

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 885  
By: Carona  
Jurisprudence  
4-8-97  
Committee Report (Substituted)

### **DIGEST**

Currently, the need may arise in the context of a sale of a business or in post-employment relations for involved parties or persons to agree to refrain from competing with each other in order to protect the continuing viability of the business. In these cases a covenant is established which attempts to restrict a party from competing in some activity for a period of time in a particular geographical area.

In order for a covenant to be enforceable it must meet a variety of standards established by statute. This bill establishes certain criteria under which a covenant is enforceable.

### **PURPOSE**

As proposed, C.S.S.B. 885 establishes certain criteria under which a covenant is enforceable.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 15.50, Business & Commerce Code, as follows:

Sec. 15.50. New heading: CRITERIA FOR ENFORCEABILITY OF COVENANTS NOT TO COMPETE; CONSIDERATION. Provides that a covenant not to compete is an enforceable agreement if it is ancillary to or part of an otherwise enforceable agreement or otherwise valid transaction or relationship, rather than at the time the agreement is made, to the extent that it contains limitations as to time, geographical area, and scope of activity that are reasonable and do not impose a restraint greater than is necessary to protect the goodwill or other business interest of the promisee. Requires certain covenants to be supported by consideration other than the continuation of the agreement, transaction, or relationship.

SECTION 2. Effective date: September 1, 1997.

SECTION 3. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

SECTION 1.

Amends Section 15.50, Business & Commerce Code, to provide a new heading for the proposed version. Provides that a covenant not to compete is enforceable if it is ancillary to or part of an otherwise enforceable agreement or otherwise valid transaction or relationship, rather than at the time the agreement is made, to the extent that it contains limitations as to time, geographical area, and scope of activity, rather than limitation on scope of activity, duration, or territory, to be restrained that are reasonable and do not impose greater restraint than is necessary, rather than that are unreasonable and that it imposes a restraint greater, than is necessary, to protect the goodwill or other business interest of the promise. Adds Subsection (b) relating to consideration.