

1 SB367
2 166383-4
3 By Senator Williams
4 RFD: Judiciary
5 First Read: 09-APR-15

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 Relating to contract law; to clarify and restate the
12 law relating to restrictive covenants; and to repeal Section
13 8-1-1, Code of Alabama 1975.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

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

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

26 (6) Upon or in anticipation of a dissolution of a
27 commercial entity, partners, owners, or members, or any

1 combination thereof, may agree that none of them will carry on
2 a similar commercial activity in the geographic area where the
3 commercial activity has been transacted.

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

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

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

20 (3) Commercial relationships or contacts with
21 specific prospective or existing customers, patients, vendors,
22 or clients.

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

25 a. An ongoing business, franchise, commercial, or
26 professional practice, or trade dress.

27 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 unreasonably long in its duration, a court may
14 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.

25 Section 10. This act shall become effective on
26 January 1, 2016, following its passage and approval by the
27 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 09-APR-15

Read for the second time and placed on the calen-
dar 1 amendment..... 28-APR-15

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

Yeas 30
Nays 0

Patrick Harris
Secretary