**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 41‑1‑140 SO AS TO PROVIDE THAT ANY COVENANT NOT TO COMPETE THAT A NONPROFIT CORPORATION WITH AN ANNUAL GROSS REVENUE EXCEEDING ONE BILLION DOLLARS HAS WITH CURRENT AND FORMER EMPLOYEES IS NULL, VOID, AND UNENFORCEABLE, AND TO PROVIDE THAT NO SUCH COVENANT MAY BE ENTERED INTO WITH FUTURE EMPLOYEES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The General Assembly finds that:

(1) The common law as a general rule permits the use of covenants not to compete under specific guidelines and requirements as not being a restraint of trade. However, in the case of nonprofit entities which do not pay federal or state income taxes, which were formed through the use of public funds and receive benefits that other taxable entities do not, the public interest requires that the standard for covenants not to compete for these entities is a much higher standard.

(2) One of these higher standards for nonprofit entities which serve the general public including in fields of public health and safety, is a requirement for strict reasonableness in terms of the prohibited areas where former employees may not engage in the duties and functions performed at their former employer.

(3) For these reasons, the General Assembly in the exercise of its plenary powers has determined to enact the provisions of this act to remedy this situation after considering competing public policy concerns.

SECTION 2. Chapter 1, Title 41 of the 1976 Code is amended by adding:

“Section 41‑1‑140. If a nonprofit corporation located in this State has an annual gross revenue exceeding one billion dollars, then:

(1) any covenant not to compete between the nonprofit corporation and any of its current or former employees is null and void and unenforceable; and

(2) no covenant not to compete may be part of a contract with a future employee.”

SECTION 3. This act takes effect upon approval by the Governor.

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