
SENATE BILL 5437

State of Washington

69th Legislature

2025 Regular Session

By Senators Stanford, Dhingra, Saldaña, Valdez, Riccelli, Conway, Frame, Hasegawa, Nobles, Ramos, and Shewmake

Read first time 01/22/25. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to encouraging competition and economic growth by
2 prohibiting noncompetition agreements and clarifying nonsolicitation
3 agreements; amending RCW 49.62.005, 49.62.010, 49.62.020, 49.62.080,
4 49.62.090, and 49.62.100; and repealing RCW 49.62.030, 49.62.040, and
5 49.44.190.

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

7 **Sec. 1.** RCW 49.62.005 and 2024 c 36 s 1 are each amended to read
8 as follows:

9 The legislature finds that:

10 (1) Workforce mobility is important to economic growth and
11 development;

12 (2) Agreements limiting competition or hiring restrain trade and
13 commerce and may be contracts of adhesion that may be unreasonable;
14 and

15 (3) The provisions in this chapter facilitating workforce
16 mobility and protecting employees and independent contractors (~~need~~
17 ~~to~~) must be liberally construed and exceptions narrowly construed.
18 In addition, nonsolicitation agreements, which prohibit an employee
19 from actively soliciting current customers or employees away from the
20 employer, are not prohibited; however, the definition of
21 nonsolicitation agreement must be narrowly construed.

1 **Sec. 2.** RCW 49.62.010 and 2024 c 36 s 2 are each amended to read
2 as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

5 (1) (~~"Earnings" means the compensation reflected on box one of~~
6 ~~the employee's United States internal revenue service form W-2 that~~
7 ~~is paid to an employee over the prior year, or portion thereof for~~
8 ~~which the employee was employed, annualized and calculated as of the~~
9 ~~earlier of the date enforcement of the noncompetition covenant is~~
10 ~~sought or the date of separation from employment. "Earnings" also~~
11 ~~means payments reported on internal revenue service form 1099-MISC~~
12 ~~for independent contractors.~~

13 ~~(2))~~ "Employee" and "employer" have the same meanings as in RCW
14 49.17.020.

15 ~~((3))~~ (2) "Franchisor" and "franchisee" have the same meanings
16 as in RCW 19.100.010.

17 ~~((4))~~ (3)(a) "Noncompetition covenant" includes every written
18 or oral covenant, agreement, or contract (~~(by which)~~) that prohibits
19 or restrains an employee or independent contractor (~~(is prohibited or~~
20 ~~restrained)~~) from engaging in a lawful profession, trade, or business
21 of any kind.

22 (b) "A noncompetition covenant" also includes a covenant,
23 agreement, or contract between a performer and a performance space,
24 or a third party scheduling the performer for a performance space,
25 that prohibits or restrains the performer from engaging in a lawful
26 performance.

27 (c) A "noncompetition covenant" also includes an agreement that
28 directly or indirectly prohibits the acceptance or transaction of
29 business with a customer.

30 (d) A "noncompetition covenant" also includes any provision in an
31 agreement that threatens, demands, requires, or otherwise effectuates
32 that an individual return, repay, or forfeit any right, benefit, or
33 compensation, as a consequence of the individual engaging in a lawful
34 profession, trade, or business of any kind.

35 (e) A "noncompetition covenant" does not include: ~~((a))~~ (i) A
36 nonsolicitation agreement; ~~((b))~~ (ii) a confidentiality agreement;
37 ~~((c))~~ (iii) a covenant prohibiting use or disclosure of trade
38 secrets or inventions; ~~((d))~~ (iv) a covenant entered into by a
39 person purchasing or selling the goodwill of a business or otherwise
40 acquiring or disposing of an ownership interest, but only if the

1 person signing the covenant purchases, sells, acquires, or disposes
2 of an ownership interest representing one percent or more of the
3 business; or ~~((e))~~ (v) a covenant entered into by a franchisee when
4 the franchise sale complies with RCW 19.100.020(1).

5 ~~((5))~~ (4) "Nonsolicitation agreement" means an agreement
6 between an employer and employee that prohibits solicitation by an
7 employee, upon termination of employment: (a) Of any employee of the
8 employer to leave the employer; or (b) of any current customer of the
9 employer to cease or reduce the extent to which it is doing business
10 with the employer. An agreement that directly or indirectly prohibits
11 the acceptance or transaction of business with a customer is not a
12 "nonsolicitation agreement."

13 ~~((6))~~ (5) "Party seeking enforcement" means the named plaintiff
14 or claimant in a proceeding to enforce a noncompetition covenant or
15 the defendant in an action for declaratory relief.

16 **Sec. 3.** RCW 49.62.020 and 2024 c 36 s 3 are each amended to read
17 as follows:

18 (1) ~~((A))~~ Beginning on the effective date of this section, all
19 noncompetition covenants ~~((is))~~ are void and unenforceable~~((÷~~

20 ~~(a)(i) Unless the employer discloses the terms of the covenant in~~
21 ~~writing to the prospective employee no later than the time of the~~
22 ~~initial oral or written acceptance of the offer of employment and, if~~
23 ~~the agreement becomes enforceable only at a later date due to changes~~
24 ~~in the employee's compensation, the employer specifically discloses~~
25 ~~that the agreement may be enforceable against the employee in the~~
26 ~~future; or~~

27 ~~(ii) If the covenant is entered into after the commencement of~~
28 ~~employment, unless the employer provides independent consideration~~
29 ~~for the covenant;~~

30 ~~(b) Unless the employee's earnings from the party seeking~~
31 ~~enforcement, when annualized, exceed one hundred thousand dollars per~~
32 ~~year. This dollar amount must be adjusted annually in accordance with~~
33 ~~RCW 49.62.040;~~

34 ~~(c) If the employee is terminated as the result of a layoff,~~
35 ~~unless enforcement of the noncompetition covenant includes~~
36 ~~compensation equivalent to the employee's base salary at the time of~~
37 ~~termination for the period of enforcement minus compensation earned~~
38 ~~through subsequent employment during the period of enforcement.~~

1 ~~(2) A court or arbitrator must presume that any noncompetition~~
2 ~~covenant with a duration exceeding eighteen months after termination~~
3 ~~of employment is unreasonable and unenforceable. A party seeking~~
4 ~~enforcement may rebut the presumption by proving by clear and~~
5 ~~convincing evidence that a duration longer than eighteen months is~~
6 ~~necessary to protect the party's business or goodwill.)) regardless~~
7 ~~of when the parties entered into the noncompetition covenant.~~

8 (2) It is a violation of this chapter for an employer to enforce,
9 attempt to enforce, or threaten to enforce against an employee or
10 worker any agreement prohibited by this chapter, to represent that
11 the employee or worker is subject to an agreement prohibited by this
12 chapter, or to enter into or attempt to enter into an agreement with
13 an employee or worker that is prohibited by this chapter.

14 (3) By October 1, 2025, an employer must provide to current
15 employees, former employees, and independent contractors, who were
16 required to enter into noncompetition covenants or whose contracts
17 include noncompetition covenants, a written notice that the
18 noncompetition covenant is void and unenforceable.

19 **Sec. 4.** RCW 49.62.080 and 2024 c 36 s 5 are each amended to read
20 as follows:

21 (1) Upon a violation of this chapter, the attorney general, on
22 behalf of a person or persons, may pursue any and all relief. A
23 person aggrieved by a ~~((noncompetition covenant))~~ violation of this
24 chapter may bring a cause of action to pursue any and all relief
25 provided for in subsection~~((s))~~ (2) ~~((and (3)))~~ of this section.

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

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

38 (4) A cause of action may not be brought regarding a
39 noncompetition covenant signed prior to January 1, 2020, if the

1 ~~noncompetition covenant is not being enforced or explicitly~~
2 ~~leveraged.))~~

3 **Sec. 5.** RCW 49.62.090 and 2024 c 36 s 6 are each amended to read
4 as follows:

5 (1) ~~((a))~~ Subject to ~~((b))~~ subsection (2) of this
6 ~~((sub))~~section, this chapter displaces conflicting tort,
7 restitutionary, contract, including contract principles relating to
8 discharge by assent or alteration, and other laws of this state
9 pertaining to liability for competition by employees or independent
10 contractors with their employers or principals, as appropriate.

11 ~~((b))~~ (2) This chapter does not amend or modify chapter 19.108
12 RCW.

13 ~~((2) Except as otherwise provided in this chapter, this chapter~~
14 ~~does not revoke, modify, or impede the development of the common~~
15 ~~law.))~~

16 **Sec. 6.** RCW 49.62.100 and 2019 c 299 s 11 are each amended to
17 read as follows:

18 ~~((This chapter applies to all proceedings commenced on or after~~
19 ~~January 1, 2020,))~~ (1) RCW 49.62.010, 49.62.020, 49.62.080, and
20 49.62.090 apply to all proceedings commenced on or after the
21 effective date of this section, regardless of when the cause of
22 action arose. ~~((To this extent, this chapter applies retroactively,~~
23 ~~but in all other respects it applies prospectively.))~~ A cause of
24 action may not be brought based on a violation of RCW 49.62.020 prior
25 to the effective date of this section.

26 (2) Legal proceedings commenced before the effective date of this
27 section will be governed by this chapter as amended prior to the
28 effective date of this section.

29 NEW SECTION. **Sec. 7.** The following acts or parts of acts are
30 each repealed:

31 (1) RCW 49.62.030 (When void and unenforceable against
32 independent contractors) and 2019 c 299 s 4;

33 (2) RCW 49.62.040 (Dollar amounts adjusted) and 2019 c 299 s 5;
34 and

1 (3) RCW 49.44.190 (Noncompetition agreements for broadcasting
2 industry employees—Restrictions—Trade secrets protected) and 2005 c
3 176 s 1.

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