

SB 13 STAFF MEASURE SUMMARY

Senate Committee On Labor and Business

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Meeting Dates: 1/26

WHAT THE MEASURE DOES:

Establishes that noncompetition agreement between employer and employee is void and unenforceable unless limited to the protection of trade secrets, the protection of proprietary information, or covenant to not compete for former customers or clients or provide similar processes or services.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

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. Section 21, Article I of the Constitution of the State of Oregon prohibits a law from impairing the obligation of contracts, meaning 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.

SB 13 establishes that a noncompetition agreement between an employer and employee is void and unenforceable unless the agreement is limited to the protection of trade secrets, the protection of proprietary information, or a covenant to not compete for former customers or clients or provide similar processes or services. The measure removes all other requirements for conformity except the maximum term of 18 months.