

By the Committee on Commerce and Tourism; and Senator Broxson

577-02260-22

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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 for misconduct
7 or failing to satisfy performance standards or goals;
8 defining the term "misconduct"; providing
9 applicability; providing an effective date.

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

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

16 542.335 Valid restraints of trade or commerce.—

17 (3) (a) A restrictive covenant is only enforceable against a
18 former employee, agent, or independent contractor who
19 voluntarily resigns, is terminated for misconduct, or does not
20 satisfy reasonable performance standards or goals which were set
21 in advance. The termination or resignation of an employee
22 following a substantial unanticipated change in market
23 conditions is not a termination for the failure to satisfy
24 reasonable performance standards or goals. A resignation
25 resulting from a constructive termination is not voluntary.

26 (b) For purposes of this subsection, the term "misconduct"
27 means all misconduct warranting involuntary termination,
28 regardless of whether the misconduct occurs at the workplace or
29 during working hours, and includes, but is not limited to, the

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30 following, which may not be construed in pari materia with each
31 other:

32 1. Conduct demonstrating conscious disregard of an
33 employer's interests and found to be a deliberate violation or
34 disregard of the reasonable standards of behavior which the
35 employer expects of his or her employee, agent, or independent
36 contractor. Such conduct may include, but is not limited to,
37 willful damage to an employer's property that results in damage
38 of more than \$500, or theft of employer property or property of
39 a customer or invitee of the employer.

40 2. Carelessness or negligence to a degree or recurrence
41 that manifests culpability or wrongful intent or shows an
42 intentional and substantial disregard of the employer's
43 interests or of the employee's, agent's, or independent
44 contractor's duties and obligations to his or her employer.

45 3. Chronic absenteeism or tardiness in deliberate violation
46 of a known policy of the employer or one or more unapproved
47 absences following a written reprimand or warning relating to
48 more than one unapproved absence.

49 4. A willful and deliberate violation of a standard or
50 regulation of the state by an employee, agent, or independent
51 contractor of an employer licensed or certified by the state,
52 which violation would cause the employer to be sanctioned or
53 have its license or certification suspended by the state.

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

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

58 b. The rule is not lawful or not reasonably related to the

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59 job environment and performance; or

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

61 6. Committing criminal assault or battery on another
62 employee, or on a customer or invitee of the employer, or
63 committing abuse or neglect of a patient, resident, disabled
64 person, elderly person, or child in her or his professional
65 care.

66 (c) This subsection does not invalidate a covenant that
67 prohibits disclosing a trade secret of the employer to third
68 parties.

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

73 1. The assets of a business or professional practice;

74 2. The shares of a corporation;

75 3. A partnership interest;

76 4. A limited liability company membership; or

77 5. An equity interest, of any other type, in a business or
78 professional practice.

79 (4) (a) Subsections (1) and (2) apply to restrictive
80 covenants entered into on or after July 1, 1996, and before June
81 30, 2022.

82 (b) Subsection (3) applies to restrictive covenants entered
83 into on or after July 1, 2022 ~~This act shall apply~~
84 ~~prospectively, and it shall not apply in actions determining the~~
85 ~~enforceability of restrictive covenants entered into before July~~
86 ~~1, 1996.~~

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