

1 HB241
2 155631-1
3 By Representative England
4 RFD: Judiciary
5 First Read: 15-JAN-14

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8 SYNOPSIS: This bill would clarify the proper use and
9 enforcement of restrictive covenants in contracts.

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11 A BILL
12 TO BE ENTITLED
13 AN ACT

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15 Relating to contract law, to clarify and restate the
16 law relating to restrictive covenants; and to repeal Section
17 8-1-1, Code of Alabama 1975.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. (a) Every contract by which anyone is
20 restrained from exercising a lawful profession, trade, or
21 business of any kind otherwise than is provided by this
22 section is to that extent void.

23 (b) Except as otherwise prohibited by law, the
24 following contracts are allowed to preserve a protectable
25 interest:

26 (1) A contract between two or more persons or
27 businesses limiting their ability to hire or employ the agent,

1 servant, or employees of a party to the contract is permitted
2 where the agent, servant, or employee holds a position
3 uniquely essential to the management, organization, or service
4 of the business.

5 (2) An agreement between two or more persons or
6 businesses to limit commercial dealings to each other.

7 (3) One who sells the good will of a business may
8 agree with the buyer to refrain from carrying on or engaging
9 in a similar business and from soliciting customers of such
10 business within a specified geographic area so long as the
11 buyer, or any entity deriving title to the good will from that
12 business, carries on a like business therein, subject to
13 reasonable time and place restraints. Restraints of one year
14 or less are presumed to be reasonable.

15 (4) An agent, servant, or employee of a commercial
16 entity may agree with such entity to refrain from carrying on
17 or engaging in a similar business and from soliciting current
18 customers of such entity within a specified geographic area so
19 long as the employer carries on a like business therein,
20 subject to reasonable restraints of time and place.
21 Restraints of one year or less are presumed to be reasonable.

22 (5) Upon or in anticipation of a dissolution of a
23 commercial entity, partners, owners, or members, or any
24 combination thereof, may agree that none of them will carry on
25 a similar commercial activity in the geographic area where the
26 commercial activity has been transacted.

1 (c) Courts may refuse to enforce such restraints in
2 whole or in part if the court finds that enforcement causes an
3 undue hardship.

4 Section 2. (a) A protectable interest includes all
5 of the following:

6 (1) Trade secrets, as defined by subdivision (1) of
7 Section 8-27-2, Code of Alabama 1975.

8 (2) Confidential information, including pricing
9 methodology, used in the business that does not otherwise
10 qualify as a trade secret.

11 (3) Substantial relationships or contacts with
12 specific prospective or existing customers, patients, vendors,
13 or clients.

14 (4) Customer, patient, vendor, or client good will
15 associated with any of the following:

16 a. An ongoing business, franchise, commercial, or
17 professional practice, or trade dress.

18 b. A specific marketing or trade area.

19 (b) Job skills in and of themselves, without more,
20 are not protectable interests.

21 Section 3. In order to be valid, any contract or
22 agreement executed pursuant to this act shall be reduced to
23 writing, signed by all parties, be supported by adequate
24 consideration, and shall be mutual in all significant
25 provisions.

26 Section 4. If a contractually specified restraint is
27 overly broad, too long in its duration, or otherwise not

1 necessary to preserve a protectable interest or interests, a
2 court may void the restraint in whole or in part.

3 Section 5. (a) Any person seeking enforcement of a
4 restrictive covenant as provided in this act shall plead with
5 specificity the existence of each element required for such a
6 covenant.

7 (b) The party seeking enforcement of the covenant
8 has the burden of proof on every element. The party resisting
9 enforcement of the covenant has the burden of proving the
10 existence of undue hardship, if raised as a defense.

11 Section 6. (a) The remedies available for breach of
12 an agreement subject to this act are:

13 (1) Such injunctive and other equitable relief as
14 may be appropriate with respect to any actual or threatened
15 breach.

16 (2) The actual damages suffered as a result of the
17 breach or lawful liquidated damages if provided in the
18 contract.

19 (3) Any remedies available in contract law,
20 including attorneys' fees or costs, if provided for in the
21 contract or otherwise provided for by law.

22 (b) Nothing in this act shall limit the availability
23 of any defense otherwise available in law or equity.

24 Section 7. Nothing in this act shall be construed to
25 eliminate any professional exemption recognized by Alabama
26 law.

1 Section 8. It is hereby declared that this
2 act expresses fundamental public policies of the State of
3 Alabama. Therefore, this act shall govern and shall be applied
4 instead of any foreign laws that might otherwise be applicable
5 in those instances when the application of those foreign laws
6 would violate a fundamental public policy expressed in this
7 act.

8 Section 9. All laws or parts of laws which conflict
9 with this act are repealed, and specifically, Section 8-1-1,
10 Code of Alabama 1975, is repealed.

11 Section 10. This act shall become effective on
12 January 1, 2015, following its passage and approval by the
13 Governor, or its otherwise becoming law.