

ACT No. 2015 - 465

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



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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.

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[Handwritten Signature]

Speaker of the House of Representatives

Kay Ivey

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

APPROVED 6-11-2015

TIME 9:00 AM

Robert Bentley
GOVERNOR

Alabama Secretary Of State

Act Num.....: 2015-465
Bill Num....: H-352

Recv'd 06/11/15 01:28pmSLF

NSOR

England

SPONSORS

HOUSE ACTION

I HEREBY CERTIFY THAT THE RESOLUTION AS REQUIRED IN SECTION C OF ACT NO. 81-889 WAS ADOPTED AND IS ATTACHED TO THE BILL, H.B. 352

YEAS 99 NAYS 1

JEFF WOODARD, Clerk

I HEREBY CERTIFY THAT THE NOTICE & PROOF IS ATTACHED TO THE BILL, H.B. AS REQUIRED IN THE GENERAL ACTS OF ALABAMA, 1975 ACT NO. 919.

JEFF WOODARD, Clerk

CONFERENCE COMMITTEE

House Conferees

SENATE ACTION

DATE: 5-21 2015
RD 1 RFD

This Bill was referred to the Standing Committee of the Senate on JUDLY and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amend(s) w/sub by a vote of 9 yeas 0 nays 0 abstain 0 this 27 day of May 2015 [Signature] Chairperson

DATE: 5-28 2015
RF FAV RD 2 CAL

DATE: 20__
RE-REFERRED RE-COMMITTED
Committee

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, HB 352

YEAS 28 NAYS 0
PATRICK HARRIS, Secretary

FURTHER SENATE ACTION (OVER)