HB 1191 2022

1 A bill to be entitled 2 3 4

An act relating to restrictions on employment; amending s. 542.335, F.S.; providing that restrictive covenants are only enforceable against a former employee, agent, or independent contractor who voluntarily resigned or was terminated because of misconduct; defining the term "misconduct"; providing applicability; providing an effective date.

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

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Section 1. Subsection (3) of section 542.335, Florida Statutes, is amended, and a new subsection (4) is added to that section, to read:

542.335 Valid restraints of trade or commerce.

- (3)(a) A restrictive covenant is only enforceable against a former employee, agent, or independent contractor who voluntarily resigns or is terminated because of misconduct. A resignation resulting from a constructive termination is not voluntary.
- (b) For purposes of this subsection, the term "misconduct" means all misconduct warranting involuntary termination, regardless of whether the misconduct occurs at the workplace or during working hours, and includes, but is not limited to, the following, which may not be construed in pari materia with each

Page 1 of 4

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HB 1191 2022

## <u>other:</u>

- 1. Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee, agent, or independent contractor. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than \$500, or theft of employer property or property of a customer or invitee of the employer.
- 2. Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent or shows an intentional and substantial disregard of the employer's interests or of the employee's, agent's, or independent contractor's duties and obligations to his or her employer.
- 3. Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.
- 4. A willful and deliberate violation of a standard or regulation of the state by an employee, agent, or independent contractor of an employer licensed or certified by the state, which violation would cause the employer to be sanctioned or have its license or certification suspended by the state.
- 5. A violation of an employer's rule, unless the employee, agent, or independent contractor can demonstrate that:

HB 1191 2022

	a.	Не	or	she	did	not	know,	ar	nd	could	not	rea	sonably	kn	OW,
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- b. The rule is not lawful or not reasonably related to the job environment and performance; or
  - c. The rule is not fairly or consistently enforced.
- 6. Committing criminal assault or battery on another employee, or on a customer or invitee of the employer, or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.
- (c) This subsection does not invalidate a covenant that prohibits disclosing a trade secret of the employer to third parties.
- (d) This subsection does not apply to a restrictive covenant sought to be enforced against a former employee, agent, or independent contractor who is associated with the sale of all or a part of:
  - 1. The assets of a business or professional practice;
  - 2. The shares of a corporation;
  - 3. A partnership interest;

- 4. A limited liability company membership; or
- 5. An equity interest, of any other type, in a business or professional practice.
- (4) (a) Subsections (1) and (2) apply to restrictive covenants entered into on or after July 1, 1996, and before June

Page 3 of 4

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HB 1191 2022

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(b) Subsection (3) applies to restrictive covenants
entered into on or after July 1, 2022 This act shall apply
prospectively, and it shall not apply in actions determining the
enforceability of restrictive covenants entered into before July
1, 1996.

Section 2. This act shall take effect July 1, 2022.