

1 SB270  
2 155631-1  
3 By Senator Williams  
4 RFD: Fiscal Responsibility and Accountability  
5 First Read: 23-JAN-14

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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 limiting their ability to hire or employ the agent,

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

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

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

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

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

1 (c) Courts may refuse to enforce such restraints in  
2 whole or in part if the court finds that enforcement causes an  
3 undue hardship.

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

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

8 (2) Confidential information, including pricing  
9 methodology, used in the business that does not otherwise  
10 qualify as a trade secret.

11 (3) Substantial relationships or contacts with  
12 specific prospective or existing customers, patients, vendors,  
13 or clients.

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

16 a. An ongoing business, franchise, commercial, or  
17 professional practice, or trade dress.

18 b. A specific marketing or trade area.

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

21 Section 3. In order to be valid, any contract or  
22 agreement executed pursuant to this act shall be reduced to  
23 writing, signed by all parties, be supported by adequate  
24 consideration, and shall be mutual in all significant  
25 provisions.

26 Section 4. If a contractually specified restraint is  
27 overly broad, too long in its duration, or otherwise not

1 necessary to preserve a protectable interest or interests, a  
2 court may void the restraint in whole or in part.

3 Section 5. (a) Any person seeking enforcement of a  
4 restrictive covenant as provided in this act shall plead with  
5 specificity the existence of each element required for such a  
6 covenant.

7 (b) The party seeking enforcement of the covenant  
8 has the burden of proof on every element. The party resisting  
9 enforcement of the covenant has the burden of proving the  
10 existence of undue hardship, if raised as a defense.

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

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

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

19 (3) Any remedies available in contract law,  
20 including attorneys' fees or costs, if provided for in the  
21 contract or otherwise provided for by law.

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

24 Section 7. Nothing in this act shall be construed to  
25 eliminate any professional exemption recognized by Alabama  
26 law.

1                   Section 8. It is hereby declared that this  
2 act expresses fundamental public policies of the State of  
3 Alabama. Therefore, this act shall govern and shall be applied  
4 instead of any foreign laws that might otherwise be applicable  
5 in those instances when the application of those foreign laws  
6 would violate a fundamental public policy expressed in this  
7 act.

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

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