
OLR Bill Analysis

sHB 6594

AN ACT CONCERNING NONCOMPETE AGREEMENTS.

SUMMARY

This bill sets limits on the use of “covenant not to compete” provisions in employment contracts. Under the bill, a “covenant not to compete” (i.e., noncompete agreement) means a contract, provision, or agreement that restrains a worker (employee or independent contractor) from, or imposes penalties for, engaging in any kind of profession, occupation, trade, or business in a geographic area for a set period after separation from employment. The bill excludes from this definition (1) nonsolicitation agreements that meet certain standards, (2) nondisclosure or confidentiality agreements, (3) agreements not to reapply with the same employer after being terminated, and (4) any contract or agreement made (a) in anticipation of a sale of a business’s goodwill or all of the seller’s ownership interest in a business or (b) as part of a partnership or ownership agreement.

Under the bill, a noncompete agreement is enforceable only if it meets specific requirements, including that the covered employee earn at least three times the minimum wage and be exempt from the state’s minimum wage laws.

The bill also sets limits on exclusivity agreements, which it defines as a contract, provision, or agreement that imposes penalties on a worker for, or restrains a worker from, supplementing his or her income by working for another employer, working as an independent contractor, or being self-employed.

It applies to noncompete and exclusivity agreements entered into, amended, extended, or renewed on or after July 1, 2023. The bill applies to private employers as well as state and municipal employers.

The bill's provisions do not apply to noncompete agreements for two professions under existing law: (1) physicians and (2) homemakers, companions, or home health aides. It also sunsets, on June 30, 2023, a law that prohibits certain noncompete agreements for security guards, making security guards subject to the bill's general provisions on noncompete agreements. (The bill is silent on a fourth type of existing noncompete law that prohibits noncompete contracts for broadcast employees.)

EFFECTIVE DATE: July 1, 2023

CONDITIONS FOR NONCOMPETE AGREEMENTS (§§ 1 & 2)

The bill makes a noncompete agreement between an employer and worker unenforceable unless specific conditions are met.

Covered Workers

To be enforceable, among other things, a noncompete agreement must only be applied to workers who are "exempt employees" (i.e., those exempt from the state's minimum wage laws, such as people employed in a qualifying executive, administrative, or professional capacity). The workers must be either:

1. employees earning "monetary compensation" (as described below) of at least three times the state minimum wage; or
2. independent contractors earning monetary compensation of at least five times the state minimum wage.

Restrictions

Under the bill, to be enforceable noncompete agreements must:

1. be limited to a period of up to one year following the worker's termination or separation, except as described below;
2. be necessary to protect the employer's "legitimate business interest" that could not reasonably be protected through less restrictive means, including a nondisclosure agreement, non-solicitation agreement, or the state Uniform Trade Secrets Act's

business protections;

3. be no more restrictive than necessary to protect a legitimate business interest in terms of the agreement's duration, geographic scope, type of work, and type of employer;
4. not require the worker to submit to adjudication outside of the state, or otherwise purport to deprive the worker of the bill's protections or benefits; and
5. not unreasonably interfere with the public interest and be consistent with the bill's requirements, other state laws, and public policy.

Under the bill, a "legitimate business interest" is an interest in (1) protecting trade secrets or confidential information that does not qualify as a trade secret or (2) preserving established goodwill with the employer's customers.

Also, a noncompete agreement is unenforceable if the worker terminates the employment or contractual relationship for good cause attributable to the employer or contractor.

Furthermore, under the bill a noncompete agreement must:

1. be provided to the worker in writing at least 10 business days before the earlier of the (a) deadline for accepting the employment offer or offer to enter into an independent contractor relationship or (b) date the agreement is signed;
2. contain a statement of the worker's noncompete agreement rights, as described below;
3. be signed by the worker and the employer or contractor separately from any other agreement underlying the relationship; and
4. be supported by sufficient consideration and not be the only basis for continuing the employment or contractor relationship if the

agreement is added to an existing employment or independent contractor relationship.

In addition, under the bill, a noncompete agreement is presumed unenforceable if it applies to (1) geographic areas in which the employee neither provided services nor had a material presence or influence within the last two years of employment or (2) types of work that the employee did not perform during this same period.

Required Statement of Workers' Rights

Under the bill, the noncompete agreement is not enforceable unless it contains a statement of the worker's rights under the agreement, including that:

1. not all noncompete agreements are enforceable,
2. noncompete agreement for workers who earn less than the applicable thresholds established in the bill are illegal,
3. workers may contact the attorney general if they believe they are subject to an illegal noncompete agreement, and
4. they have a right to consult with counsel before signing it.

Definition of Monetary Compensation

Under the bill, "monetary compensation" for exempt employees means wages earned over the course of the prior calendar year, or portion of that year, for which the employee was employed, annualized based on the employment period and calculated as of the earlier of the (1) date enforcement of the noncompete agreement is sought or (2) date of separation from employment. For independent contractors, "monetary compensation" means payments for services rendered, annualized based on the period during which the contractor provided services and calculated as of the earlier of the (1) date enforcement is sought or (2) date of separation from employment.

Exception to the Duration Limit (§ 2(d))

The bill allows a noncompete agreement to be enforceable for up to

two years if it is part of an agreement under which the worker is paid his or her “base salary and benefits,” minus any outside compensation, for the entire period of the noncompete agreement. It defines “base salary and benefits” as (1) wages earned over the course of the prior calendar year, excluding any overtime or bonus pay, and (2) health insurance benefits and other fringe benefits the employee received over the course of the prior calendar year.

Exclusion for Nonsolicitation Agreements

The bill specifies that nonsolicitation agreements are excluded from the definition of “covenants not to compete” if they do not restrict a worker’s activities for more than a year and are not more restrictive than necessary in the agreement’s duration, geographic reach, type of work, and type of employer.

Under the bill, a “nonsolicitation agreement” means a contract or agreement between:

1. an employer and employee that prohibits an employee, upon separation of employment, from soliciting (a) any employee of the employer to leave or (b) any customer to cease or reduce doing business with the employer or
2. an employer and any customer that prohibits the customer from soliciting an employee of the employer to stop or reduce doing business with the employer.

EXCLUSIVITY AGREEMENTS (§ 3)

The bill permits exclusivity agreements (i.e., contracts, provisions, or agreements that restrain a worker from, or penalize him or her for, simultaneously working for another employer, working as an independent contractor, or being self-employed) only if the worker is an (1) exempt employee with monetary compensation, as defined above, more than three times the state’s minimum wage or (2) independent contractor with monetary compensation more than five times the state’s minimum wage.

However, the bill allows exclusivity agreements if the worker’s

additional employment would (1) endanger the safety of the worker, the worker's coworkers, or the public or (2) substantially interfere with the employer or contractor's reasonable and normal scheduling expectations, which excludes on-call shift scheduling.

The bill requires that its exclusivity agreement provisions not be construed to alter an employee's obligations to an employer under existing law. This includes the common law duty of loyalty, laws preventing conflicts of interest, and any corresponding policies on these obligations.

ENFORCEMENT (§ 4)

Attorney General's Authority to Bring Civil Actions

The bill allows the attorney general, on behalf of a worker aggrieved by a violation of the bill's noncompete and exclusivity agreement provisions, to bring a civil action in Superior Court for the relief the bill provides.

Penalty

If a court or arbitrator determines that a noncompete agreement or an exclusivity agreement violates the bill, the violator is liable for the greater of \$5,000 or the aggrieved worker's actual damages, in addition to reasonable attorney's fees, expenses, and court costs. Under the bill, violators are not liable to the Labor Department for an additional civil penalty imposed under the state's wage laws.

Burden of Proof

In any enforcement proceeding, the bill places the burden of proof on the party seeking to enforce a noncompete or exclusivity agreement against a worker. In any proceeding to stop compensating a worker under an agreement in which a worker is paid for the entire period of the noncompete agreement, the bill puts the burden of proof on the party required to compensate the worker.

Unenforceable Agreements

The bill prohibits the court from modifying a noncompete agreement that violates the bill's provisions to make it enforceable. It also specifies

that if a noncompete or exclusivity agreement is found to be unenforceable, any severable provisions of a contract of other agreement that are unrelated to the noncompete agreement remain in full force and effect. This includes any provisions that require the payment of damages resulting from any injury suffered by separation of employment.

EXISTING NONCOMPETE LAWS (§§ 1 & 5)

Current law restricts the use of noncompete agreements in four types of professions: (1) physicians; (2) homemakers, companions, and home health aides; (3) security guards; and (4) broadcast employees.

The bill's provisions do not apply to noncompete agreements covered under the existing laws for physicians or homemakers, companions, and home health aides, leaving these existing laws in effect. It creates an end date, July 1, 2023, for the current limitations on noncompete agreements for security guards. In doing so, it sunsets the current limitations on these agreements and instead subjects them to the bill's general provisions.

The bill does not contemplate how its provisions on noncompete agreements interact with those under existing law for broadcast employees.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 7 Nay 4 (02/16/2023)