

By Senator Gruters

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1 A bill to be entitled
2 An act relating to restraints of trade or commerce;
3 amending s. 542.335, F.S.; revising the requirements
4 for a contract that restricts or prohibits
5 competition; redefining the term "legitimate business
6 interest" to include only interests related to
7 intellectual property; providing applicability;
8 providing an effective date.

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10 Be It Enacted by the Legislature of the State of Florida:

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12 Section 1. Subsection (1) of section 542.335, Florida
13 Statutes, is amended to read:

14 542.335 Valid restraints of trade or commerce.—

15 (1) Notwithstanding s. 542.18 and subsection (2),
16 enforcement of contracts that restrict or prohibit competition
17 during or after the term of restrictive covenants, so long as
18 such contracts are reasonable in time, ~~area,~~ and line of
19 business, is not prohibited. In any action concerning
20 enforcement of a restrictive covenant:

21 (a) A court shall not enforce a restrictive covenant unless
22 it is set forth in a writing signed by the person against whom
23 enforcement is sought.

24 (b) The person seeking enforcement of a restrictive
25 covenant shall plead and prove the existence of one or more
26 legitimate business interests justifying the restrictive
27 covenant. The term "legitimate business interest" means
28 ~~includes, but is not limited to:~~

29 1. Trade secrets, as defined in s. 688.002(4).

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30 2. Valuable confidential business or professional
31 information that otherwise does not qualify as trade secrets.

32 ~~3. Substantial relationships with specific prospective or~~
33 ~~existing customers, patients, or clients.~~

34 3.4. Customer, patient, or client goodwill associated with:
35 a. an ongoing business or professional practice, by way of
36 trade name, trademark, service mark, or "trade dress."~~†~~

37 ~~b. A specific geographic location; or~~

38 ~~e. A specific marketing or trade area.~~

39 ~~5. Extraordinary or specialized training.~~

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41 Any restrictive covenant not supported by a legitimate business
42 interest is unlawful and is void and unenforceable.

43 (c) A person seeking enforcement of a restrictive covenant
44 also shall plead and prove that the contractually specified
45 restraint is reasonably necessary to protect the legitimate
46 business interest or interests justifying the restriction. If a
47 person seeking enforcement of the restrictive covenant
48 establishes prima facie that the restraint is reasonably
49 necessary, the person opposing enforcement has the burden of
50 establishing that the contractually specified restraint is
51 overbroad, overlong, or otherwise not reasonably necessary to
52 protect the established legitimate business interest or
53 interests. If a contractually specified restraint is overbroad,
54 overlong, or otherwise not reasonably necessary to protect the
55 legitimate business interest or interests, a court shall modify
56 the restraint and grant only the relief reasonably necessary to
57 protect such interest or interests.

58 (d) In determining the reasonableness in time of a postterm

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59 restrictive covenant not predicated upon the protection of trade
60 secrets, a court shall apply the following rebuttable
61 presumptions:

62 1. In the case of a restrictive covenant sought to be
63 enforced against a former employee, agent, or independent
64 contractor, and not associated with the sale of all or a part
65 of:

- 66 a. The assets of a business or professional practice, or
- 67 b. The shares of a corporation, or
- 68 c. A partnership interest, or
- 69 d. A limited liability company membership, or
- 70 e. An equity interest, of any other type, in a business or
71 professional practice,

72
73 a court shall presume reasonable in time any restraint 6 months
74 or less in duration and shall presume unreasonable in time any
75 restraint more than 2 years in duration.

76 2. In the case of a restrictive covenant sought to be
77 enforced against a former distributor, dealer, franchisee, or
78 licensee of a trademark or service mark and not associated with
79 the sale of all or a part of:

- 80 a. The assets of a business or professional practice, or
- 81 b. The shares of a corporation, or
- 82 c. A partnership interest, or
- 83 d. A limited liability company membership, or
- 84 e. An equity interest, of any other type, in a business or
85 professional practice,

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87 a court shall presume reasonable in time any restraint 1 year or

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88 less in duration and shall presume unreasonable in time any
89 restraint more than 3 years in duration.

90 3. In the case of a restrictive covenant sought to be
91 enforced against the seller of all or a part of:

92 a. The assets of a business or professional practice, or

93 b. The shares of a corporation, or

94 c. A partnership interest, or

95 d. A limited liability company membership, or

96 e. An equity interest, of any other type, in a business or
97 professional practice,

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99 a court shall presume reasonable in time any restraint 3 years
100 or less in duration and shall presume unreasonable in time any
101 restraint more than 7 years in duration.

102 (e) In determining the reasonableness in time of a postterm
103 restrictive covenant predicated upon the protection of trade
104 secrets, a court shall presume reasonable in time any restraint
105 of 5 years or less and shall presume unreasonable in time any
106 restraint of more than 10 years. All such presumptions shall be
107 rebuttable presumptions.

108 (f) The court shall not refuse enforcement of a restrictive
109 covenant on the ground that the person seeking enforcement is a
110 third-party beneficiary of such contract or is an assignee or
111 successor to a party to such contract, provided:

112 1. In the case of a third-party beneficiary, the
113 restrictive covenant expressly identified the person as a third-
114 party beneficiary of the contract and expressly stated that the
115 restrictive covenant was intended for the benefit of such
116 person.

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117 2. In the case of an assignee or successor, the restrictive
118 covenant expressly authorized enforcement by a party's assignee
119 or successor.

120 (g) In determining the enforceability of a restrictive
121 covenant, a court:

122 1. Shall not consider any individualized economic or other
123 hardship that might be caused to the person against whom
124 enforcement is sought.

125 2. May consider as a defense the fact that the person
126 seeking enforcement no longer continues in business in the area
127 or line of business that is the subject of the action to enforce
128 the restrictive covenant only if such discontinuance of business
129 is not the result of a violation of the restriction.

130 3. Shall consider all other pertinent legal and equitable
131 defenses.

132 4. Shall consider the effect of enforcement upon the public
133 health, safety, and welfare.

134 (h) A court shall construe a restrictive covenant in favor
135 of providing reasonable protection to all legitimate business
136 interests established by the person seeking enforcement. A court
137 shall not employ any rule of contract construction that requires
138 the court to construe a restrictive covenant narrowly, against
139 the restraint, or against the drafter of the contract.

140 (i) No court may refuse enforcement of an otherwise
141 enforceable restrictive covenant on the ground that the contract
142 violates public policy unless such public policy is articulated
143 specifically by the court and the court finds that the specified
144 public policy requirements substantially outweigh the need to
145 protect the legitimate business interest or interests

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146 established by the person seeking enforcement of the restraint.

147 (j) A court shall enforce a restrictive covenant by any
148 appropriate and effective remedy, including, but not limited to,
149 temporary and permanent injunctions. The violation of an
150 enforceable restrictive covenant creates a presumption of
151 irreparable injury to the person seeking enforcement of a
152 restrictive covenant. No temporary injunction shall be entered
153 unless the person seeking enforcement of a restrictive covenant
154 gives a proper bond, and the court shall not enforce any
155 contractual provision waiving the requirement of an injunction
156 bond or limiting the amount of such bond.

157 (k) In the absence of a contractual provision authorizing
158 an award of attorney's fees and costs to the prevailing party, a
159 court may award attorney's fees and costs to the prevailing
160 party in any action seeking enforcement of, or challenging the
161 enforceability of, a restrictive covenant. A court shall not
162 enforce any contractual provision limiting the court's authority
163 under this section.

164 Section 2. The amendments to s. 542.335, Florida Statutes,
165 made by this act apply only in actions determining the
166 enforceability of restrictive covenants entered into on or after
167 July 1, 2019.

168 Section 3. This act shall take effect July 1, 2019.