1   State of Arkansas

As Engrossed: H3/20/15

2   90th General Assembly

A Bill

3   Regular Session, 2015   SENATE BILL 998

4

5   By: Senator J. Hutchinson

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7   **For An Act To Be Entitled**

8   AN ACT TO PROVIDE FOR THE ENFORCEABILITY OF A

9   COVENANT NOT TO COMPETE AGREEMENT; AND FOR OTHER

10   PURPOSES.

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13   **Subtitle**

14   TO PROVIDE FOR THE ENFORCEABILITY OF A

15   COVENANT NOT TO COMPETE AGREEMENT.

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18   BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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20   SECTION 1. Arkansas Code Title 4, Chapter 70, Subchapter 2, is amended

21   to add an additional section to read as follows:

22   4-70-207. Covenant not to compete agreements.

23   (a) A covenant not to compete agreement is enforceable if the

24   agreement is ancillary to an employment relationship or part of an otherwise

25   enforceable employment agreement or contract to the extent that:

26   (1) The employer has a protectable business interest; and

27   (2) The covenant not to compete agreement is limited with

28   respect to time and scope in a manner that is not greater than necessary to

29   defend the protectable business interest of the employer.

30   (b) For the purposes of subsection (a) of this section, the

31   protectable business interest of the employer includes the employer's:

32   (1) Trade secrets;

33   (2) Intellectual property;

34   (3) Customer lists;

35   (4) Goodwill with customers;

36   (5) Knowledge of his or her business practices;

1   (6) Methods;

2   (7) Profit margins;

3   (8) Costs;

4   (9) Other confidential business information that is

5   confidential, proprietary, and increases in value from not being known by a

6   competitor;

7   (10) Training and education of the employer's employees; and

8   (11) Other valuable employer data that the employer has provided

9   to an employee that an employer would reasonably seek to protect or safeguard

10   from a competitor in the interest of fairness.

11   (c)(1) The lack of a specific or defined geographic descriptive

12   restriction in a covenant not to compete agreement does not make the covenant

13   not to compete agreement overly broad under subdivision (a)(2) of this

14   section, if the covenant not to compete agreement is limited with respect to

15   time and scope in a manner that is not greater than necessary to defend the

16   protectable business interest of the employer.

17   (2) The reasonableness of a covenant not to compete agreement

18   shall be determined after considering:

19   (A) The nature of the employer's protectable business

20   interest;

21   (B) The geographic scope of the employer's business and

22   whether or not a geographic limitation is feasible under the circumstances;

23   (C) Whether or not the restriction placed on the employee

24   is limited to a specific group of customers or other individuals or entities

25   associated with the employer's business; and

26   (D) The nature of the employer's business.

27   (d) A post-termination restriction of two (2) years is presumptively

28   reasonable as to length of time under subdivision (a)(2) of this section

29   unless the facts and circumstances of a particular case clearly demonstrate

30   that two (2) years is unreasonable compared to the employer's protectable

31   business interest.

32   (e)(1) In a private court action, a court may award the employer

33   damages for a breach of a covenant not to compete agreement, appropriate

34   injunctive relief, or both, if appropriate.

35   (2) The immediate harm associated with the breach of a covenant

36   not to compete agreement shall be considered irreparable to establish the

1   appropriateness of a preliminary injunction.

2   (3)   This subsection does not limit:

3   (A)   Any other defense available to a party against a claim

4   for preliminary injunctive relief; or

5   (B)   An employer's right to monetary damages for breach of

6   a covenant not to compete agreement.

7   (f)(1)   If restrictions in a covenant not to compete agreement are

8   found to be unreasonable and impose a greater restraint than is necessary to

9   protect the protectable business interest of the employer under subdivision

10 (a)(1) of this section, the court shall reform the covenant not to compete

11 agreement to the extent necessary to:

12   (A)   Cause the limitations contained in the covenant not to

13 compete agreement to be reasonable; and

14   (B)   Impose a restraint that is not greater than necessary

15 to protect the protectable business interest.

16   (2)   The court shall enforce the covenant not to compete

17 agreement under the reformed terms and conditions.

18   (g)   An employee's continued employment is sufficient consideration for

19 a covenant not to compete agreement.

20   (h)(1)   This subsection does not apply to a covenant not to compete

21 agreement that is ancillary to other contractual relationships, including any

22 type of agreement for the sale and purchase of a business, franchise

23 agreement, and any other agreement not ancillary to an employment

24 relationship or employment contract.

25   (2)   Existing common law standards governing a covenant not to

26 compete agreement outside the employment background shall remain in effect.

27   (i)(1)   This subsection shall not apply to other types of agreements

28 between employers and employees that do not concern competition or

29 competitive work, including:

30   (A)   Agreements not to solicit, recruit, or hire employees;

31   (B)   Confidentiality agreements;

32   (C)   Nondisclosure agreements; and

33   (D)   The terms and conditions of an employment or

34 employment agreement.

35   (2)   Existing common law standards governing these types of

36 agreements shall remain in effect.

1   *(j) This section shall not:*

2   *(1) Be read to impair, limit, or change a party's protections*

3   *and rights under the Arkansas Trade Secrets Act, § 4-75-601 et seq.; or*

4   *(2) Apply to a person holding a professional license under*

5   *Arkansas Code Title 17, Subtitle 3.*

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7   */s/J. Hutchinson*

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10   ***APPROVED: 04/01/2015***

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