

1 HB352
2 166383-3
3 By Representative England
4 RFD: Judiciary
5 First Read: 31-MAR-15

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 or a person and a business limiting their ability
21 to hire or employ the agent, servant, or employees of a party
22 to the contract is permitted where the agent, servant, or
23 employee holds a position uniquely essential to the
24 management, organization, or service of the business.

25 (2) An agreement between two or more persons or
26 businesses or a person and a business to limit commercial
27 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 within a specified
12 geographic area so long as the ~~employer~~ commercial entity
13 carries on a like business therein, subject to reasonable
14 restraints of time and place. Restraints of two years or less
15 are presumed to be reasonable.

16 (5) An agent, servant, or employee of a commercial
17 entity may agree with such entity to refrain from soliciting
18 current customers, so long as the ~~employer~~ commercial entity
19 carries on a like business ~~therein~~, subject to reasonable time
20 restraints. Restraints of 18 months or for as long as
21 post-separation consideration is paid for such agreement,
22 whichever is greater, are presumed to be reasonable.

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

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

3 (1) Trade secrets, as defined in Section 8-27-2,
4 Code of Alabama 1975.

5 (2) Confidential information, including, but not
6 limited to, pricing information and methodology; compensation;
7 customer lists; customer data and information; mailing lists;
8 prospective customer information; financial and investment
9 information; management and marketing plans; business
10 strategy, technique, and methodology; business models and
11 data; processes and procedures; and company provided files,
12 software, code, reports, documents, manuals, and forms used in
13 the business that may not otherwise qualify as a trade secret
14 but which are treated as confidential to the business entity,
15 in whatever medium provided or preserved, such as in writing
16 or stored electronically.

17 (3) Commercial relationships or contacts with
18 specific prospective or existing customers, patients, vendors,
19 or clients.

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

22 a. An ongoing business, franchise, commercial, or
23 professional practice, or trade dress.

24 b. A specific marketing or trade area.

25 (5) Specialized and unique training involving
26 substantial business expenditure specifically directed to a
27 particular agent, servant, or employee; provided that such

1 training ~~and anticipated expense~~ is specifically set forth in
2 writing as the consideration for the restraint.

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

5 Section 3. In order to be valid, any contract or
6 agreement executed pursuant to this act shall be reduced to
7 writing, signed by all parties, and be supported by adequate
8 consideration.

9 Section 4. If a contractually specified restraint is
10 overly broad or ~~too long~~ unreasonable in its duration, a court
11 may void the restraint in part and reform it to preserve the
12 protectable interest or interests. If a contractually
13 specified restraint does not fall within the limited
14 exceptions set out in subsection (b) of Section 1, a court may
15 void the restraint in its entirety.

16 Section 5. The party seeking enforcement of the
17 covenant has the burden of proof on every element. The party
18 resisting enforcement of the covenant has the burden of
19 proving the existence of undue hardship, if raised as a
20 defense.

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

23 (1) Such injunctive and other equitable relief as
24 may be appropriate with respect to any actual or threatened
25 breach.

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

4 (3) Any remedies available in contract law,
5 including attorneys' fees or costs, if provided for in the
6 contract or otherwise provided for by law.

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

9 Section 7. Nothing in this act shall be construed to
10 eliminate any professional exemption recognized by Alabama
11 law.

12 Section 8. It is hereby declared that this
13 act expresses fundamental public policies of the State of
14 Alabama. Therefore, this act shall govern and shall be applied
15 instead of any foreign laws that might otherwise be applicable
16 in those instances when the application of those foreign laws
17 would violate a fundamental public policy expressed in this
18 act.

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

22 Section 10. This act shall become effective on
23 January 1, ~~2015~~ 2016, following its passage and approval by
24 the 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 31-MAR-15

Read for the second time and placed
on the calendar 2 amendments 09-APR-15

Read for the third time and passed
as amended..... 19-MAY-15

Yeas 101, Nays 0, Abstains 0

Jeff Woodard
Clerk