

The Alabama

November 2015 | Volume 76, Number 6

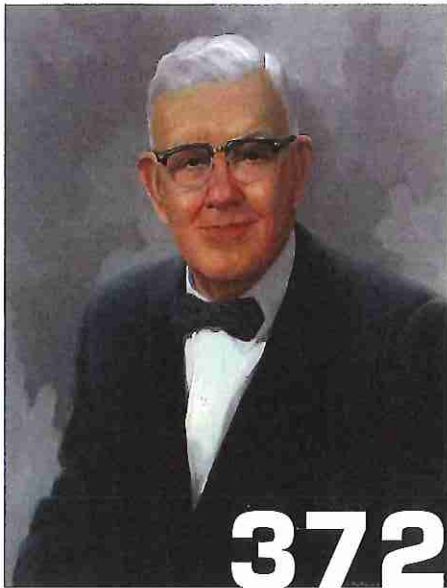
# Lawyer



Beyond the  
Veterans'  
Benefit Known  
As "Aid and  
Attendance"

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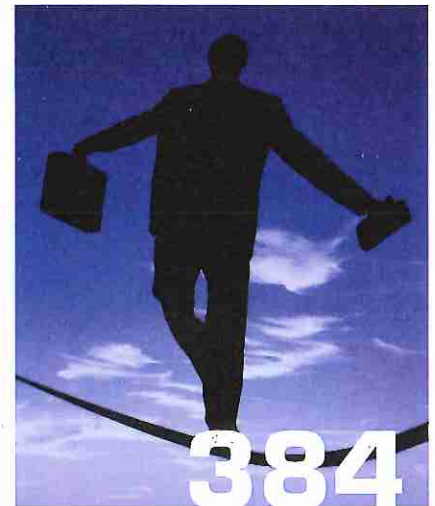
## On The Cover

This monument and plaque to World War I soldiers stand at the entrance of Linn Park, at the foot of Birmingham's main street, 20th Street North.



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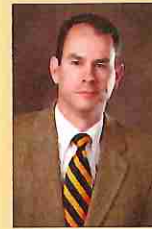
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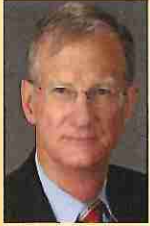
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## ARTICLE SUBMISSION REQUIREMENTS

Alabama State Bar members are encouraged to submit articles to the editor for possible publication in *The Alabama Lawyer*. Views expressed in the articles chosen for publication are the authors' only and are not to be attributed to the *Lawyer*, its editorial board or the Alabama State Bar unless expressly so stated. Authors are responsible for the correctness of all citations and quotations. The editorial board reserves the right to edit or reject any article submitted for publication.

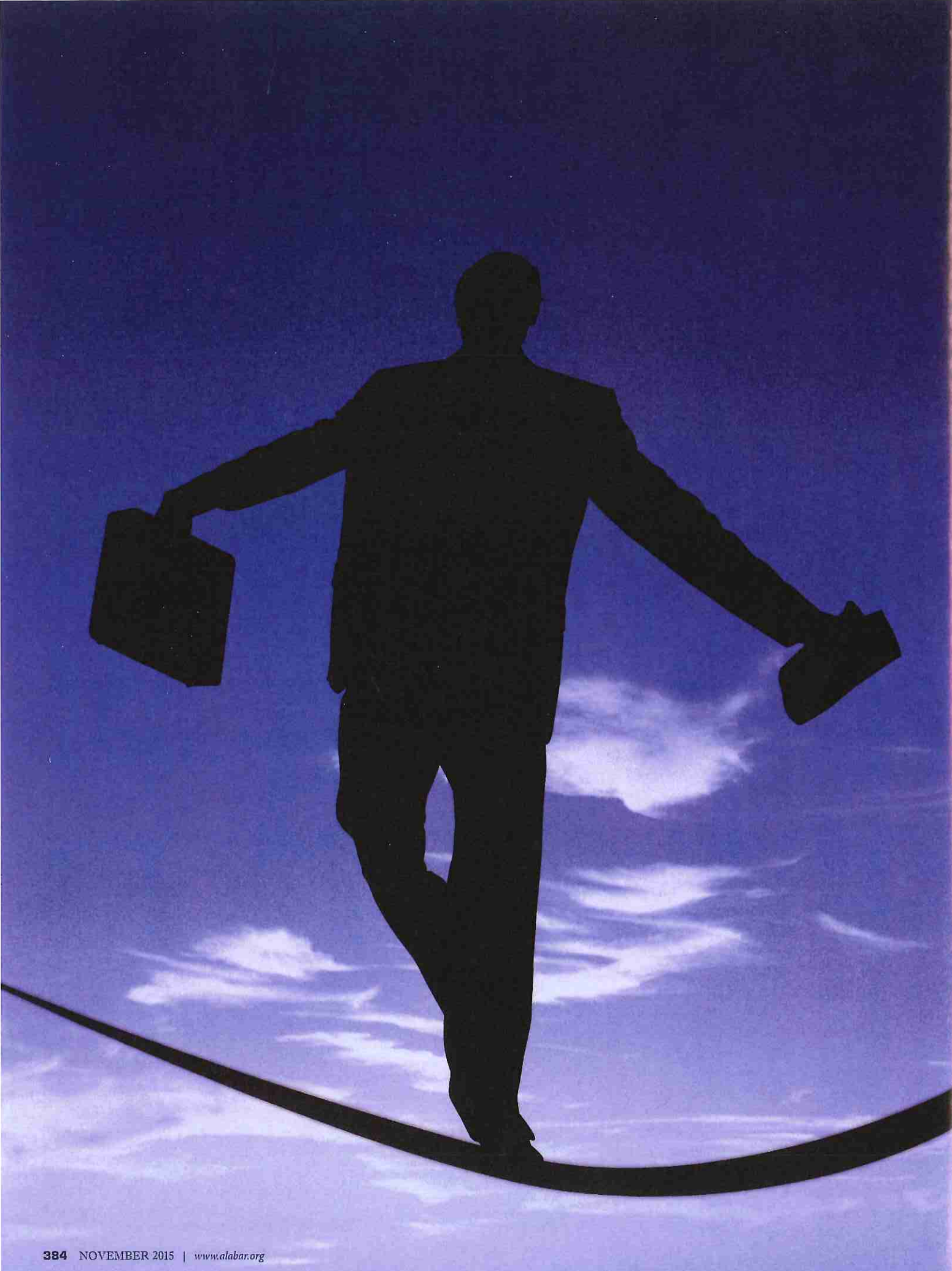
The *Lawyer* does not accept unsolicited articles from non-members of the ASB. Articles previously appearing in other publications are not accepted.

All articles to be considered for publication must be submitted to the editor via email ([ghawley@joneshawley.com](mailto:ghawley@joneshawley.com)) in Word format. A typical article is 13 to 18 letter-size pages in length, double-spaced, utilizing endnotes and not footnotes.

**A brief biographical sketch and a recent color photograph (at least 300 dpi) of the author must be submitted with the article.**







# Alabama Enacts Major Revision of *Alabama Code 8-1-1*

By Will Hill Tankersley, Richard J.R. Raleigh Jr., J. Casey Pipes and Adam K. Israel

## Introduction

For generations, Alabama lawyers who addressed issues related to non-corporate agreements have contended with a vague statute (*Ala. Code* § 8-1-1) (“Restrictive Covenant Act”), conflicting case authority, dramatic shifts in the controlling legal standard and trial courts that feel free to “blue pencil” agreements in ways that no one could have anticipated, turning wholly unenforceable covenants into enforceable covenants or vice versa.

As a result, it was notoriously difficult to advise clients as to the enforceability of restrictive covenants, even in situations where there appeared to be a reported case directly on point. For years, without clear legislative guidance, the Alabama Supreme Court struggled to develop a coherent set of analytical tools for restrictive covenant cases. Among other areas, the question of whether a restriction is “total” or only “partial” restraint, and the degree to which other elements of enforceability (e.g. “protectable interest” and “professional” status) apply to “partial” restraints, have been grafted onto Alabama’s restrictive covenant jurisprudence.

With no clear guidance from the legislature, the Alabama Supreme Court’s interpretation of the Restrictive Covenant Act shifted dramatically. For example in

*Sevier Insurance Agency v. Willis Corroon Corp.*,<sup>1</sup> the Alabama Supreme Court was presented with two cases involving insurance brokers who had allegedly violated identical covenants in two different jurisdictions (Montgomery County and Jefferson County). In the Jefferson County case, the trial court held that the covenant was a valid “partial” non-solicitation agreement and granted declaratory relief for the former employer. In the Montgomery County case, the covenant was held to be an invalid “total” restraint (non-compete agreement). On appeal, the supreme court initially reversed the Montgomery ruling and upheld the Jefferson County result. On rehearing, the Alabama Supreme Court reached the exact opposite result, reversing the Jefferson County holding upholding the covenant and affirming the Montgomery County holding invalidating the covenant. The Alabama Supreme Court ultimately held that, contrary to prior Alabama law, non-solicitation agreements were “total” restraints subject to the restrictions of *Ala. Code* § 8-1-1—an argument that neither party raised. Eight years later, the Alabama Supreme Court reversed *Sevier* and announced a new standard that a restrictive covenant was not a “total” restraint unless the bound party was prevented “from practicing her trade or profession.”<sup>2</sup>

*“To advise a client on the enforceability of a non-compete agreement under Alabama law is to flirt with malpractice.”*

—Anonymous Alabama lawyer



# History of Alabama's Restrictive Covenant Law

"It is the public policy of Alabama that contracts restraining employment are disfavored."<sup>3</sup> Alabama's restrictive covenant law has its roots in English common law. "During the Middle Ages, English courts found all restraints on trade to be void and unenforceable, including post-employment covenants not to compete."<sup>4</sup> This is because covenants in restraint of trade violated the customary rules of the craft guilds. During the 15<sup>th</sup> and 16<sup>th</sup> centuries, "craft guilds were the dominant vehicles of economic activity in England."<sup>5</sup> The guilds were divided among master craftsmen, journeymen and apprentices.<sup>6</sup> "The goal of the apprenticeship system was to provide the master craftsman with a small labor force, and provide young men with a means of technical training to introduce them to the skills of the given trade."<sup>7</sup> "The relationship between apprentice and master was a contractual one: the master agreed to provide essential training to the apprentice in exchange for low-wage labor over a given period of time, usually seven years. At the end of the contractual period, the apprentice would be free, as a journeyman, to practice his trade, eventually becoming a master."<sup>8</sup>

However, "[f]reedom of contract emerged as capitalism became the predominant policy concern during the eighteenth and nineteenth centuries. As a result, English courts began issuing decisions which allowed limited restraints on trade."<sup>9</sup> Although the courts retained the presumption against the enforceability of restrictive covenants that had developed in the common law, they began applying a "rule of reason" in the enforcement analysis.<sup>10</sup> Under the "rule of reason," the inquiry was whether there was "some essential economic or business purpose"<sup>11</sup> for the agreement and whether the restrictive covenant "appeared to be made upon good and adequate consideration."<sup>12</sup> Over the next century, the English common law "rule of reason" evolved into an interest-balancing analysis. For example, "[i]n *Horner v. Graves*, the English court found that the element of reasonableness was not limited only to the consideration stated in the contract, but also its potential impact on the public welfare."<sup>13</sup>

Beginning in the early 19<sup>th</sup> century, American courts adopted the common law "rule of reason" in their analysis of restrictive covenants and began upholding contracts in restraint of trade "if the restraints [were] reasonable under the circumstances, ancillary to a valid transaction or relationship, and limited in duration and geographic scope."<sup>14</sup> It is against this legal landscape that Alabama adopted its first set of restrictive covenant statutes.

Chapter 272, article 7, § 6826 of the 1923 *Alabama Code* set out the general common law presumption against contracts in restraint of trade that persists today. According to § 6826, "Every contract by which any one is restrained from exercising a lawful profession, trade, or business of any kind, otherwise than is provided by the next two sections, is to that extent, void."<sup>15</sup> Sections 6827 and 6828 set out two exceptions to this general rule. First, § 6827 permitted "[o]ne who sells the goodwill of a business" to "agree with the buyer to refrain from carrying on a similar business within a specified county,

city, or a part thereof, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein."<sup>16</sup> Section 6828, which, except for minor editorial changes, is identical in all material respects to the current version of *Ala. Code* § 8-1-1(c), allowed partners, "upon or in anticipation of a dissolution of the partnership, [to] agree that none of them will carry on a similar business within the same county, city, or town where the partnership business has been transacted, or within a specified part thereof."<sup>17</sup>

The Alabama legislature amended § 6827 in 1931 to extend the enforceability of restrictive covenants to the employee-employer relationship and to specifically permit non-solicitation agreements (the statute previously only mentioned agreements "to refrain from carrying on or engaging in a similar business").<sup>18</sup> Beginning on July 23, 1931, amended § 6827, which is identical in all material respects to the current version of *Ala. Code* § 8-1-1(b), stated:

**Exception in Favor of Purchaser and Employers**—One who sells the good will of a business may agree with the buyer, and one who hires as an agent, servant, or employee may agree with his employer, to refrain from carrying on or engaging in a similar business and from soliciting old customers of such employer within a specified county, city, or a part thereof, so long as the buyer or any person deriving title to the good will from him, and so long as such employer carries on a like business therein.<sup>19</sup>

Sections 6826-6828 were recodified without material alteration in the 1940 *Code*<sup>20</sup> and again in the *Code* of 1975.<sup>21</sup>

## Alabama Law Institute Committee Actions to Revise the Restrictive Covenant Act

Alabama is blessed with the superb Alabama Law Institute ("ALI") and its executive director, Othni Lathram. In 2011, the ALI took on the task of providing clarity and predictability to this contentious and confusing area of Alabama law. The ALI convened a committee of judges, law professors and leading practitioners in the field ("Committee"). The committee set a high bar for itself by adopting principles to guide its revision of the Restrictive Covenant Act.<sup>22</sup>

The ALI Committee did not view its role to be the elimination of restrictive covenants. Businesses routinely enter into such covenants with employees, sellers of businesses and other businesses.<sup>23</sup> However, the committee was very much aware that without limitations, such covenants can become very one-sided and unnecessary restrictions at a time (i.e. post-employment) when the bound party is likely receiving nothing of value from the enforcer. Conversely, businesses must have the reasonable assurance that properly crafted and supported covenants consistently will be enforced.

The ALI effort to re-codify and clarify the proper application of Alabama's Restrictive Covenant Act began with the selection of the committee chair and an advisory committee.<sup>24</sup> The committee was convened in late 2011 and met for the better part of two years going through all of the reported Alabama cases on restrictive covenants, reviewing articles about Alabama restrictive covenant



jurisprudence and reviewing the restrictive covenant statutes of other states. In fall 2013, the committee completed its initial drafting work and presented a draft statute to the ALI Executive Committee and then at the ALI annual meeting, both of which approved the draft proposed legislation.

In 2014, bill sponsors **Rep. Chris England** (D-Tuscaloosa) and **Sen. Phil Williams** (R-Guntersville) shepherded the bill in their respective chambers of the Alabama Legislature as HB 241 and SB 270. During the legislative process, an industry group sought to have time to review and consider the language of the proposed Act. As a result, the Act was tabled for nearly a year while the ALI committee chair and executive director met with the industry group, answered questions and responded to concerns. Representative England and Senator Williams re-introduced the Act in the 2015 legislative session, skillfully navigating it through the legislative process. On June 11, 2015, the governor signed the Act into law. It will take effect January 1, 2016.

## Section-by-Section Description of the New Act

**Section 1. (a) Every contract by which anyone is restrained from exercising a lawful profession, trade, or business of any kind otherwise than is provided by this section is to that extent void.**

Section 1(a) retains the historical starting point for the analysis of contracts restraining trade—that they are void. Rather than stopping at that statement and relying on judicially crafted exceptions and caveats, the new code section says that they are void except as provided in this section.

**(b) Except as otherwise prohibited by law, the following contracts are allowed to preserve a protectable interest:**

**(1) A contract between two or more persons or businesses or a person and a business limiting their ability to hire or employ the agent, servant, or employees of a party to the contract is permitted where the agent, servant, or employee holds a position uniquely essential to the management, organization, or service of the business.**

...

Section 1(b) then goes on to identify certain situations in which a contract is allowed to restrain trade or business, but only if the contract preserves a protectable interest. Just because a contract is entered into in the context of one of the enumerated, permissible fact situations, does not result in automatic enforcement. Unless there is a protectable interest being preserved by the contract, it will be unenforceable. The phrase “protectable interest” is defined in Section 2.

Section 1(b) also contains a proviso that cautions that some of these types of contracts may be prohibited by other laws, and this

new code section is not intended to repeal or change those other laws. One example may be antitrust laws.

Section 1(b)(1) pertains to contracts between people or businesses that prohibit any of the parties to the contract from hiring an agent, servant or employee of the other party. While this section expands the scope of permissible “no-hire” agreements beyond technical employees, the class of people who cannot be hired away by another party is limited to those who are “uniquely essential” to certain aspects of the business. It is anticipated that only those people whose job functions are very important and very difficult to replicate would fit within this definition.

**(b) Except as otherwise prohibited by law, the following contracts are allowed to preserve a protectable interest:**

...

**(2) An agreement between two or more persons or businesses or a person and a business to limit commercial dealings to each other.**

...

Section 1(b)(2) allows contracts that limit commercial dealings to each party to the contract. Examples of contracts that fall within this exception include requirements contracts,<sup>25</sup> output contracts<sup>26</sup> or exclusive provider contracts,<sup>27</sup> among others.

**(b) Except as otherwise prohibited by law, the following contracts are allowed to preserve a protectable interest:**

...

**(3) One who sells the good will of a business may agree with the buyer to refrain from carrying on or engaging in a similar business and from soliciting customers of such business within a specified geographic area so long as the buyer, or any entity deriving title to the good will from that business, carries on a like business therein, subject to reasonable time and place restraints. Restraints of one year or less are presumed to be reasonable.**

...

Section 1(b)(3) allows contracts in connection with the sale of the good will of a business to prohibit the seller from competing with the buyer in a similar business or soliciting customers for a certain amount of time. This continues previous Alabama statutory law, but a reasonableness component regarding the time and place restriction is also added. One time aspect is that the buyer, or its successors, must still be carrying on a like business, and the other is that the duration must be reasonable. The statute declares that a time period of one year or less is presumed to be reasonable. There is also a geographic component that must also be reasonable, but no statutory guidance was provided as to a presumptively reasonable geographic area.

**(b) Except as otherwise prohibited by law, the following contracts are allowed to preserve a protectable interest:**

...



- (4) *An agent, servant, or employee of a commercial entity may agree with such entity to refrain from carrying on or engaging in a similar business within a specified geographic area so long as the commercial entity carries on a like business therein, subject to reasonable restraints of time and place. Restraints of two years or less are presumed to be reasonable.*
- (5) *An agent, servant, or employee of a commercial entity may agree with such entity to refrain from soliciting current customers, so long as the commercial entity carries on a like business, subject to reasonable time restraints. Restraints of 18 months or for as long as post-separation consideration is paid for such agreement, whichever is greater, are presumed to be reasonable.*

...

Section 1(b)(4) allows contracts between persons and commercial entities that prohibit the person from carrying on or engaging in a similar business. Section 1(b)(5) allows contracts between persons and commercial entities that prohibit the person from soliciting current customers of the commercial entity following separation. Both of these sections allow the person subject to the restraint to be an agent, servant or employee of the commercial entity, which broadens Alabama law to cover independent contractors or those who may not technically be employees. This section also preserves the Alabama law that the individual must be an agent, servant or employee at the time of contract formation, as opposed to being a prospective or a former agent, servant, or employee.<sup>28</sup> This subsection also requires the time and place restriction to be specified and to be reasonable, and in the instance of engaging in a similar business, a duration of two years or less is presumed to be reasonable. In the instance of soliciting customers, the duration of 18 months or for so long as any post-separation consideration is being paid is presumed reasonable.

*(b) Except as otherwise prohibited by law, the following contracts are allowed to preserve a protectable interest:*

...

- (6) *Upon or in anticipation of a dissolution of a commercial entity, partners, owners, or members, or any combination thereof, may agree that none of them will carry on a similar commercial activity in the geographic area where the commercial activity has been transacted.*

Section 1(b)(6) allows contracts in connection with the dissolution of a commercial entity between the partners, owners or members to agree not to carry on a similar commercial activity in the geographic area where the previous commercial activity had been transacted. The purpose of this section is similar to that of § 1(b)(3).

Section 2. (a) *A protectable interest includes all of the following:*

- (1) *Trade secrets, as defined in Section 8-27-2, Code of Alabama 1975.*
- (2) *Confidential information, including, but not limited to, pricing information and methodology; compensation; customer lists; customer data and information; mailing lists; prospective customer information; financial and investment information; management and marketing plans; business strategy, technique, and methodology; business models and data; processes and procedures; and company provided files, software, code, reports, documents, manuals, and forms used in the business that may not otherwise qualify as a trade secret but which are treated as confidential to the business entity, in whatever medium provided or preserved, such as in writing or stored electronically.*
- (3) *Commercial relationships or contacts with specific prospective or existing customers, patients, vendors, or clients.*
- (4) *Customer, patient, vendor, or client good will associated with any of the following:*
  - a. *An ongoing business, franchise, commercial, or professional practice, or trade dress.*
  - b. *A specific marketing or trade area.*
- (5) *Specialized and unique training involving substantial business expenditure specifically directed to a particular agent, servant, or employee; provided that such training is specifically set forth in writing as the consideration for the restraint.*
- (b) *Job skills in and of themselves, without more, are not protectable interests.*

Section 2 defines a “protectable interest.” This includes: (1) trade secrets as they are defined by Section 8-27-2(1); (2) confidential information used in business that does not otherwise qualify as a trade secret; (3) substantial relationships or contacts with prospective or existing customers, patients, vendors or clients; and (4) customer, patient, vendor or client goodwill. The section makes clear that job skills alone are not protectable interests. While the section does not specifically state that the list of four specified protectable interests are the only possible protectable interests, neither does this section indicate a legislative intent to include other protectable interests (e.g. “includes but is not limited to”). Thus, an argument can certainly be made that to be a “protectable interest” it has to fit within the four listed categories.

*Section 3. In order to be valid, any contract or agreement executed pursuant to this act shall be reduced to writing, signed by all parties and supported by adequate consideration.*



Section 3 requires a contract that restrains trade to be in writing, signed by all parties, and be supported by adequate consideration. This section does not address existing Alabama law concerning whether continued employment constitutes adequate consideration.

**Section 4. If a contractually specified restraint is overly broad or unreasonable in its duration, a court may void the restraint in part and reform it to preserve the protectable interest or interests. If a contractually specified restraint does not fall within the limited exceptions set out in subsection (b) of Section 1, a court may void the restraint in its entirety.**

Section 4 continues the “Blue Pencil” rule in Alabama. That is, a court may void an overly broad or unreasonable restraint. Section 4 specifically provides that the court may “void the restraint in part and reform it to preserve the protectable interest or interests,” but makes clear that the court may void the restraint entirely if it does not fall within the exceptions outlined in § 1(b).

**Section 5. The party seeking enforcement of the covenant has the burden of proof on every element. The party resisting enforcement of the covenant has the burden of proving the existence of undue hardship, if raised as a defense.**

Section 5 requires a proponent of a contract restraining trade to prove every element necessary to enforce a covenant with the exception of undue hardship. Some confusion existed regarding whether the absence of undue hardship was an element of a proponent’s prima facie case. The committee viewed such a formulation as awkward. As a result, the Act makes clear that undue hardship is an affirmative defense to be raised by the party resisting the enforcement of the covenant, if at all. If the resisting party raises undue hardship as a defense, that party has the burden of proof on the issue.

**Section 6. (a) The remedies available for breach of an agreement subject to this act are:**

- (1) Such injunctive and other equitable relief as may be appropriate with respect to any actual or threatened breach.**
- (2) The actual damages suffered as a result of the breach or lawful liquidated damages if provided in the contract.**
- (3) Any remedies available in contract law, including attorneys’ fees or costs, if provided for in the contract or otherwise provided for by law.**

**(b) Nothing in this act shall limit the availability of any defense otherwise available in law or equity.**

Section 6 addresses remedies for breach of a valid agreement and possible defenses. They are appropriate injunctive and equitable relief, actual damages or lawful liquidated damages if the

contract so provides, and any other remedies available in contract law if provided for in the contract or otherwise provided for by law. The section also makes clear that any defense otherwise available in law or equity is still available.

**Section 7. Nothing in this act shall be construed to eliminate any professional exemption recognized by Alabama law.**

Section 7 codifies the fact that there remain certain professionals who cannot enter into contracts restraining trade, even if they are in a contractual situation otherwise permissible under § 1(b). The types of professionals who are prohibited from entering into an enforceable contract restraining trade are not listed, but the existing Alabama case law identifying such professions will continue to be followed.

**Section 8. It is hereby declared that this act expresses fundamental public policies of the State of Alabama. Therefore, this act shall govern and shall be applied instead of any foreign laws that might otherwise be applicable in those instances when the application of those foreign laws would violate a fundamental public policy expressed in this act.**

Section 8 declares that the Act “expresses fundamental public policies of the State of Alabama.” Thus, in terms of conflict of laws, when the application of foreign laws would violate a fundamental public policy expressed in the act, Alabama’s Act will govern over other laws of foreign jurisdictions. This not only codifies existing Alabama law on this point,<sup>29</sup> but it also makes clear that the conflict of laws analysis in this Act applies to the enforcement of restrictive covenants notwithstanding Alabama’s usual conflict of laws rules (i.e. *lex loci contractus* and contractual choice of law jurisprudence).

**Section 9. All laws or parts of laws which conflict with this act are repealed, and specifically, Section 8-1-1, Code of Alabama 1975, is repealed.**

Section 9 expressly repeals the current version of § 8-1-1 and other laws that conflict with this new law.

**Section 10. This act shall become effective on January 1, 2016, following its passage and approval by the Governor, or its otherwise becoming law.**

Section 10 states that the Act becomes effective January 1, 2016. Therefore, this new Act will apply to actions filed after that date, even if the contract at issue was written and entered into prior to January 1, 2016. The Act does not destroy any existing contract rights. In fact, § 1(b) of the Act increases the number of situations beyond those enumerated in the current version of § 8-1-1 under which restrictive covenants may be enforced. Furthermore, the Act brings clarity to the proper application of Alabama’s restrictive covenant law, rejecting some judicial applications that were not based on the language of the statute (i.e. the “total” vs. “partial” restraint dichotomy). Therefore, Alabama’s Act will apply to all actions filed on or after January 1, 2016.



# Conclusion

Thanks to the ALL, the committee and the bill sponsors, Alabama lawyers will have a greater ability to create covenants that fit within Alabama's balanced jurisprudence of allowing reasonable covenants and disfavoring ones that over-reach. The new law will provide greater clarity and less conflict in this fraught area of the law.

*In Memoriam:* Our friend, **Mike Freeman**, was also on our committee. He had a career-long interest in restrictive covenants, co-authoring two articles on restrictive covenants for this publication. He was an active and valuable member of our committee as long as his health would permit. He passed away at the age of 51, a few months before this Act was passed into law. | AL

## Endnotes

1. 711 So. 2d 995 (Ala. 1998).
2. *Ex parte Howell Eng'g & Surveying, Inc.*, 981 So. 2d 413, 423 (Ala. 2006).
3. *Roberson v. C.P. Allen Const. Co.*, 50 So. 3d 471, 474 (Ala. Civ. App. 2010); *see also Robinson v. Computer Servicers, Inc.*, 346 So. 2d 940, 943 (Ala. 1977) (holding that contracts restraining employment are disfavored "because they tend not only to deprive the public of efficient service, but tend to impoverish the individual.").
4. Brian Kingsley Krumm, *Covenants Not to Compete: Time for Legislative and Judicial Reform in Tennessee*, 35 U. Mem. L. Rev. 447, 450 (2005).
5. Mark A. Glick, Darren Bush and Jonathan Q. Hafen, *The Law and Economics of Post-Employment Covenants: A Unified Framework*, 11 Geo. Mason L. Rev. 357, 360 (2002).
6. *Id.*
7. *Id.*
8. *Id.* at 360-61.
9. Krumm, *supra* note 4, at 451.
10. *Id.*
11. Glick, *supra* note 5, at 365 (citing *Mitchell v. Reynolds*, 24 Eng. Rep. 347 (Q.B. 1711)).
12. *Mitchell*, 24 Eng. Rep. at 349.
13. Krumm, *supra* note 4, at 452 (citing *Horner v. Graves*, 131 Eng. Rep. 284 (C.P. 1831)).
14. *Id.* at 452-53.
15. Ala. Code (1923) ch. 272, art. 7, § 6826.
16. Ala. Code (1923) ch. 272, art. 7, § 6827.
17. Ala. Code (1923) ch. 272, art. 7, § 6828.
18. 1931 Ala. Acts 647.
19. *Id.*
20. Ala. Code (1940) tit. 9, ch. 4, art. 1, §§ 22-24.
21. Ala. Code § 8-1-1 (1975).
22. Governing principles: Provide clarity to the Restrictive Covenant Act while remaining consistent with mainstream Alabama jurisprudence as to such covenants; confirm both the disfavored nature of such covenants, but also confirm the enforceability of restrictive covenants within a narrow scope; provide an exclusive list of covenants that are capable of being enforced; restore the "protectable interest" requirement to the central role of an enforceable covenant; reinforce the unique role of the court in evaluating and, when appropriate, invalidating covenants; provide guidance regarding the minimum requirements for contract formation; reinforce use of the "Blue Pencil" in reforming the geographic and temporal scope of a covenant while making it clear that the court is empowered to strike a covenant that does not preserve one of the enumerated protectable interests; remove the unworkable "total" and "partial" restraint analysis; eliminate antiquated and illogical limitations as to the work arrangements that can carry a restrictive covenant; such as, excluding independent contractors from the reach of a restrictive covenant; clarify which party (plaintiff or defendant) bears the burden of showing the presence or absence of "undue hardship" in a restrictive covenant case; confirm the continued viability of the full scope of the "professional" exemption as it exists under current Alabama law; clarify the remedies available for breach of a covenant; and confirm that Alabama's restrictive covenant jurisprudence is the public policy of the State of Alabama, not to be replaced by inconsistent law from another jurisdiction.
23. There is a lively debate as to whether the economic success of states forbidding restrictive covenants account for some portion of those states' economic success. *See, e.g.*, David A. Price, *Does Enforcement of Employee Noncompete Agreements Impede the Development of Industry Clusters?*, Fed. Reserve Bank of Richmond Econ. Brief EB14-11 (Nov. 2011), available at [https://www.richmondfed.org/~media/richmondfedorg/publications/research/economic\\_brief/2014/pdf/eb\\_14-11.pdf](https://www.richmondfed.org/~media/richmondfedorg/publications/research/economic_brief/2014/pdf/eb_14-11.pdf).
24. Will Hill Tankersley, chair; Hon. Eric G. Bruggink; Prof. Jerome Dees; Michael ("Mike") D. Ermert; Prof. Jill Evans; Michael D. Freeman (deceased); William ("Bill") D. Hasty; Prof. Harry Hopkins; Justice J. Gorman Houston, Jr.; Adam K. Israel; Hon. David A. Kimberley; Rebekah McKinney; J. Casey Pipes; Rep. William ("Bill") S. Poole; Richard ("Rich") J.R. Raleigh, Jr.; Stephen W. Shaw; Alfred ("Buddy") F. Smith, Jr.; Ashley E. Swink Fincher; Phillip ("Phil") W. Williams, Jr.; James ("Jim") C. Wilson, Jr.
25. A "requirements contract" is a contract in which "the buyer expressly agrees to buy all of his requirements of a stated item from the seller." *Water Works Bd. of Town of Bear Creek v. Town of Bear Creek*, 70 So. 3d 1186, 1190 (Ala. 2011).
26. An output contract is a contract in which a seller agrees to sell the buyer all of the product they produce in a given period of time. *See, e.g.*, *Hargrave v. Davis-Hunt Cotton Co.*, 321 So. 2d 178, 178 (Ala. 1975) ("This appeal involves a 'cotton output' contract between the Davis-Hunt Cotton Company, Inc. [appellee] and Gene Hargrave [appellant] under which 'Hargrave agreed to sell Davis-Hunt all of the cotton he produced during 1973, and ginned before December 16, 1973, at a price of 30 cents per pound.'").
27. *See, e.g.*, *Se. Cancer Network, P.C. v. DCH Healthcare Auth., Inc.*, 869 So. 2d 452, 456-58 (Ala. 2003).
28. *See Pitney Bowes, Inc. v. Berney Office Solutions*, 823 So. 2d 659, 662 (Ala. 2001) ("Absent the employee-employer relationship when the agreement is executed, the agreement is void. *Id.* The voidness of the agreement in this case did not disappear when Pitney employed Morris almost a month after the signing. Morris did not re-execute the agreement after Pitney employed him.").
29. *Cherry, Bekaert & Holland v. Brown*, 582 So. 2d 502, 506 (Ala. 1991) ("While parties normally are allowed to choose another state's laws to govern an agreement, where application of that other state's laws would be contrary to Alabama policy, the parties' choice of law will not be given effect and Alabama law will govern the agreement.").