

By Senator Broxson

1-00675A-22

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1                   A bill to be entitled  
2           An act relating to restrictions on employment;  
3           amending s. 542.335, F.S.; providing that restrictive  
4           covenants are only enforceable against a former  
5           employee, agent, or independent contractor who  
6           voluntarily resigned or was terminated because of  
7           misconduct; defining the term "misconduct"; providing  
8           applicability; 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 (3) of section 542.335, Florida  
13           Statutes, is amended, and subsection (4) is added to that  
14           section, to read:

15           542.335 Valid restraints of trade or commerce.—

16           (3) (a) A restrictive covenant is only enforceable against a  
17           former employee, agent, or independent contractor who  
18           voluntarily resigns or is terminated because of misconduct. A  
19           resignation resulting from a constructive termination is not  
20           voluntary.

21           (b) For purposes of this subsection, the term "misconduct"  
22           means all misconduct warranting involuntary termination,  
23           regardless of whether the misconduct occurs at the workplace or  
24           during working hours, and includes, but is not limited to, the  
25           following, which may not be construed in pari materia with each  
26           other:

27           1. Conduct demonstrating conscious disregard of an  
28           employer's interests and found to be a deliberate violation or  
29           disregard of the reasonable standards of behavior which the

1-00675A-22

20221618\_\_

30 employer expects of his or her employee, agent, or independent  
31 contractor. Such conduct may include, but is not limited to,  
32 willful damage to an employer's property that results in damage  
33 of more than \$500, or theft of employer property or property of  
34 a customer or invitee of the employer.

35 2. Carelessness or negligence to a degree or recurrence  
36 that manifests culpability or wrongful intent or shows an  
37 intentional and substantial disregard of the employer's  
38 interests or of the employee's, agent's, or independent  
39 contractor's duties and obligations to his or her employer.

40 3. Chronic absenteeism or tardiness in deliberate violation  
41 of a known policy of the employer or one or more unapproved  
42 absences following a written reprimand or warning relating to  
43 more than one unapproved absence.

44 4. A willful and deliberate violation of a standard or  
45 regulation of the state by an employee, agent, or independent  
46 contractor of an employer licensed or certified by the state,  
47 which violation would cause the employer to be sanctioned or  
48 have its license or certification suspended by the state.

49 5. A violation of an employer's rule, unless the employee,  
50 agent, or independent contractor can demonstrate that:

51 a. He or she did not know, and could not reasonably know,  
52 of the rule's requirements;

53 b. The rule is not lawful or not reasonably related to the  
54 job environment and performance; or

55 c. The rule is not fairly or consistently enforced.

56 6. Committing criminal assault or battery on another  
57 employee, or on a customer or invitee of the employer, or  
58 committing abuse or neglect of a patient, resident, disabled

1-00675A-22

20221618\_\_

59 person, elderly person, or child in her or his professional  
60 care.

61 (c) This subsection does not invalidate a covenant that  
62 prohibits disclosing a trade secret of the employer to third  
63 parties.

64 (d) This subsection does not apply to a restrictive  
65 covenant sought to be enforced against a former employee, agent,  
66 or independent contractor who is associated with the sale of all  
67 or a part of:

- 68 1. The assets of a business or professional practice;
- 69 2. The shares of a corporation;
- 70 3. A partnership interest;
- 71 4. A limited liability company membership; or
- 72 5. An equity interest, of any other type, in a business or  
73 professional practice.

74 (4) (a) Subsections (1) and (2) apply to restrictive  
75 covenants entered into on or after July 1, 1996, and before June  
76 30, 2022.

77 (b) Subsection (3) applies to restrictive covenants entered  
78 into on or after July 1, 2022 ~~This act shall apply~~  
79 ~~prospectively, and it shall not apply in actions determining the~~  
80 ~~enforceability of restrictive covenants entered into before July~~  
81 ~~1, 1996.~~

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