

INTERIM STUDY PROPOSAL 2021-137

State of Arkansas

93rd General Assembly

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A Bill

ANS/ANS

HOUSE BILL

By: Representative Pilkington

Filed with: House Committee on Insurance and Commerce
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT TO PROHIBIT COVENANT NOT TO COMPETE
AGREEMENTS; TO MODIFY THE LAW CONCERNING A COVENANT
NOT TO COMPETE AGREEMENT; AND FOR OTHER PURPOSES.

Subtitle

TO PROHIBIT COVENANT NOT TO COMPETE
AGREEMENTS; AND TO MODIFY THE LAW
CONCERNING A COVENANT NOT TO COMPETE
AGREEMENT.

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

SECTION 1. Arkansas Code § 4-75-101 is amended to read as follows:

4-75-101. Covenant not to compete agreements – Prohibited.

~~(a) A covenant not to compete agreement is enforceable if the
agreement is ancillary to an employment relationship or part of an otherwise
enforceable employment agreement or contract to the extent that:~~

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

~~(2) The covenant not to compete agreement is limited with
respect to time and scope in a manner that is not greater than necessary to
defend the protectable business interest of the employer~~ A covenant not to
compete agreement is prohibited in this state.

~~(b) For the purposes of subsection (a) of this section, the
protectable business interest of the employer includes the employer's:~~

~~(1) Trade secrets;~~

- ~~(2) Intellectual property;~~
- ~~(3) Customer lists;~~
- ~~(4) Goodwill with customers;~~
- ~~(5) Knowledge of his or her business practices;~~
- ~~(6) Methods;~~
- ~~(7) Profit margins;~~
- ~~(8) Costs;~~
- ~~(9) Other confidential business information that is~~

~~confidential, proprietary, and increases in value from not being known by a competitor;~~

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

~~(11) Other valuable employer data that the employer has provided to an employee that an employer would reasonably seek to protect or safeguard from a competitor in the interest of fairness.~~

~~(e)(1) The lack of a specific or defined geographic descriptive restriction in a covenant not to compete agreement does not make the covenant not to compete agreement overly broad under subdivision (a)(2) of this section if the covenant not to compete agreement is limited with respect to time and scope in a manner that is not greater than necessary to defend the protectable business interest of the employer.~~

~~(2) The reasonableness of a covenant not to compete agreement shall be determined after considering:~~

~~(A) The nature of the employer's protectable business interest;~~

~~(B) The geographic scope of the employer's business and whether or not a geographic limitation is feasible under the circumstances;~~

~~(C) Whether or not the restriction placed on the employee is limited to a specific group of customers or other individuals or entities associated with the employer's business; and~~

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

~~(d) A post termination restriction of two (2) years is presumptively reasonable as to length of time under subdivision (a)(2) of this section unless the facts and circumstances of a particular case clearly demonstrate that two (2) years is unreasonable compared to the employer's protectable business interest.~~

1 ~~(e)(1) In a private court action, a court may award the employer~~
2 ~~damages for a breach of a covenant not to compete agreement, appropriate~~
3 ~~injunctive relief, or both, if appropriate.~~

4 ~~(2) The immediate harm associated with the breach of a covenant~~
5 ~~not to compete agreement shall be considered irreparable to establish the~~
6 ~~appropriateness of a preliminary injunction.~~

7 ~~(3) This subsection does not limit:~~

8 ~~(A) Any other defense available to a party against a claim~~
9 ~~for preliminary injunctive relief; or~~

10 ~~(B) An employer's right to monetary damages for breach of~~
11 ~~a covenant not to compete agreement.~~

12 ~~(f)(1) If restrictions in a covenant not to compete agreement are~~
13 ~~found to be unreasonable and impose a greater restraint than is necessary to~~
14 ~~protect the protectable business interest of the employer under subdivision~~
15 ~~(a)(1) of this section, the court shall reform the covenant not to compete~~
16 ~~agreement to the extent necessary to:~~

17 ~~(A) Cause the limitations contained in the covenant not to~~
18 ~~compete agreement to be reasonable; and~~

19 ~~(B) Impose a restraint that is not greater than necessary~~
20 ~~to protect the protectable business interest.~~

21 ~~(2) The court shall enforce the covenant not to compete~~
22 ~~agreement under the reformed terms and conditions.~~

23 ~~(g) An employee's continued employment is sufficient consideration for~~
24 ~~a covenant not to compete agreement.~~

25 ~~(h)(1) This subsection does not apply to a covenant not to compete~~
26 ~~agreement that is ancillary to other contractual relationships, including any~~
27 ~~type of agreement for the sale and purchase of a business, franchise~~
28 ~~agreement, and any other agreement not ancillary to an employment~~
29 ~~relationship or employment contract.~~

30 ~~(2) Existing common law standards governing a covenant not to~~
31 ~~compete agreement outside the employment background shall remain in effect.~~

32 ~~(i)(1) This section shall not apply to other types of agreements~~
33 ~~between employers and employees that do not concern competition or~~
34 ~~competitive work, including:~~

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

36 ~~(B) Confidentiality agreements;~~

1 ~~(C) Nondisclosure agreements; and~~
2 ~~(D) The terms and conditions of an employment or~~
3 ~~employment agreement.~~
4 ~~(2) Existing common law standards governing these types of~~
5 ~~agreements shall remain in effect.~~
6 ~~(j) This section shall not:~~
7 ~~(1) Be read to impair, limit, or change a party's protections~~
8 ~~and rights under the Arkansas Trade Secrets Act, § 4-75-601 et seq.; or~~
9 ~~(2) Apply to a person holding a professional license under~~
10 ~~Arkansas Code Title 17, Subtitle 3.~~

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Referred by Representative Pilkington
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