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November 2010 **www.ssd.com**

A New Day for Noncompete Agreements in Georgia

On November 2, 2010 voters in Georgia decided whether to "make Georgia more economically competitive by authorizing legislation to uphold reasonable competitive agreements." Georgia has historically been one of the most difficult states in which to draft and enforce an agreement limiting the competition of former employees. That changed on Tuesday, however, when voters approved a constitutional amendment making the state more hospitable to such agreements. The amendment enabled a bill previously passed by the Georgia legislature to become law. Most significantly this new law:

- permits noncompete restrictions to be amended by the courts (previously, any defect in an agreement rendered the entire agreement unenforceable);
- allows a court to modify a restriction by striking out defective language and enforcing a restrictive covenant to the extent that it is reasonable;
- allows courts to enforce a noncompete or nonsolicitation provision if one of the restrictions in the agreement is found to be unenforceable;
- provides that a good faith estimate made prior to termination of the activities of the employee and areas serviced by the employee is sufficient for an enforceable covenant, even if the estimate is

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Contacts:

Tara A. Aschenbrand
+1.614.365.2713

Terry M. Billups
+1.216.479.8505

D. Lewis Clark, Jr.
+1.602.528.4065
+1.614.365.2703
+1.212.407.0124

Susan M. DiMickele
+1.614.365.2842

Jill S. Kirila
+1.614.365.2772
+1.513.361.1285

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broader than necessary; and

- provides that a two-year post-employment noncompete covenant is presumed valid.

Because these changes decrease the risks of asking for more stringent restrictive covenants, companies with employees in Georgia should review and reconsider their noncompete practices to ensure that they are adequately protecting their business interests. For further information regarding the new law, please contact your principal Squire Sanders lawyer or one of the individuals listed in this Alert.

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