



Georgia Voters To Decide the Future of Georgia's Non-Compete Law

Insights

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In a state that is otherwise generally recognized as being “employer friendly,” Georgia law has long been known for its “unfriendliness” towards non-competes and other post-employment restrictive covenants. However, a radical shift in that law is on the horizon – and the fate of the sea change actually resides in the hands of Georgia voters.

At the end of the 2010 legislative session, the Georgia legislature voted to approve – and Governor Sonny Perdue signed the bill – a statutory framework that would literally turn on its head the ability to enforce post-employment covenants in Georgia. A similar effort was rejected by the Georgia Supreme Court in 1991 when the court ruled that the legislation was unconstitutional.

This time around Georgia lawmakers are heading off that argument by putting the issue before the voters with an enabling constitutional amendment – i.e., the statutory framework is already in place; the voters just need to approve a constitutional amendment paving the way for the framework to become law. The specific question on the ballot will read as follows: “Shall the Constitution of Georgia be amended so as to make Georgia more economically competitive by authorizing legislation to uphold reasonable competitive agreements?” If the majority of voters vote “yes,” the new statutory framework will become effective. Only agreements entered into after the election will be governed by the new law.

There are too many changes that will result from the new law to detail in this short blog. However, the most significant change is that Georgia courts/judges will have the ability to modify what would be an otherwise overbroad provision. Currently, Georgia judges do not have the discretion to modify, sever or blue pencil restrictive covenants in employment agreements (there is a limited exception in the context of a sale of a business).

Under the present law, if a non-solicitation of customer or non-compete provision is overbroad in any respect (and there are numerous ways it might be overbroad), the covenant fails and cannot be enforced. Not only that, an overbroad non-compete will also render unenforceable a non-solicitation provision in the same agreement even if the non-solicit was otherwise enforceable standing on its own.

If you are interested in reviewing the statutory framework, click on the pdf link for the full text at the bottom of this post.

If the majority of voters vote “no” in the November 2010 election, nothing changes. However, that does not mean that you cannot enforce non-competes or non-solicits in Georgia. You can ... so long as the factual circumstances justify such restrictions and so long as they are carefully tailored to those facts. Without careful drafting though, you will likely find that the agreement is not worth the paper it is written on.

[GA Noncompete law HB 173 full text.pdf \(124.63 kb\)](#)

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