
SENATE BILL 6522

State of Washington

65th Legislature

2018 Regular Session

By Senators Lias and Fain

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

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

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

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

36 (8) A noncompetition agreement between a performer and a
37 performance space, or a third party scheduling the performer for a
38 performance space, may not restrict the performer from performing in
39 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 (3) "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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