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SENATE BILL 5935

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State of Washington

68th Legislature

2024 Regular Session

By Senators Stanford and Keiser

Prefiled 01/02/24.

1 AN ACT Relating to noncompetition covenants; and amending RCW  
2 49.62.005, 49.62.010, 49.62.020, 49.62.050, 49.62.080, and 49.62.090.

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

4 **Sec. 1.** RCW 49.62.005 and 2019 c 299 s 1 are each amended to  
5 read as follows:

6 The legislature finds that ~~((workforce))~~;

7 (1) Workforce mobility is important to economic growth and  
8 development ~~((Further, the legislature finds that agreements))~~;

9 (2) Agreements limiting competition or hiring may be contracts of  
10 adhesion that may be unreasonable; and

11 (3) The provisions in this chapter facilitating workforce  
12 mobility and protecting employees and independent contractors need to  
13 be liberally construed and exceptions narrowly construed.

14 **Sec. 2.** RCW 49.62.010 and 2019 c 299 s 2 are each amended to  
15 read as follows:

16 The definitions in this section apply throughout this chapter  
17 unless the context clearly requires otherwise.

18 (1) "Earnings" means the compensation reflected on box one of the  
19 employee's United States internal revenue service form W-2 that is  
20 paid to an employee over the prior year, or portion thereof for which

1 the employee was employed, annualized and calculated as of the  
2 earlier of the date enforcement of the noncompetition covenant is  
3 sought or the date of separation from employment. "Earnings" also  
4 means payments reported on internal revenue service form 1099-MISC  
5 for independent contractors.

6 (2) "Employee" and "employer" have the same meanings as in RCW  
7 49.17.020.

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

10 (4) "Noncompetition covenant" includes every written or oral  
11 covenant, agreement, or contract by which an employee or independent  
12 contractor is prohibited or restrained from engaging in a lawful  
13 profession, trade, or business of any kind. A "noncompetition  
14 covenant" also includes an agreement that directly or indirectly  
15 prohibits the acceptance or transaction of business with a customer.

16 A "noncompetition covenant" does not include: (a) A nonsolicitation  
17 agreement; (b) a confidentiality agreement; (c) a covenant  
18 prohibiting use or disclosure of trade secrets or inventions; (d) a  
19 covenant entered into by a person purchasing or selling the goodwill  
20 of a business or otherwise acquiring or disposing of an ownership  
21 interest, but only if the person signing the covenant purchases,  
22 sells, acquires, or disposes of an interest representing 25 percent  
23 or more of the business; or (e) a covenant entered into by a  
24 franchisee when the franchise sale complies with RCW 19.100.020(1).

25 (5) "Nonsolicitation agreement" means an agreement between an  
26 employer and employee that prohibits solicitation by an employee,  
27 upon termination of employment: (a) Of any employee of the employer  
28 to leave the employer; or (b) of any current customer of the employer  
29 to cease or reduce the extent to which it is doing business with the  
30 employer.

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

34 **Sec. 3.** RCW 49.62.020 and 2019 c 299 s 3 are each amended to  
35 read as follows:

36 (1) A noncompetition covenant is void and unenforceable (~~against~~  
37 ~~an employee~~):

38 (a) (i) Unless the employer discloses the terms of the covenant in  
39 writing to the prospective employee no later than the time of the

1 initial oral or written acceptance of the offer of employment and, if  
2 the agreement becomes enforceable only at a later date due to changes  
3 in the employee's compensation, the employer specifically discloses  
4 that the agreement may be enforceable against the employee in the  
5 future; or

6 (ii) If the covenant is entered into after the commencement of  
7 employment, unless the employer provides independent consideration  
8 for the covenant;

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

13 (c) If the employee is terminated as the result of a layoff,  
14 unless enforcement of the noncompetition covenant includes  
15 compensation equivalent to the employee's base salary at the time of  
16 termination for the period of enforcement minus compensation earned  
17 through subsequent employment during the period of enforcement.

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

24 **Sec. 4.** RCW 49.62.050 and 2019 c 299 s 6 are each amended to  
25 read as follows:

26 A provision in a noncompetition covenant signed by an employee or  
27 independent contractor who is Washington-based is void and  
28 unenforceable:

29 (1) If the covenant requires the employee or independent  
30 contractor to adjudicate a noncompetition covenant outside of this  
31 state; ~~((and))~~

32 (2) To the extent it deprives the employee or independent  
33 contractor of the protections or benefits of this chapter; or

34 (3) If it allows or requires the application of choice of law  
35 principles or the substantive law of any jurisdiction other than  
36 Washington state.

37 **Sec. 5.** RCW 49.62.080 and 2019 c 299 s 9 are each amended to  
38 read as follows:

1 (1) Upon a violation of this chapter, the attorney general, on  
2 behalf of a person or persons, may pursue any and all relief. A  
3 person aggrieved by a noncompetition covenant (~~to which the person~~  
4 ~~is a party~~) may bring a cause of action to pursue any and all relief  
5 provided for in subsections (2) and (3) of this section.

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

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

17 (4) A cause of action may not be brought regarding a  
18 noncompetition covenant signed prior to January 1, 2020, if the  
19 noncompetition covenant is not being enforced or explicitly  
20 leveraged.

21 **Sec. 6.** RCW 49.62.090 and 2019 c 299 s 10 are each amended to  
22 read as follows:

23 (1)(a) Subject to (b) of this subsection, this chapter displaces  
24 conflicting tort, restitutionary, contract, including contract  
25 principles relating to discharge by assent or alteration, and other  
26 laws of this state pertaining to liability for competition by  
27 employees or independent contractors with their employers or  
28 principals, as appropriate.

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

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

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