to agreements entered
13 into on or after the effective date of this section.

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