SB170

202510-8

By Senator Smitherman

RFD: Judiciary

First Read: 11-FEB-20
SYNOPSIS: This bill would create the Alabama Non-Disparagement Obligations Act to provide for the creation and enforcement of non-disparagement obligations in contracts.

A BILL

TO BE ENTITLED

AN ACT

Relating to contracts; to establish the Alabama Non-Disparagement Obligations Act; to provide for the creation and enforcement of non-disparagement obligations in contracts.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This bill shall be known and may be cited as the Alabama Non-Disparagement Obligations Act.

Section 2. As used in this act, the following terms shall have the following meanings:

(1) INJURIOUS STATEMENT. Any statement that does any of the following:
a. Falsely discredits or detracts from the reputation of another's character, property, product, or business.

b. Discredits or detracts from the reputation of another's character, property, product, or business by disclosing truthful but private information.

c. Discredits or detracts from the reputation of another's character, property, product, or business by disclosing truthful but proprietary information or information gained within the context of a fiduciary relationship between the parties not otherwise protected by a trade secret statute.

d. Is knowingly or recklessly made by a party that has clear and direct information that the statement was plainly false or misleading by its unreasonable incompleteness and that the communication of the misleading information would cause specific loss.

(2) PERSON. An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, government subdivision, agency, or instrumentality, or any other legal or commercial entity.

(3) PRIVATE INFORMATION. Any information of such a personal or private nature that the parties to the contract would reasonably expect the information not to be made public.

(4) PROPRIETARY INFORMATION. Non-public information that is described with reasonable specificity in the contract
such that the parties to the contract would be on reasonable notice of the scope of the contract provision.

Section 3. (a) Except as otherwise prohibited by law, any contract or provision of a contract between two or more persons not to disparage each other is only enforceable by a civil action where all of the following elements are present:

(1) The contract between the persons contains language prohibiting the parties from disparaging one or more persons, including specifically named third-parties.

(2) An objectively injurious statement is made that, based on objective facts, is reasonably expected to cause harm.

(3) The communication of the objectively injurious statement results in specific loss to the plaintiff.

(b) Nothing in this act creates any cause of action for disparagement at law or equity absent a contractual obligation between the parties.

Section 4. In order to be valid, any contract governed by this act shall be reduced to writing, signed by all parties, and supported by adequate consideration.

Section 5. In order to be enforceable, a contract governed by this act shall include a notice stating that a party may not be held liable for breaching a contract governed by this act if a disclosure is made for any of the following purposes:
(1) Communicating with a law enforcement officer acting within the line and scope of the officer's law enforcement duties.

(2) Communicating with a government regulator acting within the line and scope of his or her regulatory duties.

(3) Responding to a grand jury subpoena.

(4) Testifying in a judicial or administrative proceeding.

(5) Conferring with an attorney for the purposes of obtaining legal advice or representation.

(6) Responding to discovery in a judicial or administrative action; provided, the disclosure is either ordered or made in compliance with a protective order entered in the action.

(7) Prosecuting or defending a civil lawsuit between or among parties to a contract governed by this act; provided, the disclosing party seeks to make any filing containing the disclosure under seal or in compliance with a protective order entered in the civil lawsuit.

Section 6. A contract governed by this act may require the parties to the contract to file under seal initial or responsive pleadings and motions under Alabama Rule of Civil Procedure 65 regarding the enforcement of a contract governed by this act. Nothing in this section prohibits a court of competent jurisdiction from making its own judgment regarding what, if any, filings filed under seal pursuant to this section should be made public. In making this judgment,
the court shall consider the extent to which unsealing parts
of the record would cause, perpetuate, or increase injury to
any of the litigants or related third parties. To the extent
allowed by law, the parties may include in a contract governed
by this act a requirement that notice be provided prior to
providing to third parties information protected under this
act.

Section 7. A court may void a contract governed by
this act in whole or in part, including, but not limited to, a
fee shifting provision, if the court finds that the contract
is overly broad, unconscionable, or unduly lacking in
mutuality.

Section 8. Nothing in this act affects any defense
or immunity otherwise available under applicable law. Nothing
in this act shall reduce, void, or diminish any obligations or
contractual obligations of any kind or nature between
shareholders, owners, members, and officers of any entity that
is governed by Title 10A, Code of Alabama 1975. Shareholders,
owners, members, and officers may disclaim rights and
obligations under this act, provided that the disclaimer
expressly and plainly states that the signatories to the
contract are aware they are waiving their rights under this
act.

Section 9. A defendant in an action for breach of a
contract governed by this act may mitigate damages by proving
either of the following:
(1) The injurious statement was made in good faith or by mistake.

(2) The injurious statement was retracted in such a way as to eliminate or reduce the harm to the plaintiff.

Section 10. Upon a finding as to whether or not there has been a breach of a contract governed by this act, the court may order any of the following:

(1) Injunctive and other equitable relief as may be appropriate with respect to any actual or threatened breach.

(2) The actual damages recoverable under existing law for breach of contract disputes that are suffered as a result of the breach.

(3) Attorneys' fees and costs, if provided for in the contract or otherwise provided for by law.

Section 11. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.