

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.