

PUBLICATION

Eleventh Circuit: GA RCA Not Considered Effective Until May 2011

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The Eleventh Circuit recently held that Georgia's new Restrictive Covenant Act did not become effective until May 11, 2011 – not November 3, 2010, when it was originally passed – because the Georgia Constitution was not amended to allow the bill to become law.

On June 4, 2012, the Eleventh Circuit held in *Becham, et al. v. Synthes USA*, that Georgia's new Restrictive Covenant Act (RCA) did not become effective until May 11, 2011. Accordingly, Georgia's pre-existing law, which strikes all overbroad restrictive covenants, applies to all such agreements entered into during the "gap period" between November 3, 2010 and May 11, 2011.

Specifically, in *Becham*, the Eleventh Circuit held that the original RCA, House Bill 173, was unconstitutional when it was passed on November 3, 2010, because the Georgia Constitution still prohibited the General Assembly from enacting legislation authorizing the enforcement of restrictive covenants. The RCA only became effective when it was "revived" by the General Assembly as House Bill 30 on May 11, 2011, following amendment to the Georgia state constitution.

Georgia employers hoping to enforce any restrictive covenant agreements entered into prior to May 11, 2011, should review, and if necessary, replace those agreements to ensure their continued viability. For more advice concerning your Georgia or other states' restrictive covenants, contact any of our more than 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.