

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

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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

14  
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 or a person and a business limiting their ability

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

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

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

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

23 (5) An agent, servant, or employee of a commercial  
24 entity may agree with such entity to refrain from soliciting  
25 current customers, so long as the employer carries on a like  
26 business therein, subject to reasonable time restraints.  
27 Restraints of 18 months or for as long as post-separation

1 consideration is paid for such agreement, whichever is  
2 greater, are presumed to be reasonable.

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

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

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

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

24 (3) Commercial relationships or contacts with  
25 specific prospective or existing customers, patients, vendors,  
26 or clients.

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

3           a. An ongoing business, franchise, commercial, or  
4 professional practice, or trade dress.

5           b. A specific marketing or trade area.

6           (5) Specialized and unique training involving  
7 substantial business expenditure specifically directed to a  
8 particular agent, servant, or employee; provided that such  
9 training and anticipated expense is specifically set forth in  
10 writing as the consideration for the restraint.

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

13           Section 3. In order to be valid, any contract or  
14 agreement executed pursuant to this act shall be reduced to  
15 writing, signed by all parties, and be supported by adequate  
16 consideration.

17           Section 4. If a contractually specified restraint is  
18 overly broad or too long in its duration, a court may void the  
19 restraint in part and reform it to preserve the protectable  
20 interest or interests. If a contractually specified restraint  
21 does not fall within the limited exceptions set out in  
22 subsection (b) of Section 1, a court may void the restraint in  
23 its entirety.

24           Section 5. The party seeking enforcement of the  
25 covenant has the burden of proof on every element. The party  
26 resisting enforcement of the covenant has the burden of

1 proving the existence of undue hardship, if raised as a  
2 defense.

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

5 (1) Such injunctive and other equitable relief as  
6 may be appropriate with respect to any actual or threatened  
7 breach.

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

11 (3) Any remedies available in contract law,  
12 including attorneys' fees or costs, if provided for in the  
13 contract or otherwise provided for by law.

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

16 Section 7. Nothing in this act shall be construed to  
17 eliminate any professional exemption recognized by Alabama  
18 law.

19 Section 8. It is hereby declared that this  
20 act expresses fundamental public policies of the State of  
21 Alabama. Therefore, this act shall govern and shall be applied  
22 instead of any foreign laws that might otherwise be applicable  
23 in those instances when the application of those foreign laws  
24 would violate a fundamental public policy expressed in this  
25 act.

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

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