A BILL TO BE ENTITLED
AN ACT

To amend Chapter 8 of Title 13 of the Official Code of Georgia Annotated, relating to illegal or void contracts generally, so as to repeal Code Section 13-8-2.1, relating to contracts in partial restraint of trade; to provide a statement of legislative findings; to define certain terms; to provide for applicability; to provide for the enforcement of contracts that restrict or prohibit competition in certain commercial agreements; to provide for the judicial enforcement of such provisions; to provide for the modification of such provisions; to provide for rebuttable presumptions; to provide for related matters; to provide for a contingent effective date, applicability, and automatic repeal; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 8 of Title 13 of the Official Code of Georgia Annotated, relating to illegal and void contracts generally, is amended by revising subsection (a) of Code Section 13-8-2, relating to contracts contravening public policy, as follows:

"(a) A contract which is against the policy of the law cannot be enforced. Contracts deemed contrary to public policy include but are not limited to:

(1) Contracts tending to corrupt legislation or the judiciary;
(2) Contracts in general restraint of trade, as distinguished from contracts in partial restraint of trade as provided for in Code Section 13-8-2.1 which restrict certain competitive activities, as provided in Article 4 of this chapter;
(3) Contracts to evade or oppose the revenue laws of another country;
(4) Wagering contracts; or
(5) Contracts of maintenance or champerty."
SECTION 2.

Said chapter is further amended by repealing Code Section 13-8-2.1, relating to contracts in partial restraint of trade, which reads as follows:

"13-8-2.1.

(a) Contracts that restrain in a reasonable manner any party thereto from exercising any trade, business, or employment are contracts in partial restraint of trade and shall not be considered against the policy of the law, and such partial restraints, so long as otherwise lawful, shall be enforceable for all purposes. Without limiting the generality of the foregoing, contracts of the type described in subsections (b) through (d) of this Code section are considered to be reasonable.

(b)(1) As used in this subsection, the term:

(A) 'Affiliate' means: (i) a person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a specified person or entity; (ii) any entity of which a specified person is an officer, director, or partner or holds an equity interest or ownership position that accounts for 25 percent or more of the voting or profits interest of such entity; (iii) any trust or other estate in which the specified person or entity has a beneficial interest of 25 percent or more or as to which such person or entity serves as trustee or in a similar fiduciary capacity; and (iv) the spouse, lineal ancestors, lineal descendants, and siblings of the specified person, as well as their spouses.

(B) 'Business' means any line of trade or business involved in a sale.

(C) 'Buyer' means any person or entity, including any successor-in-interest to such an entity, that acquires a business or a controlling interest in a business.

(D) 'Controlling interest' means any equity interest or ownership participation held by a person or entity with respect to a business: (i) which accounts for 25 percent or more of the voting or profits interest of the business prior to the sale, alone or in combination with the interest or participation held by affiliates of such person or entity; or (ii) the sale of which results in the owner thereof receiving consideration worth at least $500,000.00, inclusive of any consideration received for the sale of business covenant.

(E) 'Sale' means any sale or transfer of the good will or substantially all of the assets of a business or any sale or transfer of a controlling interest in a business, whether by sale, exchange, redemption, merger, or otherwise.

(F) 'Sale of business covenant' means any agreement described in paragraph (2) of this subsection or any substantially equivalent agreement.

(G) 'Seller' means any person or entity, including any successor-in-interest to such an entity, that is: (i) an owner of a controlling interest; (ii) an executive employee, officer, or manager of the business who receives, as a minimum, consideration in connection...
with either the sale or the sale of business covenant that is worth the equivalent of such
person's most recent annual base salary or is in the form of a commitment of continued
employment for a period of at least one year; or (iii) an affiliate of a person or entity
described in division (i) of this subparagraph; provided, however, that each sale of
business covenant shall be binding only on the person or entity entering into such
covenant, its successors-in-interest, and, if so specified in the covenant, any entity that
directly or indirectly through one or more intermediaries is controlled by or is under
common control of such person or entity.

(2) A seller may agree in writing for the benefit of a buyer to refrain from:

(A) Carrying on or engaging in any activity competitive with the business; or
(B) Soliciting or accepting business from the business's customers which were
customers at or prior to the time of the sale, including actively sought prospective
customers, for purposes of providing products or services competitive with those
provided by the business
within the geographic area or areas where the business conducts its operations at the time
of the sale, including any area where the business's customers and actively sought
prospective customers are present and including any area into which the business is
reasonably expected to expand, provided that such activity, business, and area must be
described in such writing. A sale of business covenant may, if reasonable to protect the
interests of the buyer or the good will of the business, be worldwide. A sale of business
covenant may extend for any period of time that is reasonable to protect the interests of
the buyer or the good will of the business. Each sale of business covenant shall, however,
be considered to terminate at the time the business is discontinued or either the seller,
including all successors-in-interest, or the buyer, including all successors-in-interest,
ceases to exist.

(c)(1) As used in this subsection, the term:

(A) 'Business' means any line of trade or business conducted by an employer.
(B) 'Employee' means: (i) an executive employee, officer, manager, or key employee;
(ii) research and development personnel or other persons or entities, including
independent contractors, in possession of confidential information that is important to
the business; (iii) any other person or entity, including an independent contractor, in
possession of selective or specialized skills, learning, or abilities or customer contacts
or customer information; or (iv) any party to a partnership agreement, franchise,
distributorship, or license agreement or sales agent, broker, representative, or
supervisor. The term 'employee' shall not include, however, any employee who lacks
selective or specialized skills, learning, customer contacts, or abilities.
(C) 'Employer' means any corporation, partnership, proprietorship, or other organization, including any successor-in-interest to such an entity, that conducts a business or any person or entity that directly or indirectly owns an equity interest or ownership participation in such an entity that accounts for 50 percent or more of the voting or profits interest of such entity.

(D) 'Material contact' exists between an employee and each customer or potential customer: (i) with whom the employee dealt; (ii) whose dealings with the employer were coordinated or supervised by the employee; (iii) about whom the employee obtained confidential information in the ordinary course of business as a result of such employee's association with the employer; or (iv) who receives products or services authorized by the employer, the sale or provision of which results or resulted in compensation, commissions, or earnings for the employee within two years prior to the date of the employee's termination.

(E) 'Post-employment covenant' includes any agreement described in paragraphs (2) through (4) of this subsection or any substantially equivalent agreement.

(F) 'Products or services' means anything of commercial value, including without limitation goods; personal, real, or intangible property; services; financial products or services; business opportunities or assistance; or any other object or aspect of business or the conduct thereof.

(G) 'Termination' means the termination of an employee's engagement with an employer, whether with or without cause and upon the initiative of either party, provided that any possible inequity that results from the discharge of an employee without cause or in violation of a contractual or other legal obligation of the employer may be considered as a factor affecting the choice of an appropriate remedy or, if the restraint as a whole is rendered unreasonable, the unenforceability thereof. For purposes of this definition, 'the discharge of an employee without cause' does not include (i) a termination of a partnership agreement, franchise, distributorship, or license agreement or a sales agent, broker, representative, or supervisor agreement in accordance with the terms of the agreement or upon the completion or expiration of the agreement, (ii) any termination under retirement programs of the employer, (iii) any termination that follows the employee's refusal to accept an offer of continued employment on terms and conditions at least as favorable to the employee as those previously in effect, or (iv) any termination under circumstances where the employee remains or becomes entitled to receive earnings, commissions, or benefits that serve as compensation, at least in part, for the employee's compliance with the post-termination covenants.

(2) An employee may agree in writing for the benefit of an employer to refrain, for a stated period of time following termination, from conducting activity that is competitive
with the activities the employee conducted for the employer within the geographic area
or areas where the employee conducted such activities at or within a reasonable period
of time prior to termination, provided that such activity and area must be described in
such writing. The geographic area in which an employee works may include any area
where any operations performed, supervised, or assisted in by the employee were
conducted and any area where customers or actively sought prospective customers of the
business with whom the employee had material contact are present.

(3) An employee may agree in writing for the benefit of an employer to refrain, for a
stated period of time following termination, from soliciting or accepting, or attempting
to solicit or accept, directly or by assisting others, any business from any of such
business's customers, including actively sought prospective customers, with whom the
employee had material contact during his employment for purposes of providing products
or services that are competitive with those provided by the employer's business. No
express reference to geographic area or the types of products or services considered to be
competitive shall be required in order for the restraint to be enforceable. Any reference
to a prohibition against 'soliciting or accepting business from customers,' or similar
language, shall be adequate for such purpose and narrowly construed to apply only to:
(A) such of the business's customers, including actively sought prospective customers,
with whom the employee had material contact; and (B) products and services that are
competitive with those provided by the employer's business.

(4) An employee may agree in writing for the benefit of an employer to refrain, for a
stated period of time following termination, from recruiting or hiring, or attempting to
recruit or hire, directly or by assisting others, any other employee of the employer or its
affiliates. No express reference to geographic area shall be required. Any reference to a
prohibition against recruiting or hiring, or attempting to recruit or hire, other employees
shall be narrowly construed to apply only to other employees who are still actively
employed by or doing business with the employer or its affiliates at the time of the
attempted recruiting or hiring.

(5) To the extent so stated in the post-employment covenant, a post-employment
covenant may provide that any violation of the restraint shall automatically toll and
suspend the period of the restraint for the amount of time that the violation continues,
provided that the employer seeks enforcement promptly after discovery of the violation.

(6) A duration of two years or less in the case of a restraint of the type described in
paragraph (2) of this subsection, and three years or less in the case of a restraint of the
type described in paragraphs (3) and (4) of this subsection shall be presumed to be
reasonable as the period of time stated for any post-employment covenant.
(d) Any restriction that operates during the term of an employment agreement, agency agreement, independent contractor agreement, partnership agreement, franchise, distributorship agreement, license, shareholders' agreement, or other ongoing business agreement shall not be considered unreasonable because it lacks any specific limitation upon scope of activity, duration, or territory, so long as it promotes or protects the purpose or subject matter of the agreement or deters any potential conflict of interest.

(e)(1) Activities, products, or services that are competitive with the activities, products, or services of an employer may include activities, products, or services that are the same as or similar to the activities, products, or services of the employer. Whenever a description of activities, products and services, or areas is required by this Code section, any description that provides fair notice of the maximum reasonable scope of the restraint shall satisfy such requirement, even if the description is generalized or could possibly be stated more narrowly to exclude extraneous matters.

(2) In the case of a post-employment covenant entered into prior to termination, any good faith estimate of the activities, products and services, or areas that may be applicable at the time of termination shall also satisfy such requirement, even if such estimate is capable of including or ultimately proves to include extraneous activities, products and services, or areas. The post-employment covenant shall be construed ultimately to cover only so much of such estimate as relates to the activities actually conducted, the products and services actually offered, or the areas actually involved within a stated period of time prior to termination. Activities, products, or services shall be considered sufficiently described if a reference to the activities, products, or services is provided and qualified by the phrase 'of the type conducted, authorized, offered, or provided within one year prior to termination,' or similar language. Further, the phrase 'the areas where the (employee) is working at the time of (termination)' shall be considered sufficient as a description of areas if the person or entity bound by the restraint can reasonably determine the maximum reasonable scope of the restraint at the time of termination.

(f)(1) Whenever a person or entity desires to verify the terms of any partial restraint in effect at any time, or to obtain a clarification of a restraint believed to be unclear, such person or entity may, at its option, demand such verification or clarification by delivering to the persons or entities that benefit from such restraint a written statement that contains:

(A) if verification is sought, a request for a copy of each partial restraint in effect between the parties; or (B) if clarification is sought, a description of the clarification requested; and (C) in all cases, the following statement: 'THIS DEMAND IS MADE PURSUANT TO CODE SECTION 13-8-2.1(f)(2) OF THE OFFICIAL CODE OF GEORGIA ANNOTATED AND REQUIRES A RESPONSE WITHIN 30 DAYS.'
Within 30 days after such other persons or entities or their authorized representatives have received such demand in person, they shall respond by sending the person or entity bound by the restraint the requested information or, if clarification is considered to be unnecessary because the restraint is believed to be clear, a statement to that effect. In no event shall such a response be required to include confidential information or business strategies as part of any clarification.

In the interest of reducing or eliminating any unclear or overbroad aspect of the restraint, the persons or entities that benefit from any existing restraint may provide the persons or entities bound by such restraint with a clarification or reformulation of the restraint, whether or not the clarification or reformulation was requested, so long as it is no broader than the terms of the original restraint. Any clarification or reformulation on lesser terms so provided by the persons or entities that benefit from the restraint shall supersede any conflicting terms of the restraint and be binding regardless of whether additional consideration is provided. The person or entity bound by the restraint may rely absolutely on such clarification or reformulation in complying with the terms of such restraint.

Any failure or delay of the persons or entities that benefit from such restraint to respond to such a demand shall be considered as one factor by a court in determining how much of an unclear or overbroad restraint may be enforced as lawfully serving the business purposes and interests contemplated by the parties in their agreement. In addition, if the procedure provided for in this subsection is followed for the benefit of anyone who wishes to employ or do business with a person or entity, any subsequent enforcement of any restraint that was unknown, unclear, or overbroad but that is not properly identified, clarified, or reformulated by the persons or entities that benefit from the restraint following their receipt of such a demand shall be limited so as to avoid prejudice to the employment or business to which the unknown, unclear, or overbroad aspects of the restraint relate.

Every court of competent jurisdiction shall enforce through any appropriate remedy every contract in partial restraint of trade that is not against the policy of the law or otherwise unlawful. In the absence of extreme hardship on the part of the person or entity bound by such restraint, injunctive relief shall be presumed to be an appropriate remedy for the enforcement of the contracts described in subsections (b) through (d) of this Code section. If any portion of such restraint is against the policy of the law in any respect but such restraint, considered as a whole, is not so clearly unreasonable and overreaching in its terms as to be unconscionable, the court shall enforce so much of such restraint as it determines by a preponderance of the evidence to be necessary to protect the interests of the parties that benefit from such restraint. Such a restraint shall be subject
to partial enforcement, whether or not it contains a severability or similar clause and
regardless of whether the unlawful aspects of such restraint are facially severable from
those found lawful.

(2) The enforceability of any partial restraint of trade shall be determined and shall be
enforced independently of the enforceability of any other covenant or part thereof
contained in the same contract or arrangement.

(3) Contractual terms that provide for a loss or forfeiture of rights or benefits conditioned
upon any specified act or event shall not be considered a restraint of trade. The fact that
any such loss or forfeiture provision is contained in the same agreement or contract with
an otherwise valid partial restraint of trade shall not impair the validity or enforceability
of either such loss or forfeiture provision or such restraint, and the enforcement of either
term shall not serve as grounds for delaying or withholding enforcement of the other
term, including enforcement by injunctive relief. If a loss or forfeiture provision is
contained in an agreement or contract that also contains other terms that are determined
to be, in some respects, an unreasonable and unenforceable restraint of trade, such loss
or forfeiture provision shall nonetheless be enforceable to the extent it may lawfully serve
the purposes and interests of the parties that benefit from such provision. Such a loss or
forfeiture provision shall be subject to enforcement, whether or not it contains a
severability or similar clause, and regardless of whether the unlawful aspects of such
restraint are facially severable from those found to be unlawful."

SECTION 3.

Said chapter is further amended by adding a new article to read as follows:

"ARTICLE 4

13-8-50. The General Assembly finds that reasonable restrictive covenants contained in employment
and commercial contracts serve the legitimate purpose of protecting legitimate business
interests and creating an environment that is favorable to attracting commercial enterprises
to Georgia and keeping existing businesses within the state. Further, the General Assembly
desires to provide statutory guidance so that all parties to such agreements may be certain
of the validity and enforceability of such provisions and may know their rights and duties
according to such provisions.

13-8-51. As used in this article, the term:
(1) 'Affiliate' means:
(A) A person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with another person or entity;
(B) Any entity of which a person is an officer, director, or partner or holds an equity interest or ownership position that accounts for 25 percent or more of the voting rights or profit interest of such entity;
(C) Any trust or other estate in which the person or entity has a beneficial interest of 25 percent or more or as to which such person or entity serves as trustee or in a similar fiduciary capacity; or
(D) The spouse, lineal ancestors, lineal descendants, and siblings of the person, as well as each of their spouses.

(2) 'Business' means any line of trade or business conducted by the seller or employer, as such terms are defined in this Code section.

(3) 'Confidential information' means data and information:
(A) Relating to the business of the employer, regardless of whether the data or information constitutes a trade secret as that term is defined in Article 1 of Chapter 10 of Title 10;
(B) Disclosed to the employee or of which the employee became aware of as a consequence of the employee's relationship with the employer;
(C) Having value to the employer;
(D) Not generally known to competitors of the employer; and
(E) Which includes trade secrets, methods of operation, names of customers, price lists, financial information and projections, route books, personnel data, and similar information;
provided, however, that such term shall not mean data or information (A) which has been voluntarily disclosed to the public by the employer, except where such public disclosure has been made by the employee without authorization from the employer; (B) which has been independently developed and disclosed by others; or (C) which has otherwise entered the public domain through lawful means.

(4) 'Controlling interest' means any equity interest or ownership participation held by a person or entity with respect to a business that accounts for 25 percent or more of the voting rights or profit interest of the business prior to the sale, alone or in combination with the interest or participation held by affiliates of such person or entity.

(5) 'Employee' means:
(A) An executive employee;
(B) Research and development personnel or other persons or entities of an employer, including, without limitation, independent contractors, in possession of confidential information that is important to the business of the employer;

(C) Any other person or entity, including an independent contractor, in possession of selective or specialized skills, learning, or abilities or customer contacts, customer information, or confidential information who or that has obtained such skills, learning, abilities, contacts, or information by reason of having worked for an employer; or

(D) A franchisee, distributor, lessee, licensee, or party to a partnership agreement or a sales agent, broker, or representative in connection with franchise, distributorship, lease, license, or partnership agreements.

Such term shall not include any employee who lacks selective or specialized skills, learning, or abilities or customer contacts, customer information, or confidential information.

(6) 'Employer' means any corporation, partnership, proprietorship, or other business organization, whether for profit or not for profit, including, without limitation, any successor in interest to such an entity, who or that conducts business or any person or entity who or that directly or indirectly owns an equity interest or ownership participation in such an entity accounting for 25 percent or more of the voting rights or profit interest of such entity. Such term also means the buyer or seller of a business organization.

(7) 'Executive employee' means a member of the board of directors, an officer, a key employee, a manager, or a supervisor of an employer.

(8) 'Key employee' means an employee who, by reason of the employer's investment of time, training, money, trust, exposure to the public, or exposure to customers, vendors, or other business relationships during the course of the employee's employment with the employer, has gained a high level of notoriety, fame, reputation, or public persona as the employer's representative or spokesperson or has gained a high level of influence or credibility with the employer's customers, vendors, or other business relationships or is intimately involved in the planning for or direction of the business of the employer or a defined unit of the business of the employer. Such term also means an employee in possession of selective or specialized skills, learning, or abilities or customer contacts or customer information who has obtained such skills, learning, abilities, contacts, or information by reason of having worked for the employer.

(9) 'Legitimate business interest' includes, but is not limited to:

(A) Trade secrets, as defined by Code Section 10-1-761, et seq.;

(B) Valuable confidential information that otherwise does not qualify as a trade secret;

(C) Substantial relationships with specific prospective or existing customers, patients, vendors, or clients.
(D) Customer, patient, or client good will associated with:
(i) An ongoing business, commercial, or professional practice, including, but not
limited to, by way of trade name, trademark, service mark, or trade dress;
(ii) A specific geographic location; or
(iii) A specific marketing or trade area; and

(E) Extraordinary or specialized training.

(10) 'Material contact' means the contact between an employee and each customer or
potential customer:
(A) With whom or which the employee dealt on behalf of the employer;
(B) Whose dealings with the employer were coordinated or supervised by the
employee;
(C) About whom the employee obtained confidential information in the ordinary
course of business as a result of such employee's association with the employer; or
(D) Who receives products or services authorized by the employer, the sale or
provision of which results or resulted in compensation, commissions, or earnings for
the employee within two years prior to the date of the employee's termination.

(11) 'Modification' means the limitation of a restrictive covenant to render it reasonable
in light of the circumstances in which it was made. Such term shall include:
(A) Severing or removing that part of a restrictive covenant that would otherwise make
the entire restrictive covenant unenforceable; and
(B) Enforcing the provisions of a restrictive covenant to the extent that the provisions
are reasonable.

(12) 'Modify' means to make, to cause, or otherwise to bring about a modification.

(13) 'Products or services' means anything of commercial value, including, without
limitation, goods; personal, real, or intangible property; services; financial products;
business opportunities or assistance; or any other object or aspect of business or the
conduct thereof.

(14) 'Professional' means an employee who has as a primary duty the performance of
work requiring knowledge of an advanced type in a field of science or learning
customarily acquired by a prolonged course of specialized intellectual instruction or
requiring invention, imagination, originality, or talent in a recognized field of artistic or
creative endeavor. Such term shall not include employees performing technician work
using knowledge acquired through on-the-job and classroom training, rather than by
acquiring the knowledge through prolonged academic study, such as might be performed,
without limitation, by a mechanic, a manual laborer, or a ministerial employee.

(15) 'Restrictive covenant' means an agreement between two or more parties that exists
to protect the first party's or parties' interest in property, confidential information,
customer good will, business relationships, employees, or any other economic advantages
that the second party has obtained for the benefit of the first party or parties, to which the
second party has gained access in the course of his or her relationship with the first party
or parties, or which the first party or parties has acquired from the second party or parties
as the result of a sale. Such restrictive covenants may exist within or ancillary to
contracts between or among employers and employees, distributors and manufacturers,
lessors and lessees, partnerships and partners, employers and independent contractors,
franchisors and franchisees, and sellers and purchasers of a business or commercial
enterprise and any two or more employers. A restrictive covenant shall not include
covenants appurtenant to real property.

(16) 'Sale' means any sale or transfer of the good will or substantially all of the assets of
a business or any sale or transfer of a controlling interest in a business, whether by sale,
exchange, redemption, merger, or otherwise.

(17) 'Seller' means any person or entity, including any successor-in-interest to such an
entity, that is:

(A) An owner of a controlling interest;

(B) An executive employee of the business who receives, at a minimum, consideration
in connection with a sale; or

(C) An affiliate of a person or entity described in subparagraph (A) of this paragraph;
provided, however, that each sale involving a restrictive covenant shall be binding only
on the person or entity entering into such covenant, its successors-in-interest, and, if so
specified in the covenant, any entity that directly or indirectly through one or more
affiliates is controlled by or is under common control of such person or entity.

(18) 'Termination' means the termination of an employee's engagement with an
employer, whether with or without cause, upon the initiative of either party.

(19) 'Trade dress' means the distinctive packaging or design of a product that promotes
the product and distinguishes it from other products in the marketplace.

13-8-52.

(a) The provisions of this article shall be applicable only to contracts and agreements
between or among:

(1) Employers and employees, as such terms are defined in Code Section 13-8-51;

(2) Distributors and manufacturers;

(3) Lessors and lessees;

(4) Partnerships and partners;

(5) Franchisors and franchisees;

(6) Sellers and purchasers of a business or commercial enterprise; and
(7) Two or more employers.

(b) The provisions of this article shall not apply to any contract or agreement not described in subsection (a) of this Code section.

13-8-53.

(a) Notwithstanding any other provision of this chapter, enforcement of contracts that restrict competition during the term of a restrictive covenant, so long as such restrictions are reasonable in time, geographic area, and scope of prohibited activities, shall be permitted. However, enforcement of contracts that restrict competition after the term of employment, as distinguished from a customer nonsolicitation provision, as described in subsection (b) of Code Section 13-8-53, or a nondisclosure of confidential information provision, as described in subsection (e) of Code Section 13-8-53, shall not be permitted against any employee who does not, in the course of his or her employment:

(1) Customarily and regularly solicit for the employer customers or prospective customers;

(2) Customarily and regularly engage in making sales or obtaining orders or contracts for products or services to be performed by others;

(3) Perform the following duties:

(A) Have a primary duty of managing the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;

(B) Customarily and regularly direct the work of two or more other employees; and

(C) Have the authority to hire or fire other employees or have particular weight given to suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees; or

(4) Perform the duties of a key employee or of a professional.

(b) Notwithstanding any other provision of this chapter, an employee may agree in writing for the benefit of an employer to refrain, for a stated period of time following termination, from soliciting, or attempting to solicit, directly or by assisting others, any business from any of such employer's customers, including actively seeking prospective customers, with whom the employee had material contact during his or her employment for purposes of providing products or services that are competitive with those provided by the employer's business. No express reference to geographic area or the types of products or services considered to be competitive shall be required in order for the restraint to be enforceable. Any reference to a prohibition against 'soliciting or attempting to solicit business from customers' or similar language shall be adequate for such purpose and narrowly construed to apply only to: (1) such of the employer's customers, including actively sought
prospective customers, with whom the employee had material contact; and (2) products and
services that are competitive with those provided by the employer's business.

(c)(1) Activities, products, or services that are competitive with the activities, products,
or services of an employer shall include activities, products, or services that are the same
as or similar to the activities, products, or services of the employer. Whenever a
description of activities, products, and services, or geographic areas, is required by this
Code section, any description that provides fair notice of the maximum reasonable scope
of the restraint shall satisfy such requirement, even if the description is generalized or
could possibly be stated more narrowly to exclude extraneous matters. In case of a
postemployment covenant entered into prior to termination, any good faith estimate of
the activities, products, and services, or geographic areas, that may be applicable at the
time of termination shall also satisfy such requirement, even if such estimate is capable
of including or ultimately proves to include extraneous activities, products, and services,
or geographic areas. The postemployment covenant shall be construed ultimately to
cover only so much of such estimate as relates to the activities actually conducted, the
products and services actually offered, or the geographic areas actually involved within
a reasonable period of time prior to termination.

(2) Activities, products, or services shall be considered sufficiently described if a
reference to the activities, products, or services is provided and qualified by the phrase
'of the type conducted, authorized, offered, or provided within two years prior to
termination' or similar language containing the same or a lesser time period. The phrase
'the territory where the employee is working at the time of termination' or similar
language shall be considered sufficient as a description of geographic areas if the person
or entity bound by the restraint can reasonably determine the maximum reasonable scope
of the restraint at the time of termination.

(d) Any restrictive covenant not in compliance with the provisions of this article is
unlawful and is void and unenforceable; provided, however, that a court may modify a
covention that is otherwise void and unenforceable as long as the modification does not
render the covenant more restrictive with regard to the employee than as originally drafted
by the parties.

(e) Nothing in this article shall be construed to limit the period of time for which a party
may agree to maintain information as confidential or as a trade secret, or to limit the
geographic area within which such information must be kept confidential or as a trade
secret, for so long as the information or material remains confidential or a trade secret, as
applicable.
13-8-54. (a) A court shall construe a restrictive covenant to comport with the reasonable intent and expectations of the parties to the covenant and in favor of providing reasonable protection to all legitimate business interests established by the person seeking enforcement.

(b) In any action concerning enforcement of a restrictive covenant, a court shall not enforce a restrictive covenant unless it is in compliance with the provisions of Code Section 13-8-53; provided, however, that if a court finds that a contractually specified restraint does not comply with the provisions of Code Section 13-8-53, then the court may modify the restraint provision and grant only the relief reasonably necessary to protect such interest or interests and to achieve the original intent of the contracting parties to the extent possible.

13-8-55. The person seeking enforcement of a restrictive covenant shall plead and prove the existence of one or more legitimate business interests justifying the restrictive covenant. If a person seeking enforcement of the restrictive covenant establishes by prima-facie evidence that the restraint is in compliance with the provisions of Code Section 13-8-53, then any person opposing enforcement has the burden of establishing that the contractually specified restraint does not comply with such requirements or that such covenant is unreasonable.

13-8-56. In determining the reasonableness of a restrictive covenant that limits or restricts competition during the course of an employment or business relationship, the court shall make the following presumptions:

(1) A time period equal to or measured by duration of the parties' business or commercial relationship is reasonable;

(2) A geographic territory which includes the areas in which the employer does business at any time during the parties' commercial relationship, even if not known at the time of entry into the restrictive covenant, is reasonable provided that:

(A) The total distance encompassed by the provisions of the covenant also is reasonable;

(B) The agreement contains a list of particular competitors as prohibited employers for a limited period of time after the term of employment or a commercial or business relationship; or

(C) Both subparagraphs (A) and (B) of this paragraph;
The scope of competition restricted is measured by the business of the employer or other person or entity in whose favor the restrictive covenant is given; provided, however, that a court shall not refuse to enforce the provisions of a restrictive covenant because the person seeking enforcement establishes evidence that a restrictive covenant has been violated but has not proven that the covenant has been violated as to the entire scope of the prohibited activities of the person seeking enforcement or as to the entire geographic area of the covenant; and

Any restriction that operates during the term of an employment relationship, agency relationship, independent contractor relationship, partnership, franchise, distributorship, license, ownership of a stake in a business entity, or other ongoing business relationship shall not be considered unreasonable because it lacks any specific limitation upon scope of activity, duration, or geographic area as long as it promotes or protects the purpose or subject matter of the agreement or relationship or deters any potential conflict of interest.

In determining the reasonableness in time of a restrictive covenant sought to be enforced after a term of employment, a court shall apply the rebuttable presumptions provided in this Code section.

In the case of a restrictive covenant sought to be enforced against a former employee and not associated with the sale or ownership of all or a material part of:

1. The assets of a business, professional practice, or other commercial enterprise;
2. The shares of a corporation;
3. A partnership interest;
4. A limited liability company membership; or
5. An equity interest or profit participation, of any other type, in a business, professional practice, or other commercial enterprise,
a court shall presume to be reasonable in time any restraint two years or less in duration and shall presume to be unreasonable in time any restraint more than two years in duration, measured from the date of the termination of the business relationship.

In the case of a restrictive covenant sought to be enforced against a current or former distributor, dealer, franchisee, lessee of real or personal property, or licensee of a trademark, trade dress, or service mark and not associated with the sale of all or a part of:

1. The assets of a business, professional practice, or other commercial enterprise;
2. The shares of a corporation;
3. A partnership interest;
4. A limited liability company membership; or
(5) An equity interest or profit participation, of any other type, in a business, professional practice, or other commercial enterprise, a court shall presume to be reasonable in time any restraint three years or less in duration and shall presume to be unreasonable in time any restraint more than three years in duration, measured from the date of termination of the business relationship.

(d) In the case of a restrictive covenant sought to be enforced against the owner or seller of all or a material part of:

(1) The assets of a business, professional practice, or other commercial enterprise;
(2) The shares of a corporation;
(3) A partnership interest;
(4) A limited liability company membership; or
(5) An equity interest or profit participation, of any other type, in a business, professional practice, or other commercial enterprise, a court shall presume to be reasonable in time any restraint the longer of five years or less in duration or equal to the period of time during which payments are being made to the owner or seller as a result of any sale referred to in this subsection and shall presume to be unreasonable in time any restraint more than the longer of five years in duration or the period of time during which payments are being made to the owner or seller as a result of any sale referred to in this subsection, measured from the date of termination or disposition of such interest.

13-8-58.

(a) A court shall not refuse to enforce a restrictive covenant on the ground that the person seeking enforcement is a third-party beneficiary of such contract or is an assignee or successor to a party to such contract.

(b) In determining the enforceability of a restrictive covenant, it is not a defense that the person seeking enforcement no longer continues in business in the scope of the prohibited activities that is the subject of the action to enforce the restrictive covenant if such discontinuance of business is the result of a violation of the restriction.

(c) A court shall enforce a restrictive covenant by any appropriate and effective remedy available at law or equity, including, but not limited to, temporary and permanent injunctions.

(d) In determining the reasonableness of a restrictive covenant between an employer and an employee, as such terms are defined in subparagraphs (A) through (C) of paragraph (5) of Code Section 13-8-51, a court may consider the economic hardship imposed upon an employee by enforcement of the covenant; provided, however, that this subsection shall not
apply to contracts or agreements between or among those persons or entities listed in paragraphs (2) through (7) of subsection (a) of Code Section 13-8-52.

13-8-59.

Nothing in this article shall be construed or interpreted to allow or to make enforceable any restraint of trade or commerce that is otherwise illegal or unenforceable under the laws of the United States or under the Constitution of this state or of the United States.”

SECTION 4.

This Act shall become effective on the day following the ratification at the time of the 2010 general election of an amendment to the Constitution of Georgia providing for the enforcement of covenants in commercial contracts that limit competition and shall apply to contracts entered into on and after such date and shall not apply in actions determining the enforceability of restrictive covenants entered into before such date. If such amendment is not so ratified, then this Act shall stand automatically repealed.

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.