

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

1 ENGROSSED

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4 A BILL  
5 TO BE ENTITLED  
6 AN ACT  
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8 Relating to contract law, to clarify and restate the  
9 law relating to restrictive covenants; and to repeal Section  
10 8-1-1, Code of Alabama 1975.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

16 (b) Except as otherwise prohibited by law, the  
17 following contracts are allowed to preserve a protectable  
18 interest:

19 (1) A contract between two or more persons or  
20 businesses limiting their ability to hire or employ the agent,  
21 servant, or employees of a party to the contract is permitted  
22 where the agent, servant, or employee holds a position  
23 uniquely essential to the management, organization, or service  
24 of the business.

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

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

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

16           (5) Upon or in anticipation of a dissolution of a  
17 commercial entity, partners, owners, or members, or any  
18 combination thereof, may agree that none of them will carry on  
19 a similar commercial activity in the geographic area where the  
20 commercial activity has been transacted.

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

24           Section 2. (a) A protectable interest includes all  
25 of the following:

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

1           (2) Confidential information, including pricing  
2 methodology, used in the business that does not otherwise  
3 qualify as a trade secret, but which is genuinely confidential  
4 and not just labeled as such.

5           (3) Substantial relationships or contacts with  
6 specific prospective or existing customers, patients, vendors,  
7 or clients.

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

10           a. An ongoing business, franchise, commercial, or  
11 professional practice, or trade dress.

12           b. A specific marketing or trade area.

13           (5) Specialized and unique training involving  
14 substantial company expenditure specifically directed to a  
15 particular employee, provided that such training and  
16 anticipated expense is specifically set forth in writing as  
17 the consideration for the restraint.

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

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

25           Section 4. If a contractually specified restraint is  
26 overly broad, too long reasonable in its duration, or

1 otherwise not necessary to preserve a protectable interest or  
2 interests, a 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.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Judiciary ..... . . . . . 15-JAN-14

Read for the second time and placed  
on the calendar 1 amendment ..... . . . . . 22-JAN-14

Read for the third time and passed  
as amended..... . . . . . 05-MAR-14

Yeas 101, Nays 0, Abstains 0

Jeff Woodard  
Clerk