

SB 1527 -1, -2 STAFF MEASURE SUMMARY

Senate Committee On Labor and Business

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Meeting Dates: 2/4, 2/6

WHAT THE MEASURE DOES:

Prohibits employer from entering into noncompetition agreement with employee unless specified criteria are met. Establishes that noncompetition agreements that fail to meet specified criteria are void rather than voidable. Replaces references to median family income for a four-person family as determined by the U.S. Census Bureau for the most recent year available with current wage and specifies that wage is adjusted annually for inflation. Reduces maximum term of noncompetition agreement from 18 months from the date of the employee's termination to six months. Requires noncompetition agreement to be written agreement, rather than written, oral, express, or implied.

ISSUES DISCUSSED:

- Increase in number of businesses requiring noncompetition agreements as term of employment
- Impact of current noncompetition agreement regulations on workers
- Confirmation of median family income for four-person family in Oregon as \$97,311 based on 2018 ACS
- Provisions of measure and -1 amendments

EFFECT OF AMENDMENT:

-1 Increases maximum term of noncompetition agreement from six months from the date of the employee's termination to 12 months.

-2 Establishes that noncompetition agreements are void if they fail to meet written notice, work type, or minimum salary requirements or if employer fails to provide signed, written copy of agreement within 30 days of termination. Makes noncompetition agreements which meet other criteria but for which employer has no protectable interest voidable by employee.

BACKGROUND:

A noncompetition agreement is a clause in an employment contract in which one party (usually the employee) agrees not to enter into a similar profession or trade against another party (usually the employer). Oregon statute allows noncompetition agreements to be voided and prohibits courts from enforcement if certain conditions are not met. The applicable conditions vary depending on the date on which the noncompetition agreement was executed.

Noncompetition agreements entered into on or after January 1, 2008, may be voided and are unenforceable unless: 1) the employer informs the employee in a written offer at least two weeks before starting that a noncompetition agreement is required as a condition of employment or the agreement is entered into when the employee receives a promotion; 2) the employee is salaried and engaged in administrative, executive, or professional work that meets specified criteria; 3) the employer has a protectable interest, meaning the employee has access to trade secrets, competitively sensitive information, or is on-air talent for an employer in the business of broadcasting; and 4) the employee's median gross salary and commissions at the time of termination exceeds the median family income for a four-person family as estimated by the U.S. Census Bureau. Noncompetition agreements entered into after January 1, 2016 may not exceed 18 months from the date of the employee's termination. In a 2015 decision, the Oregon Court of Appeals found that nonconforming noncompetition agreements are voidable, but presumed valid until voided by one of the parties.

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Senate Bill 1527 prohibits an employer from entering into a nonconforming noncompetition agreement with an employee and makes nonconforming agreements void rather than voidable. The measure replaces references to the median family income for a four-person family as determined by the United States Census Bureau for the most recent year available with the current income, \$97,311, and specifies that the income is adjusted annually for inflation. The measure reduces the maximum term of noncompetition agreements from 18 months from the date of the employee's termination to six months. Finally, the measure requires noncompetition agreements to be written, rather than written, oral, express, or implied.