
ENGROSSED SUBSTITUTE SENATE BILL 5478

State of Washington

66th Legislature

2019 Regular Session

By Senate Labor & Commerce (originally sponsored by Senators Lias, Keiser, Conway, Hunt, Pedersen, Kuderer, and McCoy)

READ FIRST TIME 02/15/19.

1 AN ACT Relating to restraints, including noncompetition
2 covenants, on persons engaging in lawful professions, trades, or
3 businesses; adding a new chapter to Title 49 RCW; and providing an
4 effective date.

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

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

10 NEW SECTION. **Sec. 2.** The definitions in this section apply
11 throughout this chapter unless the context clearly requires
12 otherwise.

13 (1) "Earnings" means the compensation reflected on box one of the
14 employee's United States internal revenue service form W-2 that is
15 paid to an employee over the prior year, or portion thereof for which
16 the employee was employed, annualized and calculated as of the
17 earlier of the date enforcement of the noncompetition covenant is
18 sought or the date of separation from employment. "Earnings" also
19 means payments reported on internal revenue service form 1099-MISC
20 for independent contractors.

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

3 (3) "Franchisor" and "franchisee" have the same meanings as in
4 RCW 19.100.010.

5 (4) "Noncompetition covenant" includes every written or oral
6 covenant, agreement, or contract by which an employee or independent
7 contractor is prohibited or restrained from engaging in a lawful
8 profession, trade, or business of any kind. A "noncompetition
9 covenant" does not include: (a) A nonsolicitation agreement; (b) a
10 confidentiality agreement; (c) a covenant prohibiting use or
11 disclosure of trade secrets or inventions; (d) a covenant entered
12 into by a person purchasing or selling the goodwill of a business or
13 otherwise acquiring or disposing of an ownership interest; or (e) a
14 covenant entered into by a franchisee when the franchise sale
15 complies with RCW 19.100.020(1).

16 (5) "Nonsolicitation agreement" means an agreement between an
17 employer and employee that prohibits solicitation by an employee,
18 upon termination of employment: (a) Of any employee of the employer
19 to leave the employer; or (b) of any customer of the employer to
20 cease or reduce the extent to which it is doing business with the
21 employer.

22 (6) "Party seeking enforcement" means the named plaintiff or
23 claimant in a proceeding to enforce a noncompetition covenant or the
24 defendant in an action for declaratory relief.

25 NEW SECTION. **Sec. 3.** (1) A noncompetition covenant is void and
26 unenforceable against an employee:

27 (a) (i) Unless the employer discloses the terms of the covenant in
28 writing to the prospective employee no later than the time of the
29 acceptance of the offer of employment and, if the agreement becomes
30 enforceable only at a later date due to changes in the employee's
31 compensation, the employer specifically discloses that the agreement
32 may be enforceable against the employee in the future; or

33 (ii) If the covenant is entered into after the commencement of
34 employment, unless the employer provides independent consideration
35 for the covenant;

36 (b) Unless the employee's earnings from the party seeking
37 enforcement, when annualized, exceed one hundred thousand dollars per
38 year. This dollar amount must be adjusted annually in accordance with
39 section 5 of this act;

1 (c) If the employee is terminated as the result of a layoff,
2 unless enforcement of the noncompetition covenant includes
3 compensation equivalent to the employee's base salary at the time of
4 termination for the period of enforcement minus compensation earned
5 through subsequent employment during the period of enforcement.

6 (2) A court or arbitrator must presume that any noncompetition
7 covenant with a duration exceeding eighteen months after termination
8 of employment is unreasonable and unenforceable. A party seeking
9 enforcement may rebut the presumption by proving by clear and
10 convincing evidence that a duration longer than eighteen months is
11 necessary to protect the party's business or goodwill.

12 NEW SECTION. **Sec. 4.** (1) A noncompetition covenant is void and
13 unenforceable against an independent contractor unless the
14 independent contractor's earnings from the party seeking enforcement
15 exceed two hundred fifty thousand dollars per year. This dollar
16 amount must be adjusted annually in accordance with section 5 of this
17 act.

18 (2) The duration of a noncompetition covenant between a performer
19 and a performance space, or a third party scheduling the performer
20 for a performance space, must not exceed three calendar days.

21 NEW SECTION. **Sec. 5.** The dollar amounts specified in sections 3
22 and 4 of this act must be adjusted annually for inflation. Annually
23 on September 30th the department of labor and industries will adjust
24 the dollar amounts specified in this section by calculating to the
25 nearest cent using the consumer price index for urban wage earners
26 and clerical workers, CPI-W, or a successor index, for the twelve
27 months prior to each September 1st as calculated by the United States
28 department of labor. The adjusted dollar amount calculated under this
29 section takes effect on the following January 1st.

30 NEW SECTION. **Sec. 6.** A provision in a noncompetition covenant
31 signed by an employee or independent contractor who is Washington-
32 based is void and unenforceable:

33 (1) If the covenant requires the employee or independent
34 contractor to adjudicate a noncompetition covenant outside of this
35 state; and

36 (2) To the extent it deprives the employee or independent
37 contractor of the protections or benefits of this chapter.

1 NEW SECTION. **Sec. 7.** (1) No franchisor may restrict, restrain,
2 or prohibit in any way a franchisee from soliciting or hiring any
3 employee of a franchisee of the same franchisor.

4 (2) No franchisor may restrict, restrain, or prohibit in any way
5 a franchisee from soliciting or hiring any employee of the
6 franchisor.

7 NEW SECTION. **Sec. 8.** An employer may not restrict, restrain, or
8 prohibit an employee earning less than twice the applicable state
9 minimum hourly wage from having an additional job, supplementing
10 their income by working for another employer, working as an
11 independent contractor, or being self-employed: Provided, that this
12 section shall not apply to any such additional services when the
13 specific services to be offered by the employee raise issues of
14 safety for the employee, coworkers, or the public, or interfere with
15 the reasonable and normal scheduling expectations of the employer.
16 This section does not alter the obligations of an employee to an
17 employer under existing law, including the common law duty of loyalty
18 and laws preventing conflicts of interest and any corresponding
19 policies addressing such obligations.

20 NEW SECTION. **Sec. 9.** (1) Upon a violation of this chapter, the
21 attorney general, on behalf of a person or persons, may pursue any
22 and all relief. A person aggrieved by a noncompetition covenant to
23 which the person is a party may bring a cause of action to pursue any
24 and all relief provided for in subsections (2) and (3) of this
25 section.

26 (2) If a court or arbitrator determines that a noncompetition
27 covenant violates this chapter, the violator must pay the aggrieved
28 person the greater of his or her actual damages or a statutory
29 penalty of five thousand dollars, plus reasonable attorneys' fees,
30 expenses, and costs incurred in the proceeding.

31 (3) If a court or arbitrator reforms, rewrites, modifies, or only
32 partially enforces any noncompetition covenant, the party seeking
33 enforcement must pay the aggrieved person the greater of his or her
34 actual damages or a statutory penalty of five thousand dollars, plus
35 reasonable attorneys' fees, expenses, and costs incurred in the
36 proceeding.

1 (4) A cause of action may not be brought regarding a
2 noncompetition covenant signed prior to the effective date of this
3 section if the noncompetition covenant is not being enforced.

4 NEW SECTION. **Sec. 10.** (1)(a) Subject to (b) of this subsection,
5 this chapter displaces conflicting tort, restitutionary, contract,
6 and other laws of this state pertaining to liability for competition
7 by employees or independent contractors with their employers or
8 principals, as appropriate.

9 (b) This chapter does not amend or modify chapter 19.108 RCW.

10 (2) Except as otherwise provided in this chapter, this chapter
11 does not revoke, modify, or impede the development of the common law.

12 NEW SECTION. **Sec. 11.** This chapter applies to all proceedings
13 commenced on or after the effective date of this section, regardless
14 of when the cause of action arose. To this extent, this chapter
15 applies retroactively, but in all other respects it applies
16 prospectively.

17 NEW SECTION. **Sec. 12.** This chapter is an exercise of the
18 state's police power and shall be construed liberally for the
19 accomplishment of its purposes.

20 NEW SECTION. **Sec. 13.** This act takes effect January 1, 2020.

21 NEW SECTION. **Sec. 14.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 15.** Sections 1 through 13 of this act
26 constitute a new chapter in Title 49 RCW.

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