

FLORIDA HOUSE OF REPRESENTATIVES

BILL ANALYSIS

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BILL #: [CS/HB 1219](#)

TITLE: Employment Agreements

SPONSOR(S): Koster

COMPANION BILL: [CS/SB 922](#) (Leek)

LINKED BILLS: None

RELATED BILLS: [CS/SB 922](#) (Leek)

Committee References

[Industries & Professional Activities](#)

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SUMMARY

Effect of the Bill:

The bill creates the Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth (CHOICE) Act to protect confidential information and client relationships by creating two types of agreements: covered garden leave agreements and covered noncompete agreements. The agreements protect the confidentiality of information and client relationships for up to 4 years, either while the covered employee remains employed (covered garden leave agreement) or after the covered employee has left employment (covered noncompete agreement).

Fiscal or Economic Impact:

The bill may have a positive economic impact by encouraging businesses to establish in Florida in order to enter into garden leave agreements.

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ANALYSIS

EFFECT OF THE BILL:

The bill creates the Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth (CHOICE) Act to protect confidential information and client relationships. A covered employer¹ and covered employee² may enter into a covered [garden leave agreement](#) in which the covered employer agrees to provide no more than 4 years of advance, express notice before terminating the employment or contractual relationship. (Section [1](#) and [2](#))

The time between the notice and agreed upon termination date is referred to as the notice period. In exchange, the covered employee agrees not resign before the end of the notice period. The covered employer agrees to retain the employee during the notice period and pay the same salary and benefits the covered employee received in the month preceding the beginning of the notice period. However, the covered employer is not required to provide discretionary incentive compensation or benefits or have the covered employee continue performing work during the notice period and the covered employer may reduce, during the notice period, the term of the covered garden leave agreement by providing 30 days advance notice. (Section [2](#))

¹ The bill defines covered employer as an entity or individual who employs or engages a covered employee.

² The bill defines covered employee as an employee or individual contractor who earns or is reasonably expected to earn a salary greater than twice the annual mean wage, or who has access to his or her employer's or client's confidential information or customer relationships.

STORAGE NAME: h1219.IPA

DATE: 3/20/2025

Covered garden leave agreements do not violate public policy as restraint of trade or an attempt to monopolize trade or commerce in this state provided that:

- The covered employee was advised, in writing, of the right to seek counsel and provided the covered agreement at least 7 days before the agreement or offer of employment expired;
- The covered employee acknowledged, in writing, receipt of confidential information or customer relationships; and
- The covered garden leave agreement provides that:
 - After the first 90 days of the notice period, the covered employee does not have to provide services to the covered employer;
 - The covered employee may engage in nonwork activities at any time, including during normal business hours, during the remainder of the notice period;
 - The covered employee may, with the permission of the covered employer, work for another employer while still employed by the covered employer during the notice period.
 - The garden leave agreement notice period may be reduced during the notice period if the covered employer provides at least 30 days' advance notice in writing to the covered employee. (Section [2](#))

Once a covered employer seeks enforcement of a covered garden leave agreement, the court must preliminarily enjoin the covered employee from providing services to any business, entity, or individual other than the covered employer during the notice period. The injunction may only be modified or dissolved if the covered employee establishes by clear and convincing evidence that:

- The covered employee will not perform, during the notice period, any work similar to the services provided to the covered employer; or
- The covered employer has failed to pay or provide the salary and benefits provided for in the covered garden leave agreement during the notice period and has had a reasonable opportunity to cure the failure. (Section [2](#))

Once a covered employer seeks enforcement of a covered garden leave agreement, the court must preliminarily enjoin a business, an entity, or an individual from engaging a covered employee during the notice period. The injunction may only be modified or dissolved if the covered employee establishes by clear and convincing evidence that:

- The covered employee will not provide any services covered by the agreement; or
- The business or individual seeking to employ or engage the covered employee is not engaged in, and is not planning to engage in, any business activity similar to those of the covered employer during the notice period. (Section [2](#))

The bill also creates covered [noncompete agreements](#) which are agreements, not to exceed 4 years, within a specified geographic area defined in the agreement. (Section [2](#))

The covered employee agrees not to assume a role with another business, entity or individual in which it is reasonably likely the covered employee would use confidential information or customer relationships of the covered employer or provide services similar to the services provided to the covered employer during the three years prior to the noncompete period. The noncompete period begins upon termination of employment and continues through the end of the agreed-upon post-employment period provided in the agreement. A covered noncompete agreement must reduce the noncompete period day-for-day by any nonworking portion of the notice period of a covered garden leave agreement. (Section [2](#))

Covered noncompete agreements do not violate public policy as restraint of trade or an attempt to monopolize trade or commerce in this state provided that:

- The covered employee was advised, in writing, of the right to seek counsel and provided the covered agreement at least 7 days before the agreement or offer of employment expired;
- The covered employee acknowledged, in writing, receipt of confidential information or customer relationships; and
- The covered noncompete agreement provides that the agreement is reduced day-to-day by any nonworking portion of the notice period, pursuant to a covered garden leave agreement between the covered employee and the covered employer. (Section [2](#))

Once a covered employer seeks enforcement of a covered noncompete agreement, the court must preliminarily enjoin the covered employee from providing services to any business, entity, or individual other than the covered employer during the noncompete period. The injunction may only be modified or dissolved if the covered employee establishes by clear and convincing evidence that:

- The covered employee will not perform, during the noncompete period, any work similar to the services provided to the covered employer or use confidential information or customer relationships of the covered employer; or
- The covered employer has failed to pay or provide the compensation provided for in the covered noncompete agreement during the noncompete period and has had a reasonable opportunity to cure the failure. (Section [2](#))

Once a covered employer seeks enforcement of a covered noncompete agreement, the court must preliminarily enjoin a business, an entity, or an individual from engaging a covered employee during the noncompete period. The injunction may only be modified or dissolved if the covered employee establishes by clear and convincing evidence, based on public or other nonconfidential information, that:

- The covered employee will not provide any services covered by the agreement or use confidential information or customer relationships of the covered employer; or
- The business or individual seeking to employ or engage the covered employee is not engaged in, and is not planning to engage in, any business activity similar to those of the covered employer during the noncompete period and in the geographic area described in the agreement. (Section [2](#))

Any information filed with the court which the covered employer deems confidential, must be filed under seal to protect confidentiality or avoid substantial injury. In addition, the court must presume that an employee or individual contractor has access to confidential information or customer relationships if the employee or individual contractor acknowledges the access or receipt of such access in writing. (Section [2](#))

Prior to entering covered garden leave agreements and covered noncompete agreements, a covered employer must provide the proposed covered agreement to a prospective covered employee at least 7 days before the offer of employment expires or 7 days before the covered agreement expires if the covered employee is a current employee. (Section [2](#))

When enforcing either type of agreement, a reduction in salary or benefits or other appropriate action during the noncompete or notice period due to gross misconduct by the covered employee may not be considered a breach of the noncompete or garden leave agreement. In addition to injunctive relief, a prevailing covered employer is entitled to recover all available monetary damages for all available claims.

The prevailing party is entitled to reasonable attorney fees and costs. (Section [2](#)).

The effective date of the bill is July 1, 2025. (Section [3](#))

RELEVANT INFORMATION

SUBJECT OVERVIEW:

[Noncompete Agreements \(Restrictive Covenants\)](#)

Generally, a contract in restraint of trade or commerce in Florida is unlawful.³ However, non-competition restrictive covenants⁴ contained in employment agreements that are reasonable in time, area, and line of business, are not prohibited.⁵ In any action concerning enforcement of a restrictive covenant, a court may not enforce a

³ Section [542.18, F.S.](#)

⁴ Section [542.335, F.S.](#) employs the term “restrictive covenants” and includes all contractual restrictions such as noncompetition/nonsolicitation agreements, confidentiality agreements, exclusive dealing agreements, and all other contractual restraints of trade. See *Henao v. Prof'l Shoe Repair, Inc.*, [929 So.2d 723, 726](#) (Fla. 5th DCA 2006).

⁵ S. [542.335\(1\), F.S.](#)

restrictive covenant unless it is set forth in a writing signed by the person against whom enforcement is sought, and the person seeking enforcement of a restrictive covenant must prove the existence of one or more legitimate business interests justifying the restrictive covenant.⁶ The term “legitimate business interest” includes, but is not limited to:

- Trade secrets;⁷
- Valuable confidential business or professional information that does not otherwise qualify as trade secrets;
- Substantial relationships with specific prospective or existing customers, patients, or clients;
- Customer, patient, or client goodwill associated with:
 - An ongoing business or professional practice, by way of trade name, trademark, service mark, or “trade dress;”
 - A specific geographic location; or
 - A specific marketing or trade area; or
- Extraordinary or specialized training.⁸

Federal Trade Commission Rule

In September of 2024, the FTC’s rule⁹ against noncompete agreements was set to take effect to promote competition by banning noncompete agreements nationwide.¹⁰ Under the rule, existing noncompete agreements for most workers would no longer be enforceable.¹¹ Existing noncompete agreements for senior executives would remain in force, however, new noncompete agreements, even if they involve senior executives would be banned.¹²

Additionally, the rule requires employers to provide notice to workers other than senior executives who are bound by an existing noncompete agreement that they will not be enforceable.¹³ Ultimately, the rule determined that it is an unfair method of competition for employers to enter into noncompete agreements with workers, and therefore noncompete agreements are a violation of Section 5 of the FTC Act.

On July 23, 2024, the U.S. District Court for the Eastern District of Pennsylvania issued a decision, which held that the FTC had the authority to issue its rule banning most employment based noncompete agreements.¹⁴

On August 14, 2024, the U.S. District Court for the Middle District of Florida entered a limited injunction prohibiting the FTC from enforcing the FTC’s noncompete rule. The court used the “major questions doctrine” to argue that the FTC did not have a valid grant of congressional authority to enact the rule.¹⁵

On August 20, 2024, the U.S. District Court for the Northern District of Texas granted summary judgement to the plaintiffs in *Ryan, LLC v. FTC*, which sets aside the FTC’s noncompete clause rule.¹⁶ The court found that the FTC has no authority to promulgate substantive rules regarding unfair competition, and the rule is invalid because it is arbitrary and capricious.¹⁷

⁶ *Id.*

⁷ S. [688.002\(4\), F.S.](#), defines a “trade secret” as information, including a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

⁸ S. [542.335\(1\)\(b\), F.S.](#)

⁹ 16 C.F.R. § 910.1-6

¹⁰ *FTC Announces Rule Banning Noncompetes*, The Federal Trade Commission, available at <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes> (last visited Mar. 14, 2025).

¹¹ *Id.*

¹² *Id.* The final rule defines “senior executives” as workers earning more than \$151,164 annually and who are in policy-making positions. See *id.* See also 16 C.F.R. § 910.1-6.

¹³ *Id.*

¹⁴ *ATS Tree Services, LLC v. Federal Trade Commission*, WL 3511630 (E.D. Pa. 2024). The court found that the FTC has broad authority to regulate “unfair methods of competition” under the FTC Act. See also 15 U.S.C. §§ 41-58.

¹⁵ *Properties of the Villages, Inc. v. Federal Trade Commission*, WL 3870380 (M.D. Fla. 2024). The “major questions doctrine” requires administrative agencies issuing rules of extraordinary economic and political significance to point to clear and unambiguous congressional intent to confer such power on the agency.

¹⁶ *Ryan, LLC v. Federal Trade Commission*, 746 F.Supp.3d 369 (N.D. Tex. 2024). This is a nation wide injunction. The FTC is

¹⁷ *Id.*

[Garden Leave Agreements](#)

The term garden leave refers to agreements in which the worker remains employed, receives the same total annual compensation and benefits, but their access to co-workers and company facilities is restricted.¹⁸ Such agreements are not post-employment restrictions.¹⁹

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
<u>Industries & Professional Activities Subcommittee</u>	11 Y, 5 N	3/19/2025	Anstead	Brackett

¹⁸ Non-Compete Clause Rule, 89 FR 38342, 38366 (May 7, 2024)

<https://www.federalregister.gov/documents/2024/05/07/2024-09171/non-compete-clause-rule>

¹⁹ *Id.*