The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 922
INTRODUCER:	Judiciary Committee; Commerce and Tourism Committee and Senator Leek
SUBJECT:	Employment Agreements
DATE:	April 15, 2025 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	**Fav/CS**
2.	Bond	Cibula	JU	**Fav/CS**
3.	McMillan	Yeatman	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 922 creates the "Florida Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth (CHOICE) Act," which establishes the framework for the use of covered garden leave agreements and covered noncompete agreements between a covered employer and a covered employee. A covered garden leave agreement or a covered noncompete agreement does not violate state antitrust laws. An employee must be given 7 days to review a covered agreement before signing. The bill limits covered agreements to 4 years and provides for the enforcement of covered agreements.

A covered employee is one earning more than twice the annual mean wage in Florida or who has access to confidential information or customer relations. A covered garden leave agreement is an agreement to keep paying an existing covered employee even though the employee is not required to appear at work or produce any output. The employee agrees not to take any other employment during that period without the permission of the employer. A covered noncompete agreement is an agreement usually signed at the beginning of employment whereby the covered employee agrees not to work for a competitor for a set length of time after termination of employment.

The bill takes effect July 1, 2025.

II. Present Situation:

Federal Antitrust Laws

In 1890, Congress passed the first antitrust law, the Sherman Act, as a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. Congress subsequently passed two additional antitrust laws in 1914: the Federal Trade Commission Act, which created the Federal Trade Commission (FTC), and the Clayton Act. Currently, these are the three core federal antitrust laws.[1]

The Sherman Act

The Sherman Act outlaws every contract, combination, or conspiracy in restraint of trade, and any monopolization, attempted monopolization, or conspiracy or combination to monopolize. The Sherman Act does not prohibit every restraint of trade – only those that are unreasonable. For example, an agreement between two individuals to form a partnership may restrain trade, but may not do so unreasonably, and thus may be lawful under the antitrust laws. In contrast, certain acts are considered "per se" violations of the Sherman Act because they are harmful to competition. These include plain arrangements among competing individuals or businesses to fix prices, divide markets, or rig bids.[2]

The penalties for violating the Sherman Act can be severe. Although most enforcement actions are civil, the Sherman Act is also a criminal law, and individuals and businesses that violate it may be prosecuted by the U.S. Department of Justice. Criminal prosecutions are typically limited to intentional and clear violations. The Sherman Act imposes criminal penalties of up to $10 million for a corporation and $350,000 for an individual, along with up to 3 years in prison.[3] Under some circumstances, the maximum fines can be higher.[4]

The Federal Trade Commission Act

The Federal Trade Commission Act prohibits unfair methods of competition and unfair or deceptive acts or practices.[5] The U.S. Supreme Court has ruled that all violations of the Sherman Act also violate the FTC Act. Therefore, the FTC can bring cases under the FTC Act against the same kinds of activities that violate the Sherman Act. The FTC Act also reaches other practices that harm competition but may not fit neatly into categories of conduct formally prohibited by the Sherman Act. Only the FTC may bring cases under the FTC Act.[6]

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[1] *See The Antitrust Laws*, Federal Trade Commission, *available at* https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws (last visited Mar. 18, 2025).
[2] *Id.*
[3] *Antitrust Enforcement and the Consumer*, U.S. Department of Justice, *available at* https://www.govinfo.gov/content/pkg/GOVPUB-J-PURL-LPS16084/pdf/GOVPUB-J-PURL-LPS16084.pdf (last visited Mar. 18, 2025). *See also* 15 U.S.C.A. § 2
[4] *Id.*
[5] 15 U.S.C. §§ 41-58.
[6] *The Antitrust Laws*, Federal Trade Commission, *available at* https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws (last visited Mar. 18, 2025).

The Clayton Act

The Clayton Act addresses specific practices that the Sherman Act does not clearly prohibit, such as mergers and interlocking directorates.[7] It also bans mergers and acquisitions where the effect may substantially lessen competition or create a monopoly. As amended by the Robinson-Patman Act of 1936, the Clayton Act also prohibits certain discriminatory prices, services, and allowances in dealings between merchants. The Clayton Act was amended again in 1976 by the Hart-Scott-Rodino Antitrust Improvements Act to require companies planning large mergers or acquisitions to notify the government of their plans in advance. Additionally, private parties are authorized to sue for triple damages when they have been harmed by conduct that violates either the Sherman or Clayton Act and to obtain a court order prohibiting the anticompetitive practice prospectively.[8]

Florida Antitrust Laws

Florida law also provides protections against anticompetitive practices. Chapter 542, F.S., the Florida Antitrust Act of 1980, is intended to complement the body of federal law prohibiting restraints of trade or commerce in order to foster effective competition.[9] It outlaws every contract, combination, or conspiracy in restraint of trade or commerce in Florida[10] and any person from monopolizing or attempting or conspiring to monopolize any part of trade.[11]

Contracts in Restraint of Trade or Commerce

Generally, a contract in restraint of trade or commerce in Florida is unlawful.[12] However, non-competition restrictive covenants[13] contained in employment agreements that are reasonable in time, area, and line of business, are not prohibited.[14] In any action concerning enforcement of a restrictive covenant, a court may not enforce a 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.[15] The term "legitimate business interest" includes, but is not limited to:

- Trade secrets;[16]
- Valuable confidential business or professional information that does not otherwise qualify as trade secrets;

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[7] "Interlocking directorates" means the same person making business decisions for competing companies. *See also id*.
[8] *Id.*
[9] Section 542.16, F.S.
[10] Section 542.18, F.S.
[11] Section 542.19, F.S.
[12] Section 542.18, F.S.
[13] 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).
[14] Section 542.335(1), F.S.
[15] *Id*.
[16] Section 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.

- 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.[17]
- Any restrictive covenant not supported by a legitimate business interest is unlawful and is void and unenforceable.[18] A person seeking enforcement of a restrictive covenant must prove that the contractually specified restraint is reasonably necessary to protect the legitimate business interest or interests justifying the restriction.[19]

Trade Secrets

Section 812.081, F.S., defines a "trade secret" as the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof, whether tangible or intangible, and regardless of whether or how it is stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.[20]

Penalties

Florida law criminalizes the disclosure or theft of trade secrets. For example:

- Section 815.04, F.S., makes it a third degree felony[21] for a person to willfully, knowingly, and without authorization disclose or take data, programs, or supporting documentation that are trade secrets that reside or exist internal or external to a computer, computer system, computer network, or electronic device.[22]
- Section 812.081(2), F.S., makes it a third degree felony for a person to willfully and without authorization, obtain or use, or endeavor to obtain or use, a trade secret with the intent to either temporarily or permanently:

[17] Section 542.335(1)(b), F.S.
[18] *Id*.
[19] Section 542.335(1)(c), F.S.
[20] Section 812.081(1)(f), F.S.
[21] A third degree felony is punishable by up to 5 years imprisonment and a $5,000 fine. *See* ss. 775.082 and 775.083, F.S.
[22] The offense is a second degree felony if committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain property.

- Deprive or withhold from the trade secret's owner the control or benefit of a trade secret; or
- Appropriate a trade secret to his or her own use or to the use of another person not entitled to the trade secret.

- Section 812.081(3), F.S., makes it a second degree felony[23] for a person who traffics in, or endeavors to traffic in, a trade secret that he or she knows or should know was obtained or used without authorization.

Restrictive Covenants in Florida Health Care

Under s. 542.336, F.S., a restrictive covenant entered into with a physician who practices a medical specialty in a county where one entity employs or contracts with all physicians who practice that specialty in that county, is not supported by a legitimate business interest and is void and unenforceable.[24] The restrictive covenant remains void and unenforceable until three years after the date on which a second entity that employs or contracts with one or more physicians who practice that specialty begins serving patients in that county.[25]

In *21st Century Oncology, Inc.*, the plaintiff sought a preliminary injunction to enjoin the application and enforcement of s. 542.336, F.S. In August of 2019, the U.S. District Court for the Northern District of Florida denied the injunction. While s. 542.336, F.S., was found to impair the plaintiff's employment contracts within the meaning of the Contracts Clause, the court held that the degree of impairment did not outweigh the statute's significant, legitimate public purpose.[26]

Federal Trade Commission Rule

In September of 2024, the FTC's rule[27] against noncompete agreements was set to take effect to promote competition by banning noncompete agreements nationwide.[28] Under the rule, existing

[23] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. *See* ss. 775.082 and 775.083, F.S.
[24] Section 542.336, F.S.
[25] *Id*.
[26] The ostensible public purpose of section 542.336, F.S., is to reduce healthcare costs and improve patients' access to physicians. *See* s. 542.336, F.S.; ECF No. 64 at 8 (Attorney General's post-hearing brief, stating "section 542.336 explicitly sets forth its own rational basis in declaring that the restrictive covenants addressed by it are not supported by a legitimate business interest, restrict patient access to physicians, and increase costs"). It is well settled that access to affordable healthcare is a legitimate state interest." *See also 21st Century Oncology, Inc. v. Moody*, 402 F. Supp. 3d 1351, 1359 (N.D. Fla. 2019). "Allopathy" is a system of medical practice that emphasizes diagnosing and treating disease and the use of conventional, evidence-based therapeutic measures (such as drugs or surgery). *See also* Merriam-Webster Dictionary, "allopathy," *available at* https://www.merriam-webster.com/dictionary/allopathy (last visited Mar. 18, 2025). "Osteopathy" is a system of medical practice that emphasizes a holistic and comprehensive approach to patient care and utilizes the manipulation of musculoskeletal tissues along with therapeutic measures to prevent or treat disease. *See also* Merriam-Webster Dictionary, "osteopathy," *available at* https://www.merriam-webster.com/dictionary/osteopathy (last visited Mar. 18, 2025).
[27] 16 C.F.R. § 910.1-6
[28] *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. 18, 2025).

noncompete agreements[29] for most workers would no longer be enforceable.[30] Existing noncompete agreements for senior executives[31] would remain in force; however, new noncompete agreements, even if they involve senior executives would be banned.[32] 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.[33] 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.[34]

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.[35]

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.[36]

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.[37] 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.[38]

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[29] The rule defines "noncompete clause" as one that prevents the worker from seeking or accepting new employment "after the conclusion" of the current employment. Thus, under the rule "garden leave agreements" may or may not be prohibited depending on how they are structured. For instance, a garden leave agreement where the employee remains employed but is not allowed to access the business during the garden leave period should be permissible. *See id.*

[30] *Id.* The following are exceptions listed under the rule: (1) noncompete agreements that are entered into by a person pursuant to a bona fide sale of a business entity, of the person's ownership interest in a business entity, or of all or substantially all of a business entity's operating assets; (2) noncompete agreements where a cause of action related to a noncompete clause accrued prior to the effective date of the rule; and (3) where a person has a good faith basis to believe that the rule is inapplicable. *See* 16 C.F.R. § 910.1-6.

[31] The FTC defines "senior executive" as someone who earns at least $151,164 per year and has "policy making" authority. "Policy making" authority means a role that involves making decisions that significantly impact business.

[32] *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.

[33] *Id.*

[34] *Id.* The FTC found that employers have several alternatives to noncompete agreements that still enable them to protect their investments without having to enforce a noncompete agreement. For instance, trade secret laws and non-disclosure agreements both provide employers with means to protect proprietary and other sensitive information. *See id.*

[35] *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.

[36] *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.

[37] *Ryan, LLC v. Federal Trade Commission*, 746 F.Supp.3d 369 (N.D. Tex. 2024). This is a nationwide injunction.

[38] *Id.*

The term "garden leave"

The term or idea of "garden leave" or "gardening leave" first appears to have originated in England at the end of World War I. Soldiers suffering from shell shock and unable to fight would be sent home with full pay to tend to their garden, growing food for the war effort while rehabilitating. The term came into popular use in 1986 when it was used in the BBC sitcom Yes, Prime Minister. It is thought that the leave is called gardening leave because that's all the employee can do: they can't come in to work and they can't work for anyone else. All they can do is work in or sit in their garden.[39]

III. Effect of Proposed Changes:

Section 1 of the bill creates Part I of ch. 542, F.S., consisting of existing ss. 542.15-542.36, F.S., entitled "The Florida Antitrust Act of 1980." The new Part I contains all of current ch. 542, F.S., without substantive amendment. **Sections 3 to 21** of the bill make technical changes to those sections to account for the creation of part of a chapter.

Section 2 of the bill creates Part II of ch. 542, F.S., consisting of ss. 542.41-542.45, F.S., entitled the "Florida Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth (CHOICE) Act."

The bill establishes that the Legislature finds a proper and legitimate state interest is served by enforcing strong legal protections in contracts between employers and contracted personnel which encourage optimal levels of information sharing and training and development. The Legislature further finds that alternative means of protecting confidential information and client relationships, such as nondisclosure agreements, fixed-duration term contracts, and nonsolicitation clauses in employment contracts, are inadequate to protect against the significant global risks faced by companies in Florida. Additionally, the Legislature finds that predictability in the enforcement of contracts described in Part II of ch. 542, F.S., encourages investment in Florida. Therefore, the Legislature determines and declares that Part II of ch. 542, F.S., fulfills an important state interest.

Definitions

The bill creates the following definitions:

- "Annual mean wage of employees in Florida" or "annual mean wage" means the most recent annual mean wage as calculated by the United States Department of Labor Bureau of Labor Statistics, or its successor calculation, for all occupations in Florida.[40]
- "Benefit" means access to health insurance, life insurance, or disability insurance that is the same as or similar to the insurance that a covered employee had access to and at the same cost to that employee during the month before the commencement of his or her notice period.

[39] Edmonson, *Gardening Leave?*, March 25, 2019, *available at* https://www.linkedin.com/pulse/gardening-leave-david-edmondson (last visit March 24, 2025).

[40] According to the United States Department of Labor Bureau of Labor Statistics, the most recent annual mean wage for all occupations in Florida is $60,210. *Occupational Employment and Wage Statistics*, U.S. Bureau of Labor Statistics, *available at* https://www.bls.gov/oes/current/oes_fl.htm#00-0000 (last visited Mar. 18, 2025).

- "Covered employee" means 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. A 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. The term does not include a person classified as a medical professional[41] as defined in s. 1006.0626, F.S.
- "Covered employer" means an entity or individual who employs or engages a covered employee.
- "Covered garden leave agreement" means a written agreement, or part of a written agreement, between a covered employee and covered employer in which:
  - The covered employee and covered employer agree to up to, but no more than, 4 years of advance, express notice before terminating the employment or contractor relationship;
  - The covered employee agrees not to resign before the end of such notice period; and
  - The covered employer agrees to retain the covered employee for the duration of such notice period and to continue paying the covered employee the same salary and providing the same benefits that the covered employee received from the covered employer in the last month before the commencement of the notice period.[42]
- "Covered noncompete agreement" means a written agreement, or a portion of a written agreement, between a covered employee and a covered employer in which, for a period not to exceed 4 years and within a specified geographic area, which may be global in scope, the covered employee agrees not to assume a role with or for another business, entity, or individual:
  - In which the covered employee would provide services similar to the services provided to the covered employer during the 3 years preceding the noncompete period; or
  - In which it is reasonably likely the covered employee would use the confidential information or customer relationships of the covered employer.
- "Noncompete period" means the time from the covered employee's termination of employment through the end of the agreed-upon postemployment period of noncompetition as set forth in the covered noncompete agreement.
- "Notice period" means the date from the covered employee's or covered employer's written notice of intent to terminate the covered employee's employment through the date of termination as set forth in a covered garden leave agreement.
- "Primary place of work" means the location where the covered employee spends more work time than any other single workplace.
- "Salary" means the base compensation, calculated on an annualized basis, which a covered employer pays a covered employee, including a base wage, a salary, a professional fee, or other compensation for personal services, and the fair market value of any benefit other than cash. Salary does not include health care benefits, severance pay, retirement benefits, expense reimbursement, distribution of earnings and profits not included as compensation for

[41] Section 1006.0626, F.S., defines "medical professional" as a physician licensed under chapter 458 or chapter 459, F.S., a physician assistant licensed under chapter 458 or chapter 459, F.S., or an advanced practice registered nurse licensed under s. 464.012, F.S, who provides epilepsy or seizure disorder care.

[42] The bill provides that the covered employer is not obligated to provide discretionary incentive compensation or benefits or have the covered employee continue performing any work during the notice period.

personal services, discretionary incentives or awards, or anticipated but indeterminable compensation, including tips, bonuses, or commissions.

Applicability -- In General

This section of the bill applies to a covered garden leave agreement or a covered noncompete agreement with a covered employee[43] who maintains a primary place of work in Florida, as well as to a covered employee who is subject to a covered garden leave agreement or a covered noncompete agreement with a covered employer whose principal place of business is in Florida. If any provision of ss. 542.44 or 542.45, F.S., are in conflict with any other law, the provisions of ss. 542.44 or 542.45, F.S., apply.

Certain Garden Leave Agreements Authorized

The bill provides that a covered garden leave agreement does not violate public policy as a restraint of trade[44] or as an attempt to monopolize trade or commerce[45] in Florida, and is fully enforceable according to its terms, if the following requirements are met:

- A covered employee is provided proper notice of the covered garden leave agreement before its execution; 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; and
  - The covered employee may, with the permission of the covered employer, work for another employer while still employed by the covered employer during the remainder of the notice period.

Certain Noncompete Agreements Authorized

The bill establishes that a covered noncompete agreement does not violate public policy as a restraint of trade, or as an attempt to monopolize trade or commerce in Florida, and is fully enforceable according to its terms, provided that:

- A covered employee is provided proper notice of the covered noncompete agreement before its execution; and
- A covered noncompete agreement provides that the noncompete period is reduced day-for-day by any nonworking portion of the notice period, pursuant to a covered garden leave agreement between the covered employee and the covered employer, if applicable.

[43] A "covered employee" means 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. A 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.
[44] *See* s. 542.18, F.S.
[45] *See* s. 542.19, F.S.

Notice Requirements for Garden Leave Agreements and Noncompete Agreements

The bill requires proper notice of a covered garden leave agreement or a covered noncompete agreement in the following circumstances:

- For a prospective covered employee, at least 7 days before a prospective covered employee's offer of employment expires; or
- For a current covered employee, at least 7 days before an offer to enter into a covered garden leave agreement expires.

In either case, a prospective or current covered employee is required to acknowledge in writing that he or she was expressly advised of the right to seek legal counsel before the execution of the covered garden leave agreement or the covered noncompete agreement. However, the covered employer may, without breach of the covered garden leave agreement, waive any portion of the notice requirement by providing at least 30 days' advance notice in writing to the covered employee.

Other Agreements with Employee

The bill provides that this section of the bill does not affect or limit the enforceability of any other employment agreement or any other agreement.

Remedies -- Garden Leave Agreements

Upon application by a covered employer, a court must preliminarily enjoin a covered employee from providing services to any business, entity, or individual other than the covered employer during the notice period. The court may modify or dissolve the injunction only 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 during the 3-year period preceding the commencement of the notice period, or use confidential information or customer relationships of 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.

Remedies -- Noncompete Agreements

Upon application by a covered employer, a court must preliminarily enjoin a business, an entity, or an individual from engaging a covered employee during the covered employee's noncompete period. The court may modify or dissolve the injunction only if the business, entity, or individual establishes by clear and convincing evidence, based on public or other nonconfidential information, that:

- The covered employee will not provide any services similar to the services provided to the covered employer during the 3-year period preceding the commencement of the noncompete period, 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 or preparing to engage in, any business activity similar to those engaged in by the covered employer during the noncompete period.

Miscellaneous Other Provisions Regarding Garden Leave Agreements and Noncompete Agreements

Any information filed with the court which the covered employer deems to be confidential must be filed under seal to protect trade secrets or avoid substantial injury. This provision will require parties to a lawsuit regarding a covered garden leave agreement or covered noncompete agreement will be required to comply with the filing requirements of Rule 2.420(d)(2) of the Florida Rules of General Practice and Judicial Administration and the court will have to rule that the information qualifies for an exemption pursuant to existing public records laws.

The injunctive relief provided is not an exclusive remedy, and a prevailing covered employer is entitled to recover all available monetary damages for all available claims.

In any action to enforce this section, the prevailing party is entitled to reasonable attorney fees and costs.

If the covered employee engages in gross misconduct against the covered employer, the covered employer may reduce the salary or benefits of the covered employee or take other appropriate action during the notice period or the noncompete period, which reduction or other action may not be considered a breach of the covered garden leave agreement or the covered noncompete agreement.

The bill provides that any action regarding a restrictive covenant that does not meet the definitions of covered garden leave agreement or covered noncompete agreement governed by the provisions created by this bill is governed by s. 542.335, F.S. That section generally regulates restraints on trade or commerce.

Effective Date

Section 22 of the bill provides that it takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Sections 542.44(2)(b) and 542.45(2)(b), created by this bill, provide that: “Any information filed with the court which the covered employer deems to be confidential must be filed under seal to protect confidentiality or avoid substantial injury.” To the extent that this language creates a directive requiring parties to ask the court to seal the information under existing public records law, they are enforceable. However, this language cannot create a new public records exemption because a new exemption must be created in a separate bill. Fla. Const. Art. I, s. 24(c).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article VI, Paragraph 2 of the U.S. Constitution, commonly referred to as the Supremacy Clause, establishes that the federal constitution, and federal law generally, take precedence over state laws and constitutions. The Supremacy Clause also prohibits states from interfering with the federal government's exercise of its constitutional powers and from assuming any functions that are exclusively entrusted to the federal government. It does not, however, allow the federal government to review or veto state laws before they take effect.[46]

As described in the "Present Situation" of this bill analysis, on August 20, 2024, the U.S. District Court for the Northern District of Texas issued an order stopping the FTC from enforcing the noncompete rule. The FTC has appealed the decision.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[46] *Supremacy Clause*, Cornell Law School, Legal Information Institute, *available at* https://www.law.cornell.edu/wex/supremacy_clause (last visited Mar. 18, 2025).

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 542.41, 542.45, 542.42, 542.43, and 542.44.
This bill amends the following sections of the Florida Statutes: 542.15, 542.16, 542.17, 542.20, 542.22, 542.23, 542.235, 542.24, 542.25, 542.26, 542.27, 542.28, 542.29, 542.30, 542.31, 542.32, 542.33, 542.35, and 542.36.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Judiciary on April 1, 2025:
The committee substitute renames the new Part II of ch. 542, F.S., which is created by the bill, as the CHOICE Act; limits application of new statutes on covered agreements to only a business whose principal place of business is in the state or to an employee whose principal place of employment is in the state; and makes numerous grammar and style improvements. It also makes technical changes to ss. 542.15 through 542.36, F.S., to conform to the new classification as Part I of ch. 542, F.S.

CS by Commerce and Tourism on March 17, 2025:
The committee substitute clarifies that a covered employer is not obligated to provide "discretionary benefits" or have the covered employee continue performing any work during the notice period. The amendment also clarifies that a provision should read "covered garden leave agreement," instead of "covered garden agreement." Lastly, the amendment fixes a drafting error to the title of a subsection in the bill.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.