

1 State of Arkansas As Engrossed: H1/16/19
2 92nd General Assembly **A Bill**

3 Regular Session, 2019

HOUSE BILL 1068

4
5 By: Representative Evans

6 By: Senator Hill

7
8 **For An Act To Be Entitled**

9 AN ACT TO REPEAL THE ABILITY TO ENFORCE A COVENANT
10 NOT TO COMPETE AGREEMENT; AND FOR OTHER PURPOSES.

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13 **Subtitle**

14 TO REPEAL THE ABILITY TO ENFORCE 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. DO NOT CODIFY. This act does not affect the ability of an
21 employer to protect the employer's trade secrets under the Arkansas Trade
22 Secrets Act, § 4-75-601 et seq.

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24 SECTION 2. Arkansas Code § 4-75-101 is repealed.

25 ~~4-75-101. Covenant not to compete agreements.~~

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

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

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

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

35 ~~(1) Trade secrets;~~

36 ~~(2) Intellectual property;~~



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

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

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

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

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

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

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

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

35 ~~(e)(1) In a private court action, a court may award the employer~~
36 ~~damages for a breach of a covenant not to compete agreement, appropriate~~

1 ~~injunctive relief, or both, if appropriate.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

34 ~~(B) Confidentiality agreements;~~

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

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

1 ~~employment agreement.~~

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

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

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

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

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10 */s/Evans*

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