

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

HOUSE BILL 1628

5 By: Representatives S. Meeks, Gazaway
6 By: Senator M. Johnson
7

For An Act To Be Entitled

9 AN ACT TO PROHIBIT COVENANT NOT TO COMPETE
10 AGREEMENTS; TO AMEND THE LAW CONCERNING A COVENANT
11 NOT TO COMPETE AGREEMENT; AND FOR OTHER PURPOSES.
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Subtitle

15 TO PROHIBIT COVENANT NOT TO COMPETE
16 AGREEMENTS; AND TO AMEND THE LAW
17 CONCERNING A COVENANT NOT TO COMPETE
18 AGREEMENT.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code § 4-75-101 is amended to read as follows:

24 4-75-101. Covenant not to compete agreements - Prohibited - Definition.

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

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

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

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

34 ~~(1) Trade secrets;~~

35 ~~(2) Intellectual property;~~

36 ~~(3) Customer lists;~~



- 1 ~~(4) Goodwill with customers;~~
- 2 ~~(5) Knowledge of his or her business practices;~~
- 3 ~~(6) Methods;~~
- 4 ~~(7) Profit margins;~~
- 5 ~~(8) Costs;~~
- 6 ~~(9) Other confidential business information that is~~
 7 ~~confidential, proprietary, and increases in value from not being known by a~~
 8 ~~competitor;~~
- 9 ~~(10) Training and education of the employer's employees; and~~
- 10 ~~(11) Other valuable employer data that the employer has provided~~
 11 ~~to an employee that an employer would reasonably seek to protect or safeguard~~
 12 ~~from a competitor in the interest of fairness.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 ~~(B) Confidentiality agreements;~~

34 ~~(C) Nondisclosure agreements; and~~

35 ~~(D) The terms and conditions of an employment or~~
 36 ~~employment agreement.~~

1 ~~(2) Existing common law standards governing these types of~~
 2 ~~agreements shall remain in effect.~~

3 ~~(j) This section shall not:~~

4 ~~(1) Be read to impair, limit, or change a party's protections~~
 5 ~~and rights under the Arkansas Trade Secrets Act, § 4-75-601 et seq.; or~~

6 ~~(2) Apply to a person holding a professional license under~~
 7 ~~Arkansas Code Title 17, Subtitle 3.~~

8 (a)(1) A "covenant not to compete" means a covenant or agreement,
 9 including a provision of a contract of employment, between an employer and
 10 employee that restrains, prohibits, or otherwise restricts an individual's
 11 ability, following the termination of the individual's employment, to compete
 12 with his or her former employer.

13 (2) A covenant not to compete includes every written or oral
 14 covenant, agreement, or contract by which an employee or independent
 15 contractor is prohibited or restrained from engaging in a lawful profession,
 16 trade, or business of any kind.

17 (3) A covenant not to compete does not include a:

18 (A) Nonsolicitation agreement;

19 (B) Confidentiality agreement;

20 (C) Covenant prohibiting use or disclosure of trade
 21 secrets or inventions;

22 (D) Covenant entered into by a person purchasing or
 23 selling the goodwill of a business or otherwise acquiring or disposing of an
 24 ownership interest; or

25 (E) Covenant entered into by a franchisee when the
 26 franchise sale complies with the Arkansas Franchise Practices Act, § 4-72-201
 27 et seq.

28 (b) A covenant not to compete agreement is prohibited in this state.

29 (c) An individual who makes an agreement with an employer, whether in
 30 writing or verbally, not to compete with the employer after the employment
 31 relationship has been terminated, shall be permitted to engage in the same
 32 business as that conducted by the former employer or in a similar business as
 33 that conducted by the former employer as long as the former employee does not
 34 directly solicit the sale of goods, services, or a combination of goods and
 35 services from the established customers of the former employer.

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