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HOUSE BILL 2903

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State of Washington

65th Legislature

2018 Regular Session

By Representatives Stanford, Valdez, Gregerson, Hudgins, and Pollet

Read first time 01/23/18. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to protecting workers from work restrictions;  
2 adding new sections to chapter 49.44 RCW; creating new sections; and  
3 declaring an emergency.

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

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

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, 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 (2) A noncompetition agreement is unreasonable, and void and  
18 unenforceable:

19 (a) If the annual compensation, excluding benefits, of the  
20 employee is less than five times the average weekly wage as

1 established under RCW 50.04.355 at the time of entering into the  
2 contract.

3 (b) If the employee is terminated during a probationary period or  
4 without just cause, including due to a reduction in force.

5 (3) A rebuttable presumption is established that a noncompetition  
6 agreement is unreasonable and void and unenforceable for any period  
7 of time beyond a one-year duration. A party to the agreement may  
8 rebut the presumption with clear and convincing evidence that the  
9 duration beyond one year is reasonably necessary to protect the  
10 business or goodwill of the party.

11 (4) To be enforceable, a noncompetition agreement must be  
12 supported by a garden leave clause under which the employer agrees to  
13 continue to pay the employee wages during the restricted period. The  
14 amount of the wages shall be based on the average of wages reported  
15 to the employment security department for the four quarters prior to  
16 the restricted period, prorated to the employer's pay period. If the  
17 employee worked for the employer for less than the entirety of four  
18 complete quarters, the average shall be based on the quarters for  
19 which the employee worked the entirety of the quarter or quarters. An  
20 employer may not restrict an employee from employment while receiving  
21 garden leave if the employment is consistent with a reasonable  
22 noncompetition agreement that is consistent with this section.

23 (5) A provision in a contract or agreement signed by an employee  
24 who primarily resides and works in the state is void and  
25 unenforceable if it requires the employee to adjudicate a  
26 noncompetition agreement outside of the state.

27 (6) A provision in a contract or agreement signed by an employee  
28 who primarily resides and works in the state is void and  
29 unenforceable if it deprives the employee of the substantive  
30 protection of Washington law.

31 (7) Any enforcement or attempted enforcement of a noncompetition  
32 agreement that violates this section, or is overly broad or only  
33 partially enforceable, affects the public interest and constitutes a  
34 per se unfair or deceptive act or practice under chapter 19.86 RCW.

35 (8) A noncompetition agreement between a performer and a  
36 performance space, or a third party scheduling the performer for a  
37 performance space, may not restrict the performer from performing in  
38 a geographic region for a period longer than three days.

1 (9) A noncompetition agreement between an entity engaging an  
2 independent contractor and an independent contractor is void and  
3 unenforceable.

4 (10) Except as otherwise expressly provided, this section does  
5 not revoke, modify, or impede the development of the common law.

6 (11) This section applies to noncompetition agreements entered  
7 into on or after the effective date of this section.

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

10 An employer may not restrict, restrain, or prohibit an employee  
11 working fewer than forty hours per week or earning less than two  
12 hundred percent of the applicable state or local minimum wage from  
13 having an additional job, supplementing their income by working for  
14 another employer, working as an independent contractor, or being  
15 self-employed.

16 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.44  
17 RCW to read as follows:

18 The definitions in this section apply throughout sections 1  
19 through 3 of this act unless the context clearly requires otherwise.

20 (1) "Employee" and "employer" have the same meanings as in RCW  
21 49.17.020.

22 (2) "Noncompetition agreement" includes every written or oral  
23 covenant, agreement, or contract by which an employee is prohibited  
24 or restrained from engaging in a lawful profession, trade, or  
25 business of any kind. A "noncompetition agreement" does not include:  
26 (a) A nonsolicitation agreement; (b) a confidentiality agreement; (c)  
27 an agreement prohibiting use or disclosure of trade secrets; or (d) a  
28 covenant, agreement, or contract entered into by an employee with an  
29 ownership interest in a limited liability company or in a  
30 partnership.

31 (4) "Nonsolicitation agreement" means an agreement between an  
32 employer and employee that prohibits solicitation by an employee,  
33 upon termination of employment: (a) Of any employee of the employer  
34 to leave the employer; or (b) of any customer of the employer to  
35 cease doing business with the employer.

36 NEW SECTION. **Sec. 5.** The legislature finds that sections 2 and  
37 3 of this act are matters vitally affecting the public interest for

1 the purposes of applying the consumer protection act, chapter 19.86  
2 RCW. Any enforcement or attempted enforcement of a noncompetition  
3 agreement that violates section 2 of this act, or is overly broad or  
4 only partially enforceable, or any violation of section 3 of this  
5 act, is not reasonable in relation to the development and  
6 preservation of business and is an unfair or deceptive act in trade  
7 or commerce and an unfair method of competition for the purpose of  
8 applying the consumer protection act, chapter 19.86 RCW.

9 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
10 preservation of the public peace, health, or safety, or support of  
11 the state government and its existing public institutions, and takes  
12 effect immediately.

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