

Georgia Non-Compete Statute: House of Representatives Aims to End Debate Over Effective Date

January 7, 2011

by Joseph P. Shelton

As discussed in an earlier post, the effective date of Georgia's recently enacted non-competes legislation is in doubt. Some believe



that it was not and never can be effective. Others believe that it was effective as of January 1, 2011, and that it would survive constitutional challenges.

In an article published in The Atlanta Journal-Constitution on November 19, 2010, House Judiciary Committee Chairman Wendell Willard, R-Sandy Springs, indicated that the legislature would move quickly to fix the potential problem when the session opened on January 10, 2011. In fact, House Bill 30 has been "prefiled" and is presumably ready to be that fix. HB 30 explicitly states that its enactment should not be taken as evidence that the previous statute (HP 173) was in fact invalid. Here is the introductory language of HB 30 in its entirety which explains why it was arguably necessary:

During the 2009 legislative session the General Assembly enacted HB 173 (Act No. 64, Ga. L. 2009, p. 231), which was a bill that dealt with the issue of restrictive covenants in contracts and which was contingently effective on the passage of a constitutional amendment. During the 2010 legislative session the General Assembly enacted HR 178 (Ga. L. 2010, p. 1260), the constitutional amendment necessary for the statutory language of HB 173 (Act No. 64, Ga. L. 2009, p. 231), and the voters ratified the constitutional amendment on November 2, 2010. It has been suggested by certain parties that because of the effective date provisions of HB 173 (Act No. 64, Ga. L. 2009, p. 231), there may be some question about the validity of that legislation. It is the intention of this Act to remove any such uncertainty by substantially reenacting the substantive provisions of HB 173 (Act No. 64, Ga. L. 2009, p. 231), but the enactment of this Act should not be taken as evidence of a legislative determination that HB 173 (Act No. 64, Ga. L. 2009, p. 231) was in fact invalid.

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Notably, the effective date of HB 30 would not be retroactive to the day after the election or January 1, 2011. Rather, it would be effective when the Governor signs it.

The conservative approach is not to count on the previous statute (HB 173). While HB 173 may ultimately survive an attack, HB 30 will hopefully work itself through the legislature quickly and we will have more certainty. Here's to hoping that things clear up to some extent by the end of February, 2011.