

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED                                         (Y/N)  
ADOPTED AS AMENDED                         (Y/N)  
ADOPTED W/O OBJECTION                     (Y/N)  
FAILED TO ADOPT                             (Y/N)  
WITHDRAWN                                     (Y/N)  
OTHER                                          

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1 Committee/Subcommittee hearing bill: Judiciary Committee  
2 Representative Koster offered the following:

3  
4        **Amendment (with title amendment)**

5        Remove lines 166-365 and insert:

6        (b) A covered garden leave agreement with a covered  
7 employer whose principal place of business is in this state and  
8 which employer is expressly governed by the laws of this state.

9  
10 If any provision of this section is in conflict with any other  
11 law, the provisions of this section shall govern.

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

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17 (a) A covered employee was advised, in writing, of the  
18 right to seek counsel prior to execution of the covered garden  
19 leave agreement and was provided notice as described in  
20 subsection (3);

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

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

24 1. After the first 90 days of the notice period, the  
25 covered employee does not have to provide services to the  
26 covered employer;

27 2. The covered employee may engage in nonwork activities  
28 at any time, including during normal business hours, during the  
29 remainder of the notice period;

30 3. The covered employee may, with the permission of the  
31 covered employer, work for another employer while still employed  
32 by the covered employer during the remainder of the notice  
33 period; and

34 4. The garden leave agreement notice period may be reduced  
35 during the notice period if the covered employer provides at  
36 least 30 days' advance notice in writing to the covered  
37 employee.

38 (3) NOTICE.—

39 (a) A covered employer must provide a proposed covered  
40 garden leave agreement to:

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

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

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

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

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

54 (a) Upon application by a covered employer seeking  
55 enforcement of a covered garden leave agreement, a court must  
56 preliminarily enjoin a covered employee from providing services  
57 to any business, entity, or individual other than the covered  
58 employer during the notice period. The court may modify or  
59 dissolve the injunction only if the covered employee establishes  
60 by clear and convincing evidence that:

61 1. The covered employee will not perform, during the  
62 notice period, any work similar to the services provided to the  
63 covered employer during the 3-year period preceding the  
64 commencement of the notice period, or use confidential

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65 information or customer relationships of the covered employer;  
66 or

67 2. The covered employer has failed to pay or provide the  
68 salary and benefits provided for in the covered garden leave  
69 agreement during the notice period and has had a reasonable  
70 opportunity to cure the failure.

71 (b) Upon application by a covered employer seeking  
72 enforcement of a covered garden leave agreement, a court must  
73 preliminarily enjoin a business, an entity, or an individual  
74 from engaging a covered employee during the covered employee's  
75 notice period. The court may modify or dissolve the injunction  
76 only if the business, entity, or individual establishes by clear  
77 and convincing evidence, based on public or other  
78 nonconfidential information, that:

79 1. The covered employee will not provide any services  
80 similar to the services provided to the covered employer during  
81 the 3-year period preceding the commencement of the notice  
82 period, or use confidential information or customer  
83 relationships of the covered employer; or

84 2. The business or individual seeking to employ or engage  
85 the covered employee is not engaged in, and is not planning or  
86 preparing to engage in, any business activity similar to that  
87 engaged in by the covered employer during the notice period.  
88

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89 Any information filed with the court which the covered employer  
90 deems to be confidential must be filed under seal to protect  
91 confidentiality or avoid substantial injury. A court must  
92 presume that an employee or individual contractor has access to  
93 confidential information or customer relationships if the  
94 employee or individual contractor acknowledges the access or  
95 receipt of such access in writing.

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

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

102 (e) If the covered employee engages in gross misconduct  
103 against the covered employer, the covered employer may reduce  
104 the salary or benefits of the covered employee or take other  
105 appropriate action during the notice period, which reduction or  
106 other action may not be considered a breach of the covered  
107 garden leave agreement.

108 542.45 Covered noncompete agreements.-

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

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

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113 (b) A covered noncompete agreement with a covered employer  
114 whose principal place of business is in this state and which  
115 employer is expressly governed by the laws of this state.

116  
117 In either case, if any provision of this section is in conflict  
118 with any other law, the provisions of this section govern.

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

124 (a) A covered employee was advised, in writing, of the  
125 right to seek counsel prior to execution of the covered  
126 noncompete agreement and was provided notice as described in  
127 subsection (3);

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

130 (c) A covered noncompete agreement provides that the  
131 noncompete period is reduced day-for-day by any nonworking  
132 portion of the notice period, pursuant to a covered garden leave  
133 agreement between the covered employee and the covered employer,  
134 if applicable.

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

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

139 (b) A current covered employee at least 7 days before the  
140 date that an offer to enter into a covered noncompete agreement  
141 expires.

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

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

146 (a) Upon application by a covered employer seeking  
147 enforcement of a covered noncompete agreement, a court must  
148 preliminarily enjoin a covered employee from providing services  
149 to any business, entity, or individual other than the covered  
150 employer during the noncompete period. The court may modify or  
151 dissolve the injunction only if the covered employee establishes  
152 by clear and convincing evidence that:

153 1. The covered employee will not perform, during the  
154 noncompete period, any work similar to the services provided to  
155 the covered employer during the 3-year period preceding the  
156 commencement of the noncompete period, or use confidential  
157 information or customer relationships of the covered employer;  
158 or

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

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162 (b) Upon application by a covered employer seeking  
163 enforcement of a covered noncompete agreement, a court must  
164 preliminarily enjoin a business, an entity, or an individual  
165 from engaging a covered employee during the covered employee's  
166 noncompete period. The court may modify or dissolve the  
167 injunction only if the business, entity, or individual  
168 establishes by clear and convincing evidence, based on public or  
169 other nonconfidential information, that:

170 1. The covered employee will not provide any services  
171 similar to the services provided to the covered employer during  
172 the 3-year period preceding the commencement of the noncompete  
173 period, or use confidential information or customer  
174 relationships of the covered employer; or

175 2. The business or individual seeking to employ or engage  
176 the covered employee is not engaged in, and is not planning or  
177 preparing to engage in, any business activity in the geographic  
178 area specified in the noncompete agreement during the noncompete  
179 period if such business activity is similar to that engaged in  
180 by the covered employer.

181  
182 Any information filed with the court which the covered employer  
183 deems to be confidential must be filed under seal to protect  
184 confidentiality or avoid substantial injury. A court must  
185 presume that an employee or individual contractor has access to  
186 confidential information or customer relationships if the

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187 employee or individual contractor acknowledges the access or  
188 receipt of such access in writing.

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

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

195 (e) If the covered employee engages in gross misconduct  
196 against the covered employer, the covered employer may reduce  
197 the salary or benefits of the covered employee or take other  
198 appropriate action during the noncompete period, which reduction  
199 or other action may not be considered a breach of the covered  
200 noncompete agreement.

201  
202 Any action regarding a restrictive covenant that does not meet  
203 the definition of a covered garden leave agreement or a covered  
204 noncompete agreement as provided in this part is governed by s.  
205 542.335.

206 **Section 4. Section 542.15, Florida Statutes, is amended to**  
207 **read:**

208 542.15 Short title.—This part ~~act~~ shall be known and may  
209 be cited as the "Florida Antitrust Act of 1980."

210 **Section 5. Section 542.16, Florida Statutes, is amended to**  
211 **read:**

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212           542.16 Purpose.—The Legislature declares it to be the  
213 purpose of this part ~~act~~ to complement the body of federal law  
214 prohibiting restraints of trade or commerce in order to foster  
215 effective competition. It is the intent of the Legislature that  
216 this part ~~act~~ be liberally construed to accomplish its  
217 beneficial purpose.

218           **Section 6. Section 542.17, Florida Statutes, is amended to**  
219 **read:**

220           542.17 Definitions.—Unless a different meaning is clearly  
221 indicated by the context, for the purposes of this part ~~chapter~~,  
222 the terms defined in this section have the following meanings  
223 ascribed to them:

224           (1) "Commodity" means any goods, merchandise, wares,  
225 produce, chose in action, land, article of commerce, or other  
226 tangible or intangible property, real, personal, or mixed, for  
227 use, consumption, production, enjoyment, or resale.

228           (2) "Service" means any kind of activity performed in  
229 whole or in part for economic benefit.

230           (3) "Person" means any individual, corporation, firm,  
231 partnership, limited partnership, incorporated or unincorporated  
232 association, professional association, or other legal,  
233 commercial, or governmental entity, including the State of  
234 Florida, its departments, agencies, political subdivisions, and  
235 units of government.

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236 (4) "Trade or commerce" means any economic activity of any  
237 type whatsoever involving any commodity or service whatsoever.

238 (5) "Document" means any stored or retained data or  
239 information in whatever form.

240 (6) "Attorney General" includes not only the Attorney  
241 General of Florida but also any designee of the Attorney General  
242 or any assistant attorney general or special assistant attorney  
243 general.

244 (7) "State attorney" includes not only the state attorneys  
245 of Florida but also any designee of a state attorney or any  
246 assistant state attorney or special assistant state attorney.

247 (8) "Local government" means a municipality, county,  
248 school district, or any other general-function or special-  
249 function governmental unit established by the laws of the state.

250 **Section 7. Section 542.20, Florida Statutes, is amended to**  
251 **read:**

252 542.20 Exemptions.—Any activity or conduct exempt under  
253 Florida statutory or common law or exempt from the provisions of  
254 the antitrust laws of the United States is exempt from the  
255 provisions of this part ~~chapter~~.

256 **Section 8. Subsection (1) of section 542.22, Florida**  
257 **Statutes, is amended to read:**

258 542.22 Suits for damages.—

259 (1) Any person who shall be injured in her or his business  
260 or property by reason of any violation of s. 542.18 or s. 542.19

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261 may sue therefor in the circuit courts of this state and shall  
262 recover threefold the damages by her or him sustained, and the  
263 cost of suit, including a reasonable attorney's fee. The court  
264 shall award a reasonable attorney's fee to a defendant  
265 prevailing in any action under this part ~~chapter~~ for damages or  
266 equitable relief in which the court finds there was a complete  
267 absence of a justiciable issue of either law or fact raised by  
268 the plaintiff.

269 **Section 9. Section 542.23, Florida Statutes, is amended to**  
270 **read:**

271 542.23 Equitable remedies.—In addition to other remedies  
272 provided by this part ~~chapter~~, any person shall be entitled to  
273 sue for and have injunctive or other equitable relief in the  
274 circuit courts of this state against threatened loss or damage  
275 by a violation of this part ~~chapter~~. In any action under this  
276 section in which the plaintiff substantially prevails, the court  
277 shall award the cost of suit, including a reasonable attorney's  
278 fee, to the plaintiff.

279 **Section 10. Subsection (4) of section 542.235, Florida**  
280 **Statutes, is amended to read:**

281 542.235 Limitations of actions and penalties against local  
282 governments and their officials and employees.—

283 (4) No criminal action shall be maintained pursuant to s.  
284 542.21(2), and no civil penalties, damages, interest on damages,  
285 costs, or attorneys' fees shall be recovered pursuant to s.

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286 542.21(1) or s. 542.22, against any local government official or  
287 employee for official conduct within the scope of her or his  
288 lawful authority, unless the official or employee has violated  
289 the provisions of this part ~~chapter~~ for the purpose of deriving  
290 personal financial or professional gain or for the professional  
291 or financial gain of her or his immediate family or of any  
292 principal by whom the official is retained.

293 **Section 11. Section 542.24, Florida Statutes, is amended**  
294 **to read:**

295 542.24 Consent decrees and settlement agreements.—In a  
296 civil action maintained under this part ~~chapter~~ by the Attorney  
297 General or a state attorney, any party to such action may  
298 petition the court for entry of a consent decree or for approval  
299 of a settlement agreement. The proposed decree or agreement  
300 shall set out the alleged violations, the future obligations of  
301 the parties, the damages or other relief agreed upon, and the  
302 reasons for entering into the consent decree or settlement  
303 agreement.

304 **Section 12. Section 542.25, Florida Statutes, is amended**  
305 **to read:**

306 542.25 Judgment in favor of state as prima facie  
307 evidence.—A final judgment or decree entered in any civil or  
308 criminal proceeding brought by the Attorney General or a state  
309 attorney under s. 542.21 or s. 542.23 to the effect that a  
310 defendant has violated s. 542.18 or s. 542.19, or entered in any

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311 civil or criminal proceeding brought by the United States  
312 Department of Justice under comparable federal laws, shall be  
313 prima facie evidence against such defendant in any civil action  
314 or proceeding under this part ~~chapter~~ brought by any other  
315 person against such defendant as to all matters with respect to  
316 which such judgment or decree would be an estoppel as between  
317 the parties thereto; however, this section does not apply to a  
318 consent judgment or decree entered before any testimony has been  
319 taken. Nothing contained in this section shall be construed to  
320 impose any limitation on the application of collateral estoppel.

321 **Section 13. Subsection (2) of section 542.26, Florida**  
322 **Statutes, is amended to read:**

323 542.26 Limitation of actions.—

324 (2) Whenever any civil or criminal proceeding is  
325 instituted by the Attorney General or a state attorney to  
326 prevent, restrain, or punish any violation of this part ~~chapter~~,  
327 the running of the statute of limitations, with respect to every  
328 private right of action arising under this part ~~chapter~~ and  
329 based in whole or in part on any matter complained of in said  
330 proceeding, shall be suspended during the pendency thereof and  
331 for 1 year thereafter. Whenever the running of the statute of  
332 limitations in respect of a cause of action arising under s.  
333 542.22(1) is suspended hereunder, any action to enforce such  
334 cause of action shall be forever barred unless commenced either

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335 within the period of suspension or within the period of  
336 limitation.

337 **Section 14. Section 542.27, Florida Statutes, is amended**  
338 **to read:**

339 542.27 Enforcement authority.—

340 (1) The Attorney General, or a state attorney with written  
341 permission from the Attorney General, acting jointly or  
342 independently, may commence and try all criminal prosecutions  
343 under this part ~~chapter~~. Criminal prosecutions under this part  
344 ~~chapter~~ shall be commenced by indictment. With respect to  
345 commencement and trial of such prosecutions, the Attorney  
346 General or a state attorney shall have all the powers and duties  
347 vested by law with respect to criminal prosecutions generally.  
348 Incident to any investigation commenced under this part ~~chapter~~,  
349 the Attorney General may participate in and appear before a  
350 grand jury in assistance of any state attorney, irrespective of  
351 the provisions of chapter 905.

352 (2) The Attorney General is authorized to institute or  
353 intervene in civil proceedings seeking the full range of relief  
354 afforded by this part ~~chapter~~ or by federal laws pertaining to  
355 antitrust or restraints of trade on behalf of the state, its  
356 departments, agencies, and units of government. In addition, the  
357 Attorney General, as chief state legal officer, may institute  
358 any action authorized under this part ~~chapter~~, federal laws

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359 | pertaining to antitrust or restraints of trade, or similar laws  
360 | of other states on behalf of natural persons in the state.

361 | (3) Whenever the Attorney General, by her or his own  
362 | inquiry or as a result of a complaint, suspects that a violation  
363 | of this part ~~chapter~~ or federal laws pertaining to restraints of  
364 | trade is imminent, occurring, or has occurred, the Attorney  
365 | General may investigate such suspected violation.

366 | **Section 15. Paragraph (b) of subsection (2), paragraph (b)**  
367 | **of subsection (3), and subsections (5) and (13) of section**  
368 | **542.28, Florida Statutes, are amended to read:**

369 | 542.28 Civil investigative demand.—

370 | (2) The demand shall:

371 | (b) State the nature of the conduct which constitutes the  
372 | violation of this part ~~chapter~~ or of the federal antitrust laws  
373 | and which is alleged to have occurred or to be imminent.

374 | (3) No such demand shall require the production of any  
375 | documentary material, the submission of any answers to written  
376 | interrogatories, or the giving of any oral testimony if such  
377 | material, answers, or testimony would be protected from  
378 | disclosure under:

379 | (b) The standards applicable to a discovery request under  
380 | the Florida Rules of Civil Procedure, to the extent that the  
381 | application of such standards to any such demand is appropriate  
382 | and consistent with the provisions and purposes of this part  
383 | ~~chapter~~.



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384 (5) Within 30 days after the service of an investigative  
385 demand upon any person or at any time before the return date  
386 specified therein, whichever period is longer, the person served  
387 may file in the circuit court in and for the county in which the  
388 person resides or transacts business, and serve upon the  
389 Attorney General or state attorney, a petition for an order of  
390 the court modifying or setting aside the demand. The time  
391 allowed for compliance in whole or in part with the demand as  
392 deemed proper and ordered by the court shall not run while the  
393 petition is pending before the court. The petition shall specify  
394 each ground upon which the petitioner relies in seeking relief  
395 and may be based upon the failure of the demand to comply with  
396 the provisions of this part ~~chapter~~ or upon any constitutional  
397 or other legal right or privilege of such person.

398 (13) Nothing contained in this section shall impair the  
399 authority of the Attorney General or state attorney to:

400 (a) Institute a civil proceeding under s. 542.22;

401 (b) Lay before a grand jury of this state evidence  
402 concerning a violation of this part ~~chapter~~;

403 (c) Invoke the power of a court to compel the production  
404 of evidence before a grand jury; or

405 (d) File a civil complaint or criminal indictment alleging  
406 a violation of this part ~~chapter~~.

407 **Section 16. Section 542.29, Florida Statutes, is amended**  
408 **to read:**

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409           542.29 Duty of public officers.—In any investigation and  
410 in any criminal or civil action commenced pursuant to this part  
411 ~~chapter~~, it shall be the duty of all public officers and their  
412 deputies, assistants, clerks, subordinates, or employees to  
413 render and furnish to the Attorney General or a state attorney,  
414 when so requested, assistance and all information available in  
415 their official capacity.

416           **Section 17. Section 542.30, Florida Statutes, is amended**  
417 **to read:**

418           542.30 Jurisdiction and venue.—Without regard to the  
419 amount in controversy, a suit or proceeding brought under this  
420 part ~~chapter~~ shall be brought in the circuit court in and for  
421 any county in which the cause of action arose; in which any  
422 defendant resides, is found, or has an agent; or in which any  
423 act in furtherance of the conduct prohibited by this part  
424 ~~chapter~~ occurred.

425           **Section 18. Section 542.31, Florida Statutes, is amended**  
426 **to read:**

427           542.31 Action not barred as affecting or involving  
428 interstate or foreign commerce.—No action under this part  
429 ~~chapter~~ shall be barred on the grounds that the activity or  
430 conduct complained of in any way affects or involves interstate  
431 or foreign commerce. It is the intent of the Legislature to  
432 exercise its powers to the fullest extent consistent with the  
433 Constitutions of this state and the United States.

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434           **Section 19. Section 542.32, Florida Statutes, is amended**  
435 **to read:**

436           542.32 Rule of construction and coverage.—It is the intent  
437 of the Legislature that, in construing this part ~~chapter~~, due  
438 consideration and great weight be given to the interpretations  
439 of the federal courts relating to comparable federal antitrust  
440 statutes. In particular, the failure to include in this part  
441 ~~chapter~~ the substantive provisions of s. 3 of the Clayton Act,  
442 15 U.S.C. s. 14, shall not be deemed in any way to limit the  
443 scope of s. 542.18 or s. 542.19.

444           **Section 20. Subsection (1) of section 542.33, Florida**  
445 **Statutes, is amended to read:**

446           542.33 Contracts in restraint of trade valid.—  
447           (1) Notwithstanding other provisions of this part ~~chapter~~  
448 to the contrary, each contract by which any person is restrained  
449 from exercising a lawful profession, trade, or business of any  
450 kind, as provided by subsections (2) and (3) hereof, is to that  
451 extent valid, and all other contracts in restraint of trade are  
452 void.

453           **Section 21. Section 542.35, Florida Statutes, is amended**  
454 **to read:**

455           542.35 Remedies cumulative.—The remedies provided by this  
456 part ~~act~~ are cumulative of each other and of existing powers and  
457 remedies inherent in the courts.

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458           **Section 22. Section 542.36, Florida Statutes, is amended**  
459 **to read:**

460           542.36 Continuing violations.—Violations commenced prior  
461 to October 1, 1980, ~~the effective date of this act~~ and  
462 continuing after the effective date shall be actionable as  
463 provided in this part ~~chapter~~. The fact that any conduct  
464 occurred prior to October 1, 1980, ~~the effective date of this~~  
465 ~~act~~ shall not affect its relevance in proving that a violation  
466 of this part ~~chapter~~ has occurred or is occurring.

467  
468 -----  
469                           **T I T L E   A M E N D M E N T**

470           Remove line 61 and insert:

471           covered noncompete agreement; amending ss. 542.15,  
472           542.16, 542.17, 542.20, 542.22, 542.23, 542.235,  
473           542.24, 542.25, 542.26, 542.27, 542.28, 542.29,  
474           542.30, 542.31, 542.32, 542.33, 542.35, and 542.36,  
475           F.S., to conform to the changes made by this act;  
476           providing an effective  
477