

By the Committee on Commerce and Tourism; and Senator Leek

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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 Trade Secret Protection  
6       Act"; creating s. 542.41, F.S.; providing a short  
7       title; creating s. 542.42, F.S.; providing legislative  
8       findings; creating s. 542.43, F.S.; defining terms;  
9       creating s. 542.44, F.S.; providing applicability;  
10      providing that certain covered garden leave agreements  
11      are not a restraint of trade or an attempt to  
12      monopolize trade or commerce; providing notice  
13      requirements for covered garden leave agreements;  
14      providing that a covered employer may waive any  
15      portion of such notice requirements by providing a  
16      specified amount of advance written notice to the  
17      covered employee; providing that covered garden leave  
18      agreements do not affect other agreements; requiring a  
19      court to enter a preliminary injunction to stop  
20      covered employees, businesses, entities, or  
21      individuals if a breach of a covered garden leave  
22      agreement is alleged; authorizing the court to modify  
23      such an injunction if a covered employee, business,  
24      entity, or individual establishes certain information  
25      by clear and convincing evidence; requiring that  
26      certain information be provided to the court under  
27      seal; providing that a prevailing covered employer is  
28      entitled to recover all available monetary damages for  
29      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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59 definition of a covered garden leave agreement or a  
60 covered noncompete agreement; providing an effective  
61 date.

62  
63 Be It Enacted by the Legislature of the State of Florida:

64  
65 Section 1. Part I of chapter 542, Florida Statutes,  
66 consisting of ss. 542.15-542.36, Florida Statutes, is created  
67 and entitled "The Florida Antitrust Act of 1980."

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

71 542.41 Short title.—This part may be cited as "The Florida  
72 Trade Secret Protection Act."

73 542.42 Legislative findings.—The Legislature finds that a  
74 proper and legitimate state interest is served by enforcing  
75 strong legal protections in contracts between employers and  
76 contracted personnel which encourage optimal levels of  
77 information sharing and training and development. The  
78 Legislature further finds that alternative means of protecting  
79 confidential information and client relationships, such as  
80 nondisclosure agreements, fixed-duration term contracts, and  
81 nonsolicitation clauses in employment contracts, are inadequate  
82 to protect against the significant global risks faced by  
83 companies in this state. The Legislature further finds that  
84 predictability in the enforcement of contracts described in this  
85 part encourages investment in this state. Therefore, the  
86 Legislature determines and declares that this part fulfills an  
87 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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117 terminating the employment or contractor relationship;

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

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

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

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

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

142 (7) "Noncompete period" means the time from the covered  
143 employee's termination of employment through the end of the  
144 agreed-upon postemployment period of noncompetition as set forth  
145 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.

171  
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 leave agreement before its execution, as  
181 described in 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.—

194 (a) Proper notice of a covered garden leave agreement  
195 requires:

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

199 2. For a current covered employee, at least 7 days before  
200 an offer to enter into a covered garden leave agreement expires.

201 (b) 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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204 covered garden leave agreement.

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

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

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

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

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

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

228 (b) Upon application by a covered employer, a court must  
229 preliminarily enjoin a business, an entity, or an individual  
230 from engaging a covered employee during the covered employee's  
231 notice period. The court may modify or dissolve the injunction  
232 only if the business, entity, or individual establishes by clear



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

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

240 2. The business or individual seeking to employ or engage  
241 the covered employee is not engaged in, and is not planning or  
242 preparing to engage in, any business activity similar to those  
243 engaged in by the covered employer during the notice period.

244  
245 Any information filed with the court which the covered employer  
246 deems to be confidential must be filed under seal to protect  
247 trade secrets or avoid substantial injury.

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

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

254 (e) If the covered employee engages in gross misconduct  
255 against the covered employer, the covered employer may reduce  
256 the salary or benefits of the covered employee or take other  
257 appropriate action during the notice period, which reduction or  
258 other action may not be considered a breach of the covered  
259 garden leave agreement.

260 542.45 Covered noncompete agreements.-

261 (1) APPLICABILITY.-This section applies to:

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

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

268  
269 In either case, if any provision of this section is in conflict  
270 with any other law, the provisions of this section govern.

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

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

279 (b) A covered noncompete agreement provides that the  
280 noncompete period is reduced day-for-day by any nonworking  
281 portion of the notice period, pursuant to a covered garden leave  
282 agreement between the covered employee and the covered employer,  
283 if applicable.

284 (3) NOTICE.—Proper notice of a covered noncompete agreement  
285 requires:

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

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

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291  
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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320 injunction only if the business, entity, or individual  
321 establishes by clear and convincing evidence, based on public or  
322 other nonconfidential information, that:

323 1. The covered employee will not provide any services  
324 similar to the services provided to the covered employer during  
325 the 3-year period preceding the commencement of the noncompete  
326 period, or use confidential information or customer  
327 relationships of the covered employer; or

328 2. The business or individual seeking to employ or engage  
329 the covered employee is not engaged in, and is not planning or  
330 preparing to engage in, any business activity similar to those  
331 engaged in by the covered employer during the noncompete period.

332  
333 Any information filed with the court which the covered employer  
334 deems to be confidential must be filed under seal to protect  
335 trade secrets or avoid substantial injury.

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

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

342 (e) If the covered employee engages in gross misconduct  
343 against the covered employer, the covered employer may reduce  
344 the salary or benefits of the covered employee or take other  
345 appropriate action during the noncompete period, which reduction  
346 or other action may not be considered a breach of the covered  
347 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.