

1 A bill to be entitled
2 An act relating to employment agreements; creating
3 part I of ch. 542, F.S., entitled the "Florida
4 Antitrust Act of 1980"; creating part II of ch. 542,
5 F.S., entitled the "Florida Contracts Honoring
6 Opportunity, Investment, Confidentiality, and Economic
7 Growth (CHOICE) Act"; creating s. 542.41, F.S.;
8 providing a short title; creating s. 542.42, F.S.;
9 providing legislative findings; creating s. 542.43,
10 F.S.; defining terms; creating s. 542.44, F.S.;
11 providing applicability; providing that certain
12 covered garden leave agreements are not a restraint of
13 trade or an attempt to monopolize trade or commerce;
14 providing notice requirements for covered garden leave
15 agreements; providing that a covered employer may
16 waive any portion of such notice requirements by
17 providing a specified amount of advance written notice
18 to the covered employee; providing that covered garden
19 leave agreements do not affect other agreements;
20 requiring a court to enter a preliminary injunction to
21 stop covered employees, businesses, entities, or
22 individuals if a breach of a covered garden leave
23 agreement is alleged; authorizing the court to modify
24 such an injunction if a covered employee, business,
25 entity, or individual establishes certain information

26 | by clear and convincing evidence; requiring that
27 | certain information be provided to the court under
28 | seal; providing that a prevailing covered employer is
29 | entitled to recover all available monetary damages for
30 | all available claims; providing that a prevailing
31 | party is entitled to reasonable attorney fees and
32 | costs; authorizing a covered employer to reduce the
33 | salary or benefits of a covered employee if he or she
34 | engages in gross misconduct; providing that such a
35 | reduction is not a breach of the covered garden leave
36 | agreement; creating s. 542.45, F.S.; providing
37 | applicability; providing that certain covered
38 | noncompete agreements are not a restraint of trade or
39 | an attempt to monopolize trade or commerce; providing
40 | notice requirements for covered noncompete agreements;
41 | providing that covered noncompete agreements do not
42 | affect other agreements; requiring a court to enter a
43 | preliminary injunction to stop covered employees,
44 | businesses, entities, or individuals if a breach of a
45 | covered noncompete agreement is alleged; authorizing
46 | the court to modify such an injunction if a covered
47 | employee, business, entity, or individual establishes
48 | certain information by clear and convincing evidence;
49 | requiring that certain information be provided to the
50 | court under seal; providing that a prevailing covered

51 employer is entitled to recover all available monetary
 52 damages for all available claims; providing that a
 53 prevailing party is entitled to reasonable attorney
 54 fees and costs; authorizing a covered employer to
 55 reduce the salary or benefits of a covered employee if
 56 he or she engages in gross misconduct; providing that
 57 such a reduction is not a breach of the covered
 58 noncompete agreement; providing construction regarding
 59 a restrictive covenant that does not meet the
 60 definition of a covered garden leave agreement or a
 61 covered noncompete agreement; providing an effective
 62 date.

63
 64 Be It Enacted by the Legislature of the State of Florida:

65
 66 **Section 1.** Part I of chapter 542, Florida Statutes,
 67 consisting of ss. 542.15-542.36, Florida Statutes, is created
 68 and entitled the "Florida Antitrust Act of 1980."

69 **Section 2.** Part II of chapter 542, Florida Statutes,
 70 consisting of ss. 542.41-542.45, Florida Statutes, is created
 71 and entitled the "Florida Contracts Honoring Opportunity,
 72 Investment, Confidentiality, and Economic Growth (CHOICE) Act."

73 542.41 Short title.—This part may be cited as the "Florida
 74 Contracts Honoring Opportunity, Investment, Confidentiality, and
 75 Economic Growth (CHOICE) Act."

76 542.42 Legislative findings.—The Legislature finds that a
77 proper and legitimate state interest is served by enforcing
78 strong legal protections in contracts between employers and
79 contracted personnel which encourage optimal levels of
80 information sharing and training and development. The
81 Legislature further finds that alternative means of protecting
82 confidential information and client relationships, such as
83 nondisclosure agreements, fixed-duration term contracts, and
84 nonsolicitation clauses in employment contracts, are inadequate
85 to protect against the significant global risks faced by
86 companies in this state. The Legislature further finds that
87 predictability in the enforcement of contracts described in this
88 part encourages investment in this state. Therefore, the
89 Legislature determines and declares that this part fulfills an
90 important state interest.

91 542.43 Definitions.—For the purposes of this part, the
92 term:

93 (1) "Annual mean wage of employees in Florida" or "annual
94 mean wage" means the most recent annual mean wage as calculated
95 by the United States Department of Labor Bureau of Labor
96 Statistics, or its successor calculation, for all occupations in
97 this state.

98 (2) "Benefit" means access to health insurance, life
99 insurance, or disability insurance that is the same as or
100 similar to the insurance that a covered employee had access to

101 and at the same cost to that employee during the month before
102 the commencement of his or her notice period.

103 (3) "Covered employee" means an employee or individual
104 contractor who earns or is reasonably expected to earn a salary
105 greater than twice the annual mean wage, or who has access to
106 his or her employer's or client's confidential information or
107 customer relationships. The term does not include a person
108 classified as a medical professional as defined in s. 1006.0626.

109 (4) "Covered employer" means an entity or individual who
110 employs or engages a covered employee.

111 (5) "Covered garden leave agreement" means a written
112 agreement, or part of a written agreement, between a covered
113 employee and covered employer in which:

114 (a) The covered employee and covered employer agree to up
115 to, but no more than, 4 years of advance, express notice before
116 terminating the employment or contractor relationship;

117 (b) The covered employee agrees not to resign before the
118 end of such notice period; and

119 (c) The covered employer agrees to retain the covered
120 employee for the duration of such notice period and to continue
121 paying the covered employee the same salary and providing the
122 same benefits that the covered employee received from the
123 covered employer in the last month before the commencement of
124 the notice period. The covered employer is not obligated to
125 provide discretionary incentive compensation or benefits or have

126 the covered employee continue performing any work during the
127 notice period.

128 (6) "Covered noncompete agreement" means a written
129 agreement, or a portion of a written agreement, between a
130 covered employee and a covered employer in which, for a period
131 not to exceed 4 years and within the geographic area defined in
132 the agreement, the covered employee agrees not to assume a role
133 with or for another business, entity, or individual:

134 (a) In which the covered employee would provide services
135 similar to the services provided to the covered employer during
136 the 3 years preceding the noncompete period; or

137 (b) In which it is reasonably likely the covered employee
138 would use the confidential information or customer relationships
139 of the covered employer.

140 (7) "Noncompete period" means the time from the covered
141 employee's termination of employment through the end of the
142 agreed-upon postemployment period of noncompetition as set forth
143 in the covered noncompete agreement.

144 (8) "Notice period" means the date from the covered
145 employee's or covered employer's written notice of intent to
146 terminate the covered employee's employment through the date of
147 termination as set forth in a covered garden leave agreement.

148 (9) "Primary place of work" means the location where the
149 covered employee spends more work time than any other single
150 workplace.

151 (10) "Salary" means the base compensation, calculated on
152 an annualized basis, which a covered employer pays a covered
153 employee, including a base wage, a salary, a professional fee,
154 or other compensation for personal services, and the fair market
155 value of any benefit other than cash. Salary does not include
156 health care benefits, severance pay, retirement benefits,
157 expense reimbursement, distribution of earnings and profits not
158 included as compensation for personal services, discretionary
159 incentives or awards, or anticipated but indeterminable
160 compensation, including tips, bonuses, or commissions.

161 542.44 Covered garden leave agreement.—

162 (1) APPLICABILITY.—This section applies to:

163 (a) A covered garden leave agreement with a covered
164 employee who maintains a primary place of work in this state,
165 regardless of any applicable choice of law provisions; or

166 (b) A covered employee who is subject to a covered garden
167 leave agreement with a covered employer with a significant nexus
168 to this state.

169
170 If any provision of this section is in conflict with any other
171 law, the provisions of this section shall govern.

172 (2) RESTRAINT OF TRADE.—A covered garden leave agreement
173 does not violate public policy as a restraint of trade, as
174 described in s. 542.18, or an attempt to monopolize trade or
175 commerce in this state, as described in s. 542.19, and is fully

176 enforceable according to its terms, provided that:

177 (a) A covered employee was advised, in writing, of the
178 right to seek counsel prior to execution of the covered garden
179 leave agreement and was provided notice as described in
180 subsection (3);

181 (b) A covered employee acknowledges, in writing, receipt
182 of confidential information or customer relationships; and

183 (c) The covered garden leave agreement provides that:

184 1. After the first 90 days of the notice period, the
185 covered employee does not have to provide services to the
186 covered employer;

187 2. The covered employee may engage in nonwork activities
188 at any time, including during normal business hours, during the
189 remainder of the notice period; and

190 3. The covered employee may, with the permission of the
191 covered employer, work for another employer while still employed
192 by the covered employer during the remainder of the notice
193 period.

194 4. The garden leave agreement notice period may be reduced
195 during the notice period if the covered employer provides at
196 least 30 days' advance notice in writing to the covered
197 employee.

198 (3) NOTICE.—

199 (a) A covered employer must provide a proposed covered
200 garden leave agreement to:

201 1. A prospective covered employee at least 7 days before
202 an offer of employment expires; or

203 2. A current covered employee at least 7 days before the
204 date that an offer to enter into a covered garden leave
205 agreement expires.

206 (b) A covered employer may, as provided for in the covered
207 garden leave agreement, shorten the term of the notice period at
208 any time during the notice period by providing at least 30 days'
209 advance notice in writing to the covered employee.

210 (4) OTHER AGREEMENTS.—This section does not affect or
211 limit the enforceability of any other employment agreement or
212 any other agreement.

213 (5) BREACH OF A COVERED GARDEN LEAVE AGREEMENT; REMEDIES.—

214 (a) Upon application by a covered employer seeking
215 enforcement of a covered garden leave agreement, a court must
216 preliminarily enjoin a covered employee from providing services
217 to any business, entity, or individual other than the covered
218 employer during the notice period. The court may modify or
219 dissolve the injunction only if the covered employee establishes
220 by clear and convincing evidence that:

221 1. The covered employee will not perform, during the
222 notice period, any work similar to the services provided to the
223 covered employer during the 3-year period preceding the
224 commencement of the notice period, or use confidential
225 information or customer relationships of the covered employer;

226 or

227 2. The covered employer has failed to pay or provide the
228 salary and benefits provided for in the covered garden leave
229 agreement during the notice period and has had a reasonable
230 opportunity to cure the failure.

231 (b) Upon application by a covered employer seeking
232 enforcement of a covered garden leave agreement, a court must
233 preliminarily enjoin a business, an entity, or an individual
234 from engaging a covered employee during the covered employee's
235 notice period. The court may modify or dissolve the injunction
236 only if the business, entity, or individual establishes by clear
237 and convincing evidence, based on public or other
238 nonconfidential information, that:

239 1. The covered employee will not provide any services
240 similar to the services provided to the covered employer during
241 the 3-year period preceding the commencement of the notice
242 period, or use confidential information or customer
243 relationships of the covered employer; or

244 2. The business or individual seeking to employ or engage
245 the covered employee is not engaged in, and is not planning or
246 preparing to engage in, any business activity similar to those
247 engaged in by the covered employer during the notice period.

248
249 Any information filed with the court which the covered employer
250 deems to be confidential must be filed under seal to protect

251 confidentiality or avoid substantial injury. A court must
252 presume that an employee or individual contractor has access to
253 confidential information or customer relationships if the
254 employee or individual contractor acknowledges the access or
255 receipt of such access in writing.

256 (c) The injunctive relief provided under this section is
257 not an exclusive remedy, and a prevailing covered employer is
258 entitled to recover all available monetary damages for all
259 available claims.

260 (d) In any action to enforce this section, the prevailing
261 party is entitled to reasonable attorney fees and costs.

262 (e) If the covered employee engages in gross misconduct
263 against the covered employer, the covered employer may reduce
264 the salary or benefits of the covered employee or take other
265 appropriate action during the notice period, which reduction or
266 other action may not be considered a breach of the covered
267 garden leave agreement.

268 542.45 Covered noncompete agreements.—

269 (1) APPLICABILITY.—This section applies to:

270 (a) A covered noncompete agreement with a covered employee
271 who maintains a primary place of work in this state, regardless
272 of any applicable choice of law provisions; or

273 (b) A covered employee who is subject to a covered
274 noncompete agreement with a covered employer with a significant
275 nexus to this state.

276
277 In either case, if any provision of this section is in conflict
278 with any other law, the provisions of this section govern.

279 (2) RESTRAINT OF TRADE.—A covered noncompete agreement
280 does not violate public policy as a restraint of trade, as
281 described in s. 542.18, or an attempt to monopolize trade or
282 commerce in this state, as described in s. 542.19, and is fully
283 enforceable according to its terms, provided that:

284 (a) A covered employee was advised, in writing, of the
285 right to seek counsel prior to execution of the covered
286 noncompete agreement and was provided notice as described in
287 subsection (3);

288 (b) A covered employee acknowledges, in writing, receipt
289 of confidential information or customer relationships; and

290 (c) A covered noncompete agreement provides that the
291 noncompete period is reduced day-for-day by any nonworking
292 portion of the notice period, pursuant to a covered garden leave
293 agreement between the covered employee and the covered employer,
294 if applicable.

295 (3) NOTICE.—A covered employer must provide a proposed
296 covered noncompete agreement to:

297 (a) A prospective covered employee at least 7 days before
298 an offer of employment expires; or

299 (b) A current covered employee at least 7 days before the
300 date that an offer to enter into a covered noncompete agreement

301 expires.

302 (4) OTHER AGREEMENTS.—This section does not affect or
303 limit the enforceability of any other employment agreement or
304 any other agreement.

305 (5) BREACH OF COVERED NONCOMPETE AGREEMENT; REMEDIES.—

306 (a) Upon application by a covered employer seeking
307 enforcement of a covered noncompete agreement, a court must
308 preliminarily enjoin a covered employee from providing services
309 to any business, entity, or individual other than the covered
310 employer during the noncompete period. The court may modify or
311 dissolve the injunction only if the covered employee establishes
312 by clear and convincing evidence that:

313 1. The covered employee will not perform, during the
314 noncompete period, any work similar to the services provided to
315 the covered employer during the 3-year period preceding the
316 commencement of the noncompete period, or use confidential
317 information or customer relationships of the covered employer;
318 or

319 2. The covered employer has failed to pay or provide the
320 consideration provided for in the covered noncompete agreement
321 and has had a reasonable opportunity to cure the failure.

322 (b) Upon application by a covered employer seeking
323 enforcement of a covered noncompete agreement, a court must
324 preliminarily enjoin a business, an entity, or an individual
325 from engaging a covered employee during the covered employee's

326 noncompete period. The court may modify or dissolve the
327 injunction only if the business, entity, or individual
328 establishes by clear and convincing evidence, based on public or
329 other nonconfidential information, that:

330 1. The covered employee will not provide any services
331 similar to the services provided to the covered employer during
332 the 3-year period preceding the commencement of the noncompete
333 period, or use confidential information or customer
334 relationships of the covered employer; or

335 2. The business or individual seeking to employ or engage
336 the covered employee is not engaged in, and is not planning or
337 preparing to engage in, any business activity in the geographic
338 area specified in the noncompete agreement during the noncompete
339 period if such business activity is similar to those engaged in
340 by the covered employer.

341
342 Any information filed with the court which the covered employer
343 deems to be confidential must be filed under seal to protect
344 confidentiality or avoid substantial injury. A court must
345 presume that an employee or individual contractor has access to
346 confidential information or customer relationships if the
347 employee or individual contractor acknowledges the access or
348 receipt of such access in writing.

349 (c) The injunctive relief provided in this section is not
350 an exclusive remedy, and a prevailing covered employer is

351 entitled to recover all available monetary damages for all
 352 available claims.

353 (d) In any action to enforce this section, the prevailing
 354 party is entitled to reasonable attorney fees and costs.

355 (e) If the covered employee engages in gross misconduct
 356 against the covered employer, the covered employer may reduce
 357 the salary or benefits of the covered employee or take other
 358 appropriate action during the noncompete period, which reduction
 359 or other action may not be considered a breach of the covered
 360 noncompete agreement.

361
 362 Any action regarding a restrictive covenant that does not meet
 363 the definition of a covered garden leave agreement or a covered
 364 noncompete agreement as provided in this part is governed by s.
 365 542.335.

366 **Section 3.** This act shall take effect July 1, 2025.