

SB 169 A STAFF MEASURE SUMMARY**Carrier:** Rep. Grayber**House Committee On Business and Labor****Action Date:** 05/05/21**Action:** Do Pass the A-Eng bill.**Vote:** 11-0-0-0**Yeas:** 11 - Bonham, Boshart Davis, Breese-Iverson, Bynum, Clem, Evans, Fahey, Grayber, Holvey, Post, Witt**Fiscal:** No fiscal impact**Revenue:** No revenue impact**Prepared By:** Jan Nordlund, LPRO Analyst**Meeting Dates:** 4/28, 5/5**WHAT THE MEASURE DOES:**

Establishes that noncompetition agreement is void and unenforceable unless agreement meets specified criteria. 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 of \$100,533 and specifies that wage is adjusted annually for inflation. Reduces maximum term of noncompetition agreement from 18 to 12 months. Defines noncompetition agreement as a written agreement, rather than written, oral, express, or implied. Applies to agreements entered into on or after effective date of measure.

ISSUES DISCUSSED:

- Cost to former employee to have court void a noncompetition agreement
- Whether the salary threshold of \$100,533 is appropriate or should be higher
- Negotiations to reach the compromise reflected in the measure
- Use of nondisclosure agreements and nonsolicitation agreements as alternative or in addition to noncompetition agreements

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 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

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agreements are voidable, but presumed valid until voided by one of the parties.

Senate Bill 169 A establishes that a nonconforming noncompetition agreement between an employer and employee is void and unenforceable, rather than voidable. The measure replaces references to the median family income for a four-person family as determined by the U.S. Census Bureau for the most recent year available with the amount of \$100,533, and specifies that the income threshold 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 12 months. The measure also requires noncompetition agreements to be in writing. These changes apply only to noncompetition agreements entered into on or after the effective date of the measure.