

PUBLICATION

Georgia Governor Signs Restrictive Covenant Law

May 16, 2011

On May 11, 2011, Georgia Governor Nathan Deal signed into law House Bill 30 ("H.B. 30"), drafted to resolve a debate surrounding the validity and effective date of an earlier law expanding the enforceability of employment-related restrictive covenants. That law, House Bill 173 ("H.B. 173"), provided guidelines for determining the reasonableness of restrictive covenants and established more lenient court review of such covenants by courts. Some of the more significant changes H.B. 73 ushered in included:

- Permitting courts to enforce reasonable portions of a restrictive covenant, even where other portions of the covenant were unenforceable. Previously, courts refused to "blue pencil," or delete, offending provisions, declaring most or all of such covenants unenforceable;
- Defining key terms for many restrictive covenants, such as "confidential information," "employee," "legitimate business interest" and "material contact";
- Presuming reasonable non-compete time restrictions of up to two years following the termination of employment;
- Eliminating time restrictions protecting confidentiality and trade secrets;
- Assuming that non-solicitation covenants apply to all customers with whom the departing employee had "material contact," which is broadly defined; and
- Allowing non-solicitation provisions to stand without reference to a specific geographic area.

H.B. 30 now clarifies that H.B. 173 applies to all covenants entered into on or after May 11, 2011, although it is less clear how courts will inter restrictive covenants entered into between H.B. 173's ratification by Georgia voters in November 2010 and May 10, 2011, given confusion that attended the effective date of the Georgia voters' ratification of H.B. 173.

H.B. 30 also contains several substantive changes to O.C.G.A. § 13-8-56, which now finds presumptively reasonable post-employment geographic limits that include the area in which the employer does business, provided the distance encompassed is reasonable or particular competitors are listed. Click [H.B. 173](#) or [H.B. 30](#) to read full text.

As always, Baker Donelson's Labor and Employment attorneys stand ready to assist in understanding this Restrictive Covenant Law as well as any other employment issues you may encounter. If you have any questions, please feel free to reach out to your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.