

HB 1008 -- BUSINESS COVENANTS

SPONSOR: Hardwick

This bill modifies provisions relating to covenants between business entities and employees, distributors, dealers, franchisees, lessees, licensees, or owners or sellers of assets or interests in a business entity.

Currently, a covenant regarding solicitation, hiring, or otherwise interfering with an employee is enforceable if certain criteria is met. This bill modifies that provision and requires that a covenant between an employer and an employee promising not to solicit, recruit, hire, induce, persuade, encourage, or otherwise interfere with an employee is enforceable if the covenant is between employers and employees, excluding secretarial or clerical employees with no interest in the business entity, and the post-employment or post-business duration is no more than two years. Additionally, a covenant regarding interference with an employee shall be conclusively presumed to be reasonable if its post-employment or post-business duration is no more than two years, instead of one year.

The bill provides that a reasonable covenant in writing promising not to solicit, induce, persuade, encourage, accept business from, or otherwise interfere with, directly or indirectly, a business entity's customers shall be enforceable if the following requirements are met:

(1) The covenant is limited to customers with whom the employee dealt, as defined in the bill and is not associated with the sale or ownership of assets or any interest in a business entity and does not continue for more than two years following the end of employment;

(2) The covenant between a business entity and a distributor, dealer, franchisee, lessee of real or personal property, or licensee of a trademark, trade dress, or service mark is not associated with the sale or ownership of assets or any interest in a business entity and does not continue for more than three years following the end of the business relationship; or

(3) The covenant between a business entity and the owner or seller of assets or interest in a business entity does not continue for more than the longer of either five years or the period during which payments are made as measured from the date of termination, closing, or disposition.

A breach or threatened breach of a covenant between a business entity and the owner or seller of assets or interest in a business entity shall create a presumption of irreparable harm in the absence of injunctive relief without the necessity of establishing evidence of any actual or threatened damages or harm. Additionally, a provision in such a covenant in which an employee promises to provide notice to a business entity of the employee's intent to

terminate, sell, or otherwise dispose of an asset or interest is presumed to be enforceable if the notice period is no longer than 30 days and the business entity agrees to pay the employee's regular rate of pay and regular benefits during the notice period.

(4) The reasonableness of a covenant shall be determined by the facts and circumstances pertaining to it. Furthermore, the bill provides that a covenant shall be presumed to be reasonable if its post-employment, post-termination, post-business relationship, post-sale, or post-disposition duration does not exceed the duration requirements.

(5) No express reference to geographical area is required for the enforceability of a covenant.

(6) Additionally, a covenant that is overbroad, overlong, or otherwise unreasonable to protect legitimate business interests of the person seeking enforcement shall be modified by a court, which shall only grant relief reasonably necessary to protect those interests.

This bill is the same as SB 922 and HB 2684 (2020). This bill is the same as SB 181 (2021).