74th OREGON LEGISLATIVE ASSEMBLY - 2007 Regular Session **MEASURE:** **SB 248 B**
STAFF MEASURE SUMMARY **CARRIER:** **Rep. Macpherson**
House Committee on Judiciary

REVENUE: No revenue impact
FISCAL: No fiscal impact

Action:	Do Pass as Amended and Be Printed Engrossed
Vote:	9 - 0 - 0
Yeas:	Barker, Bonamici, Cameron, Flores, Komp, Krieger, Read, Whisnant, Macpherson
Nays:	0
Exc.:	0
Prepared By:	Matt Kalmanson, Counsel
Meeting Dates:	5/24, 5/29, 5/31

WHAT THE MEASURE DOES: Establishes that employment arbitration and noncompetition agreements are voidable unless: (1) the employer informs the employee of the agreement's requirements in a written employment offer received by the employee at least two weeks before the first day of employment, or (2) the agreement is entered into upon a bona fide advancement of the employee. Establishes additional requirements for noncompetition agreements, including that the employee make a certain salary, have a certain level or responsibility and have access to certain types of information. Establishes that noncompetition agreements may not exceed two years. Permits employers to enforce an otherwise voidable noncompetition agreement, in certain instances, if the employer compensates the employee. Clarifies that other agreements, such as nonsolicitation agreements, are not subject to the bill's requirements.

ISSUES DISCUSSED:
- The proliferation of noncompetition and employment arbitration agreements
- Legal standards that apply to noncompetition agreement
- The societal costs and benefits of such agreements
- Legitimate and illegitimate uses of such agreements

EFFECT OF COMMITTEE AMENDMENT: Replaces the bill.

BACKGROUND: As a general matter, contracts in restraint of trade are unenforceable. However, agreements that are in partial restraint of trade may be enforceable, if they are limited in their application to a reasonable period of time and territory, and "afford only a fair protection to the interests of the party in whose favor it is made and must not be so large in its operation as to interfere with the interests of the public." The Oregon Supreme Court has ruled that to be entitled to the protection of a noncompetition covenant, the employer must show that it has a "legitimate interest" entitled to protection. The interest need not be a trade secret, but could consist of customer or strategic information. SB 248 B would describe the permissible scope of such agreements. The bill limits noncompetition agreements to certain types of employees who make a certain amount of money, and who have access to specialized information. It expressly limits them to two years.