

Kansas Legislature Amends Law to Strengthen Employers' Ability to Enforce Non-Solicit Agreements

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The Kansas Legislature has amended its Restraint of Trade Act effective July 1, 2025, to create some conclusive presumptions regarding when non-solicit agreements are enforceable and to require that courts reform overly broad non-solicit agreements. These changes are contained in Senate Bill 241, which amends KSA 50-163. These amendments are both significant and very employer-friendly. However, it should be noted that this new law applies only to non-solicit agreements and not to non-compete agreements. As many of you know, a non-solicit agreement prevents an employee from soliciting customers to move their business to a new company and can prevent an employee from soliciting employees to leave their employer. A non-compete agreement is broader and prevents an employee from going to work for a competitor.

What types of Non-Solicit Agreements are Conclusively Presumed to be Enforceable?

Although Senate Bill 241 goes into greater detail regarding what types of non-solicitation agreements are conclusively presumed to be enforceable and not a restraint of trade, the general types of agreements covered are the following

1. Agreements Between a Business Entity and a Business Owner or Seller.

Written agreements between a business entity and a business owner or seller of a business (or part of a business) not to solicit or encourage employees or other owners of the business to leave the business are enforceable if the agreement's duration does not continue for more than four years following the end of the business owner's business relationship with the business entity.

Written agreements by a business owner or seller of a business (or part of a business) not to solicit or encourage customers to terminate business with that business or reduce or transfer business to a competitor are enforceable, but only if the agreement is limited to "material contact customers" (defined at paragraph 3 below) and if the agreement's duration does not continue for more than four years following the end of the business owner's business relationship with the business entity.

Written agreements in which an owner agrees to provide prior notice of the owner's intent to terminate, sell, or otherwise dispose of his/her ownership interest in the business are conclusively presumed to be enforceable and not a restraint of trade.

2. Agreements Between a Business Entity and its Employees

A written agreement between a business entity and an employee not to solicit or encourage a business owner or another employee to leave the business is enforceable if:

- The agreement seeks to protect confidential or trade secret information or customer or supplier relationships, goodwill or loyalty; or
- The agreement restriction does not continue for more than two (2) years following the end of the

employee's employment with the business entity.

Written agreements by an employee not to solicit or encourage customers to terminate business with the employer or reduce or transfer business to a competitor are enforceable if the agreement is limited to "material contact customers" and if the agreement's duration does not continue for more than two years following the end of the employee's employment with the employer.

3. *"Material Contact Customers"*

A "Material Contact Customer" means any customer or prospective customer that is solicited, produced, or serviced, directly or indirectly, by the employee or the business entity, or any customer or prospective customer about whom the employee or the business entity, directly or indirectly, had confidential business or proprietary information or trade secrets in the course of employee's or business's relationship with the customer.

Mandatory Reformation of Overbroad Non-Solicit Agreements

Another major change in Kansas law by Senate Bill 241 is a provision that requires the court to modify overbroad or unreasonable non-solicit agreements (i.e., agreements that are not presumed to be enforceable), to narrow them to the extent necessary to make them enforceable. This change is significant because in the past the court has had the option to either modify/narrow an overbroad non-solicit agreement to make it enforceable or refuse to enforce an overbroad non-solicit agreement and reject the entire document.

Other Provisions of Senate Bill 241

Senate Bill 241 contains a provision providing that, notwithstanding the presumption of enforceability of the non-solicit agreements described above, "an employee or owner shall be permitted to assert any applicable defense available at law or in equity for the court's consideration in a dispute regarding a written covenant." How Kansas Courts will interpret this provision is at this point uncertain. Presumably, an employee could still defend a claim that there was a violation of a non-solicit agreement by arguing that the company breached the agreement first, that the employee was induced to sign it by fraud or duress, or that there was insufficient consideration, or some other legal or equitable defense. Also, note that Senate Bill 241 does not cover non-solicit provisions in franchise agreements or agreements with independent contractors, and does not address non-compete agreements.

What This Means for Employers and Employees

This Senate Bill 241 is a reminder that whether a non-compete, non-solicit, or non-disclosure agreement is going to be enforced depends on the law of the state where the employee works and the exact wording of the agreement. While Senate Bill 241 is employer friendly, many state legislatures are adopting or have adopted employee friendly laws regulating non-compete, non-solicit and non-disclosure agreements. For example, Colorado, Oklahoma, and Nebraska have more employee-friendly non-compete and/or non-solicit laws than Kansas has. Some states restrict which employees can be bound by non-compete, non-solicit, or non-disclosure agreements, and some states expressly prohibit an employer from providing that the agreement will be governed by the law of any state other than the state where the employee works and resides.

We recommend that you have an experienced employment lawyer review your current non-compete, non-solicit, and non-disclosure agreements for legal compliance. We also recommend that you strongly consider modifying your non-solicit agreements for employees working in Kansas so that they include the special language set forth in the amended statute which is required to make those agreements "conclusively presumed to be enforceable". In addition to revising non-solicit agreements for new

employees, you should discuss with counsel whether to modify non-solicit agreements with current employees and, if so, what consideration might be required to make those new agreements legally enforceable. Finally, you should discuss whether you need non-compete and non-disclosure provisions to supplement non-solicitation provisions in your agreements and whether different agreements might be appropriate for different classes of employees. For example, production workers with knowledge of trade secrets but no customer contacts might only need a non-disclosure and agreement not to solicit co-workers, while the agreement for a sales employee would also need an agreement not to solicit customers, and the agreement for senior executives might need not only comprehensive non-disclosure and non-solicitation provisions but also a non-compete provision.

For employers with employees in multiple states, we recommend you discuss recent changes in other state laws relating to your non-compete, non-solicit, and non-disclosure agreements with your attorney, because as noted above, there have been recent changes in many states which may affect your ability to enforce your agreements.

Please feel free to contact us if you need assistance reviewing your non-compete, non-disclosure, and/or non-solicit agreements for legal compliance.

This article is general in nature and does not constitute legal advice. If you have legal questions, please consult the authors, John Vering (jvering@sb-kc.com) at 816.265.4109 and Shannon Cohorst Johnson (sjohnson@sb-kc.com) 816.265.4139 or other attorneys in Seigfreid Bingham's Employment Law Group, including: John Neyens (johnn@sb-kc.com) 816.265.4152, Brenda Hamilton (bhamilton@sb-kc.com) 816.265.4103, Mark Opara (mopara@sb-kc.com) 816.265.4140, Julie Parisi (jparisi@sb-kc.com) 816.265.4159, Katie Conklin (kconklin@sb-kc.com) at 816.265.4114, Cody Weyhofen (cweyhofen@sb-kc.com) 816-265-4163, or Chris Tillery (ctillery@sb-kc.com) at 816-265-4157 or your regular contact at Seigfreid Bingham at 816.421.4460.