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HOUSE BILL 2931

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State of Washington

64th Legislature

2016 Regular Session

By Representatives Stanford and Ormsby

Read first time 01/28/16. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to noncompetition agreements; adding a new  
2 section to chapter 49.44 RCW; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.44  
5 RCW to read as follows:

6 (1) An unreasonable noncompetition agreement is void and  
7 unenforceable in its entirety. A court may not reform an unreasonable  
8 noncompetition agreement.

9 (2) An employment noncompetition agreement is unreasonable and  
10 void and unenforceable if the employee is:

11 (a) A temporary or seasonal employee; or

12 (b) Terminated without just cause or laid off by action of the  
13 employer.

14 (3) A rebuttable presumption is established that an employment  
15 noncompetition agreement is unreasonable and void and unenforceable  
16 if:

17 (a) The employee is restricted from competing for more than one  
18 year after termination of employment; or

19 (b) The employee is not an executive employee.

1 (4) A noncompetition agreement between an entity engaging an  
2 independent contractor and an independent contractor is unreasonable  
3 and void and unenforceable.

4 (5) This section does not restrict the right of an employer or  
5 entity engaging an independent contractor to enter a confidentiality  
6 or nonsolicitation agreement.

7 (6) For purposes of this section:

8 (a) "Confidentiality agreement" means an agreement between an  
9 employer and employee that protects proprietary and confidential  
10 information including sales information, business strategies and  
11 plans, customer information, price information, and trade secrets as  
12 defined in RCW 19.108.010.

13 (b) "Employee" means an employee of an employer.

14 (c) "Employer" means any person, firm, corporation, partnership,  
15 business trust, legal representative, or other entity that engages in  
16 any business, industry, profession, or activity in this state and  
17 employs one or more employees, and includes the state, counties,  
18 cities, all municipal corporations, public corporations, political  
19 subdivisions of the state, and charitable organizations.

20 (d) "Executive employee" means any employee:

21 (i) Whose primary duty consists of the management of the  
22 enterprise in which he or she is employed or of a customarily  
23 recognized department or subdivision thereof;

24 (ii) Who customarily and regularly directs the work of two or  
25 more employees;

26 (iii) Who has the authority to hire or fire other employees or  
27 whose suggestions and recommendations as to the hiring or firing and  
28 as to the advancement and promotion or any other change in the status  
29 of other employees will be given particular weight;

30 (iv) Who customarily and regularly exercises discretionary  
31 powers; and

32 (v) Who does not devote more than twenty percent, or in the case  
33 of an employee at a retail or service establishment who does not  
34 devote as much as forty percent, of his or her hours worked in a  
35 workweek to activities which are not directly and closely related to  
36 the performance of the work described in (d)(i) through (iv) of this  
37 subsection (6). This subsection (6)(d)(v) does not apply in the case  
38 of an employee who is in sole charge of an independent establishment  
39 or a physically separated branch establishment, or who owns at least

1 a twenty percent interest in the enterprise in which he or she is  
2 employed.

3 (e) "Noncompetition agreement" means an agreement between: (i) An  
4 employer and an employee that is specifically designed to impede the  
5 ability of an employee to compete with the employer upon the  
6 termination of the employment relationship; (ii) a hiring entity and  
7 an independent contractor that is specifically designed to impede the  
8 ability of an independent contractor to compete with the hiring  
9 entity upon termination of the relationship with the hiring entity. A  
10 "noncompetition agreement" does not include a confidentiality  
11 agreement or a nonsolicitation agreement.

12 (f) "Nonsolicitation agreement" means an agreement between an  
13 employer and employee that prohibits solicitation by an employee,  
14 upon termination of employment (i) of any employee of the employer to  
15 leave the employer, or (ii) of any customer of the employer to cease  
16 doing business with the employer or to compete with the employer.

17 NEW SECTION. **Sec. 2.** This act applies to agreements entered  
18 into on or after the effective date of this section.

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