

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

(3) One who sells the good will of a business may agree with the buyer to refrain from carrying on or engaging in a similar business and from soliciting customers of such

1 business within a specified geographic area so long as the  
2 buyer, or any entity deriving title to the good will from that  
3 business, carries on a like business therein, subject to  
4 reasonable time and place restraints. Restraints of one year  
5 or less are presumed to be reasonable.

6 (4) An agent, servant, or employee of a commercial  
7 entity may agree with such entity to refrain from carrying on  
8 or engaging in a similar business within a specified  
9 geographic area so long as the ~~employer~~ commercial entity  
10 carries on a like business therein, subject to reasonable  
11 restraints of time and place. Restraints of two years or less  
12 are presumed to be reasonable.

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

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

1           (5) Specialized and unique training involving  
2 substantial business expenditure specifically directed to a  
3 particular agent, servant, or employee; provided that such  
4 training ~~and anticipated expense~~ is specifically set forth in  
5 writing as the consideration for the restraint.

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

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

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

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

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

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

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

7           (3) Any remedies available in contract law,  
8 including attorneys' fees or costs, if provided for in the  
9 contract or otherwise provided for by law.

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

12           Section 7. Nothing in this act shall be construed to  
13 eliminate any professional exemption recognized by Alabama  
14 law.

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

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

1                   Section 10. This act shall become effective on  
2           January 1, ~~2015~~ 2016, following its passage and approval by  
3           the Governor, or its otherwise becoming law.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

---

Speaker of the House of Representatives

---

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 19-MAY-15, as amended.

Jeff Woodard  
Clerk

Senate

---

04-JUN-15

Passed