BURR ALERT

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# Alabama's New Non-Compete Statute: Are You Ready For New Year's Day?

Those involved in drafting, negotiating, or litigating covenants-not-to-compete in Alabama have long known that Alabama's statute books seldom provide ready answers on this particular topic. The text of current Alabama Code § 8-1-1, entitled "Contracts restraining business void; exceptions," was -- until this year -- last amended in 1940. This text consists of three short paragraphs and does not delve into details. As a practical matter, this has meant that, for the past 75 years, it has been up to Alabama courts to fill in the details.

This is about to change. On June 11, 2015, Governor Bentley signed into law House Bill No. 352, entitled "Contracts, use of restrictive covenants clarified, Sec. 8-1-1 repealed." The new law comes into effect on January 1, 2016 and repeals all of current Alabama Code § 8-1-1.

At least in some respects, the provisions of the new law mirror what Alabama courts have already been doing. This codification of previous court outcomes into Alabama's statute books should help to provide clarity when drafting, negotiating, and litigating future agreements. In other respects, though, the new statute innovates. As a result, employers will want to pay close attention to the new law and make sure that their existing agreements comply with the law.

The old and new laws both begin by stating the general rule that contracts restraining anyone in the exercise of a lawful profession, trade, or business are void. However, the new law now enumerates, in detail, the exceptions to this general rule of voidness.

Section 1(b) of the new law lists, as exceptions, six categories of contracts that "are allowed to preserve a protectable interest." Of interest to employers, sub-items 1(b)(4) and 1(b)(5) include, within these exceptions, non-competition and non-solicitation agreements entered into between a "commercial entity" and an employee of that entity. In other words, non-competition and non-solicitation agreements entered into as part of the employment relationship might be valid under Alabama law, but only if the agreements "preserve a protectable interest."

Section 2(a) of the new law defines "protectable interests" so as to include not just "trade secrets," but also "pricing information and methodology," "customer lists," "business models and data," and "contacts with specific prospective or existing customers," among others. However, Section 2(b) says: "Job skills in and of themselves, without more, are not protectable interests." As a result, employers seeking to enforce a non-competition or non-solicitation agreement will need to pay close attention to the list of "protectable interests" in Section 2(a).

For prohibitions on competition after the end of employment, the new law states that a restrictive covenant of "two years or less" in duration will be presumed reasonable. This two-year period is, on the whole, consistent with Alabama court decisions over the past 75 years. However, the new law then provides a shorter "presumptively reasonably" time-period (usually 18 months after the end of

employment) for agreements prohibiting the solicitation of the employer's customers. These differing presumptions for non-competition and non-solicitation agreements are one of many reasons why Alabama employers may wish to review their non-competition and non-solicitation agreements for compliance with the new law.

The new non-compete statute is coming soon, New Year's Day 2016, and employers need to start preparing now.

## For more information:

If you are an employer and have questions about how Alabama's new law might impact a specific agreement your business uses, please feel free to contact:

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