

By Senator Leek

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A bill to be entitled
An act relating to employment agreements; creating
part I of ch. 542, F.S., entitled "The Florida
Antitrust Act of 1980"; creating part II of ch. 542,
F.S., entitled "The Florida Trade Secret Protection
Act"; creating s. 542.41, F.S.; providing a short
title; creating s. 542.42, F.S.; providing legislative
findings; creating s. 542.43, F.S.; defining terms;
creating s. 542.44, F.S.; providing applicability;
providing that certain covered garden leave agreements
are not a restraint of trade or an attempt to
monopolize trade or commerce; providing notice
requirements for covered garden leave agreements;
providing that a covered employer may waive any
portion of such notice requirements by providing a
specified amount of advance written notice to the
covered employee; providing that covered garden leave
agreements do not affect other agreements; requiring a
court to enter a preliminary injunction to stop
covered employees, businesses, entities, or
individuals if a breach of a covered garden leave
agreement is alleged; authorizing the court to modify
such an injunction if a covered employee, business,
entity, or individual establishes certain information
by clear and convincing evidence; requiring that
certain information be provided to the court under
seal; providing that a prevailing covered employer is
entitled to recover all available monetary damages for
all available claims; providing that a prevailing

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

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definition of a covered garden leave agreement or a
covered noncompete agreement; providing an effective
date.

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

Section 1. Part I of chapter 542, Florida Statutes,
consisting of ss. 542.15-542.36, Florida Statutes, is created
and entitled "The Florida Antitrust Act of 1980."

Section 2. Part II of chapter 542, Florida Statutes,
consisting of ss. 542.41-542.45, Florida Statutes, is created
and entitled "The Florida Trade Secret Protection Act."

542.41 Short title.—This part may be cited as "The Florida
Trade Secret Protection Act."

542.42 Legislative findings.—The Legislature finds that 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 this state. The Legislature further finds that
predictability in the enforcement of contracts described in this
part encourages investment in this state. Therefore, the
Legislature determines and declares that this part fulfills an
important state interest.

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88 542.43 Definitions.—For the purposes of this part, the
89 term:

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

95 (2) "Benefit" means access to health insurance, life
96 insurance, or disability insurance that is the same as or
97 similar to the insurance that a covered employee had access to
98 and at the same cost to that employee during the month before
99 the commencement of his or her notice period.

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

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

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

115 (a) The covered employee and covered employer agree to up
116 to, but no more than, 4 years of advance, express notice before

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terminating the employment or contractor relationship;

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

(c) 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. 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.

(6) "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:

(a) 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

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

(7) "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.

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

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

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

163 542.44 Covered garden leave agreement.—

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

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

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

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172 If any provision of this section is in conflict with any other
173 law, the provisions of this section shall govern.

174 (2) RESTRAINT OF TRADE.—A covered garden leave agreement

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175 does not violate public policy as a restraint of trade, as
176 described in s. 542.18, or an attempt to monopolize trade or
177 commerce in this state, as described in s. 542.19, and is fully
178 enforceable according to its terms, provided that:

179 (a) A covered employee is provided proper notice of the
180 covered garden agreement before its execution, as described in
181 subsection (3); and

182 (b) The covered garden leave agreement provides that:

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

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

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

193 (3) NOTICE; WAIVER OF NOTICE.—Proper notice of a covered
194 garden leave agreement requires:

195 (a) For a prospective covered employee, at least 7 days
196 before a prospective covered employee's offer of employment
197 expires.

198 (b) For a current covered employee, at least 7 days before
199 an offer to enter into a covered garden leave agreement expires.

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201 In either case, a prospective or current covered employee must
202 acknowledge in writing that he or she was expressly advised of
203 the right to seek legal counsel before the execution of the

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covered garden leave agreement.

(c) The covered employer may, without breach of the covered garden leave agreement, waive any portion of this subsection by providing at least 30 days' advance notice in writing to the covered employee.

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

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

(a) 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:

1. 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

2. 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.

(b) 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 notice period. The court may modify or dissolve the injunction only if the business, entity, or individual establishes by clear

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and convincing evidence, based on public or other
nonconfidential information, that:

1. 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 notice
period, or use confidential information or customer
relationships of the covered employer; or

2. 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 notice period.

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.

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

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

(e) 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, which reduction or
other action may not be considered a breach of the covered
garden leave agreement.

542.45 Covered noncompete agreements.-

(1) APPLICABILITY.-This section applies to:

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

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

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

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

(a) A covered employee is provided proper notice of the covered noncompete agreement before its execution, as described in subsection (3); and

(b) 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.

(3) NOTICE; WAIVER OF NOTICE.—Proper notice of a covered noncompete agreement requires:

(a) For a prospective covered employee, at least 7 days before a prospective covered employee's offer of employment expires.

(b) For a current covered employee, at least 7 days before an offer to enter into a covered noncompete agreement expires.

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292 In either case, a prospective or current covered employee must
293 acknowledge in writing that he or she was expressly advised of
294 the right to seek legal counsel before the execution of the
295 covered noncompete agreement.

296 (4) OTHER AGREEMENTS.—This section does not affect or limit
297 the enforceability of any other employment agreement or any
298 other agreement.

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

300 (a) Upon application by a covered employer, a court must
301 preliminarily enjoin a covered employee from providing services
302 to any business, entity, or individual other than the covered
303 employer during the noncompete period. The court may modify or
304 dissolve the injunction only if the covered employee establishes
305 by clear and convincing evidence that:

306 1. The covered employee will not perform, during the
307 noncompete period, any work similar to the services provided to
308 the covered employer during the 3-year period preceding the
309 commencement of the noncompete period, or use confidential
310 information or customer relationships of the covered employer;
311 or

312 2. The covered employer has failed to pay or provide the
313 salary and benefits provided for in the covered noncompete
314 agreement during the noncompete period and has had a reasonable
315 opportunity to cure the failure.

316 (b) Upon application by a covered employer, a court must
317 preliminarily enjoin a business, an entity, or an individual
318 from engaging a covered employee during the covered employee's
319 noncompete period. The court may modify or dissolve the

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injunction only if the business, entity, or individual establishes by clear and convincing evidence, based on public or other nonconfidential information, that:

1. 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

2. 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.

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.

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

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

(e) 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 noncompete period, which reduction or other action may not be considered a breach of the covered noncompete agreement.

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349 Any action regarding a restrictive covenant that does not meet
350 the definition set forth in this section of a covered garden
351 leave agreement or a covered noncompete agreement is governed by
352 s. 542.335.

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