

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019

A Bill

HOUSE BILL 1068

4
5 By: Representative Evans

For An Act To Be Entitled

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

Subtitle

12 TO REPEAL THE ABILITY TO ENFORCE A
14 COVENANT NOT TO COMPETE AGREEMENT.

16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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19 SECTION 1. DO NOT CODIFY. This act does not affect the ability of an
20 employer to protect the employer's trade secrets under the Arkansas Trade
21 Secrets Act, § 4-75-601 et seq.

22
23 SECTION 2. Arkansas Code § 4-75-101 is repealed.

24 ~~4-75-101. Covenant not to compete agreements.~~

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 subsection 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.~~

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