

Prohibiting Certain Restrictive Covenants; SB 241

SB 241 prohibits certain restrictive covenants from being considered a restraint of trade pursuant to the Kansas Restraint of Trade Act and creates a presumption in law that such covenants are enforceable.

The bill requires the court to modify a restrictive covenant if it is presumed to be unenforceable pursuant to continuing law and determined to be overbroad or not reasonably necessary to protect the business interest of the business entity seeking enforcement of the covenant, enforce the covenant as modified, and grant only the relief reasonably necessary to protect such interests.

Written Covenants

The bill adds provisions for the enforceability of certain written covenants in which one party agrees not to solicit, induce, persuade, encourage, direct, or otherwise interfere with another party. The bill also adds a provision for the enforceability of certain written notice of termination agreements. The standards for determining enforceability will differ based on the contents of the agreement.

Owner Agrees Not to Solicit Employees or Other Owners

Such written covenants between a business entity and an owner of the business entity are enforceable if the covenant does not continue for more than four years following the owner's business relationship with the business entity, and the prohibited solicitation is for the purpose of interfering with the employment or ownership relationship of such employees or owners.

Owner Agrees Not to Solicit Business's Customers

Such written covenants between a business entity and an owner of the business entity are enforceable if the covenant is limited to material contact customers, as defined by the bill, and does not continue for more than four years following the end of the owner's business relationship with the business entity.

Employee Agrees Not to Solicit Entity's Employees or Owners

Such written covenants between a business entity and an employee of the business entity are enforceable if the purpose of such solicitation is for the purpose of interfering with the employment or ownership of such employees or owners and if:

- The employer seeks to protect confidential or secret trade information or customer or supplier relationships, goodwill, or loyalty; or
- The covenant does not continue for more than two years following the employee's employment.

Employee Agrees Not to Solicit Customers

Such written covenants between a business entity and employee of the business entity are enforceable if the covenant is limited to material contact customers and does not continue for more than two years following the end of the employee's employment.

Owner Agrees to Prior Notice of Termination

Covenants in which an owner agrees to provide prior notice of owner's intent to terminate ownership in a business entity are presumed to be enforceable.

Defense at Law or in Equity

The bill permits an employee or owner to assert any applicable defense available at law or in equity for the court's consideration in a dispute regarding a written covenant.

Definitions

The bill defines the following terms:

- "Employee": a current or former employee that agreed to a written covenant;
- "Material contact customer": any customer or prospective customer that is solicited, produced, or serviced, directly or indirectly, by the employee or owner at issue or any customer or prospective customer about whom the employee or owner, directly or indirectly, had confidential business or proprietary information or trade secrets in the course of the employee's or owner's relationship with the customer; and
- "Owner": a current or former owner or seller of all or any part of the assets of a business entity or any interest in a business entity, including, but not limited to a:
 - Partnership interest;
 - Membership interest in a limited liability company or series limited liability company; or
 - Any other equity or ownership interest.