

CHAPTER 965

H.B. No. 7

AN ACT

relating to the criteria for enforceability of covenants not to compete and to certain procedures and remedies in actions to enforce those covenants.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 15.50, Business & Commerce Code, is amended to read as follows:

Sec. 15.50. CRITERIA FOR ENFORCEABILITY OF COVENANTS NOT TO COMPETE. Notwithstanding Section 15.05 of this code, a covenant not to compete is enforceable *if it is ancillary to or part of an otherwise enforceable agreement at the time the agreement is made* to the extent that it[:

~~[(1) is ancillary to an otherwise enforceable agreement but, if the covenant not to compete is executed on a date other than the date on which the underlying agreement is executed, such covenant must be supported by independent valuable consideration; and~~

~~[(2) contains [reasonable] limitations as to time, geographical area, and scope of activity to be restrained that are reasonable and do not impose a greater restraint than is necessary to protect the goodwill or other business interest of the promisee.~~

SECTION 2. Sections 15.51(b) and (c), Business & Commerce Code, are amended to read as follows:

(b) If the primary purpose of the agreement to which the covenant is ancillary is to obligate the promisor to render personal services, *for a term or at will*, the promisee has the burden of establishing that the covenant meets the criteria specified by ~~[Subdivision (2) of]~~ Section 15.50 of this code. If the agreement has a different primary purpose, the promisor has the burden of establishing that the covenant does not meet those criteria. For the purposes of this subsection, the "burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(c) If the covenant *is found to be ancillary to or part of an otherwise enforceable agreement but contains limitations as to time, geographical area, or scope of activity to be restrained that are not reasonable and impose a greater restraint than is necessary to protect the goodwill or other business interest of the promisee* ~~[meets the criteria specified by Subdivision (1) of Section 15.50 of this code but does not meet the criteria specified by Subdivision (2) of Section 15.50]~~, the court~~[, at the request of the promisee,]~~ shall reform the covenant to the extent necessary to cause the *limitations contained in the covenant as to time, geographical area, and scope of activity to be restrained to be reasonable and to impose a restraint that is not greater than necessary to protect the goodwill or other business interest of the promisee* ~~[covenant to meet the criteria specified by Subdivision (2) of Section 15.50]~~ and enforce the covenant as reformed, except that the court may not award the promisee damages for a breach of the covenant before its reformation and the relief granted to the promisee shall be limited to injunctive relief. If the primary purpose of the agreement to which the covenant is ancillary is to obligate the promisor to render personal services, the promisor establishes that the promisee knew at the time of the execution of the agreement that the covenant did not *contain limitations as to time, geographical area, and scope of activity to be restrained that were reasonable and the limitations imposed a greater restraint than* ~~[meet the criteria specified by Subdivision (2) of Section 15.50 and the promisee sought to enforce the covenant to a greater extent than was]~~ necessary to protect the goodwill or other business interest of the promisee, *and the promisee sought to enforce the covenant to a greater extent than was necessary to protect the goodwill or other business interest of the promisee*, the court may award the promisor the costs, including reasonable attorney's fees, actually and reasonably incurred by the promisor in defending the action to enforce the covenant.

SECTION 3. Subchapter E, Chapter 15, Business & Commerce Code, is amended by adding Section 15.52 to read as follows:

Sec. 15.52. PREEMPTION OF OTHER LAW. The criteria for enforceability of a covenant not to compete provided by Section 15.50 of this code and the procedures and remedies in an action to enforce a covenant not to compete provided by Section 15.51 of this code are exclusive and preempt any other criteria for enforceability of a covenant not to compete or procedures and remedies in an action to enforce a covenant not to compete under common law or otherwise.

SECTION 4. This Act takes effect September 1, 1993.

SECTION 5. This Act applies to a covenant not to compete entered into before, on, or after the effective date of this Act unless the enforceability of the covenant has been finally adjudicated by a court of competent jurisdiction before the effective date of this Act.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 14, 1993, by a non-record vote; passed by the Senate on May 29, 1993, by a viva-voce vote.

Approved June 19, 1993.

Effective Sept. 1, 1993.