



Georgia's New Non-Compete Law: Growing Questions Emerge

Insights

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As noted in an [earlier post](#), in the election on November 2, 2010, Georgia voters overwhelmingly passed a constitutional amendment authorizing a new statutory framework for enforcement of restrictive covenants. But a question has quickly emerged as to when the new law is effective.

On the surface, the answer to that question seems easy -- the new statute was effective for agreements entered into the day after the election (i.e., November 3, 2010) because the new statute has a provision that reads as follows:

"This Act shall become effective on the day following the ratification at the time of the 2010 general election...."

While this mandate is seemingly clear, it has not taken long for astute constitutional practitioners to find a problem. The above quoted language is found in House Bill 173 (which contains all the new statutory framework). However, there was another piece of legislation that accompanied HB 173. This other piece was House Resolution 178, which contained the resolution proposing the amendment as well as the amendment itself. It also includes the language of the question that was placed on the ballot. Notably, HR 178 does not contain anything about an effective date.

Here is where it gets interesting. According to Article X, Section 1, Paragraph 6 of the Georgia Constitution (entitled "Effective date of amendments or of a new Constitution");, "***Unless the amendment . . . itself or the resolution proposing the amendment . . . shall provide otherwise***, an amendment to this Constitution . . . shall become effective on the first day of January following its ratification." (Emphasis Added).

Since neither the text of Amendment One, nor the resolution proposing it (HR 178) provided an effective date, it appears the Amendment only becomes effective January 1, 2011. If that rationale is correct, HB 173 cannot become effective until January 2nd – if it becomes effective at all. Some are now questioning whether this glitch might call into question the entire constitutionality of the new statute.

So the plot thickens. Stay tuned for further developments. For now, the conservative move is to wait until January 2, 2011 before asking employees to sign new agreements.

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