

SENATE AMENDMENT NO. _____

Offered by _____ of _____

Amend SS/SCS/Senate Bill No. 968, Page 6, Section 407.475, Line 18,

2 by inserting after all of said line the following:

3 "431.201. As used in section 431.202, unless the
 4 context otherwise requires, the following terms mean:

5 (1) "Business entity", any natural person, business,
 6 corporation, limited liability company, series limited
 7 liability company, partnership, sole or other
 8 proprietorship, professional practice, or any other business
 9 organization or commercial enterprise, whether for profit or
 10 not for profit, including, without limitation, any successor
 11 in interest to an entity who conducts business or who,
 12 directly or indirectly, owns any equity interest, ownership,
 13 or profit participation in the entity;

14 (2) "Customers with whom the employee dealt", each
 15 customer or prospective customer:

16 (a) Who was serviced, directly or indirectly, by an
 17 employee of a business entity;

18 (b) Whose business or other dealings with a business
 19 entity were supervised, coordinated, or otherwise worked on,
 20 directly or indirectly, by an employee;

21 (c) Who was solicited, produced, induced, persuaded,
 22 encouraged, or otherwise dealt with, directly or indirectly,
 23 by an employee;

24 (d) About whom an employee, directly or indirectly,
 25 obtained, had knowledge of, had access to, or is in
 26 possession of confidential business or proprietary

27 information or trade secrets in the course of or as a result
28 of the employee's relationship with the business entity;

29 (e) Who has purchased or otherwise obtained products
30 or services from a business entity and the sale or provision
31 of which resulted in compensation, commissions, earnings, or
32 profits to or for the employee within two years prior to the
33 end of the employee's employment or business relationship
34 with the business entity; or

35 (f) With whom an employee had contact, directly or
36 indirectly, of sufficient quality, frequency, and duration
37 during the employee's employment or other business
38 relationship with the business entity such that the employee
39 had influence over the customer;

40 (3) "Employee":

41 (a) A natural person currently or formerly employed or
42 retained by a business entity in any capacity, or who has
43 performed work for a business entity, including, but not
44 limited to, a member of a board of directors, an officer, a
45 supervisor, an independent contractor, or a vendor;

46 (b) A natural person who, by reason of having been
47 employed by or having a business relationship with a
48 business entity:

49 a. Obtained specialized skills, training, learning, or
50 abilities; or

51 b. Obtained, had knowledge of, had access to, or is in
52 possession of confidential or proprietary business
53 information or trade secrets of the business entity,
54 including, but not limited to, customer contact information
55 or information of or belonging to customers of the business
56 entity; or

57 (c) A current or former owner or seller of all or any
58 part of the assets of a business entity or of any interest
59 in a business entity, including, but not limited to, all or

60 any part of the shares of a corporation, a partnership
61 interest, a membership or membership interest in a limited
62 liability company or a series limited liability company, or
63 an equity interest, ownership, profit participation, or
64 other interest of any type in any business entity;

65 (d) The term "employee" set forth in this subdivision
66 shall be applicable only with respect to section 431.202 and
67 shall have no application in any other context. The term
68 "employee" is not intended, and shall not be relied upon, to
69 create, change, or affect the employment status of any
70 natural person or the meaning of the terms "employee",
71 "employment", or "employer" that may be applicable in any
72 other context or pursuant to any other provision of law.

73 431.202. 1. A reasonable covenant in writing
74 promising not to solicit, recruit, hire, induce, persuade,
75 encourage, or otherwise interfere with, directly or
76 indirectly, the employment or other business relationship of
77 one or more employees of a business entity shall be
78 enforceable and not a restraint of trade pursuant to
79 subsection 1 of section 416.031 if:

80 (1) Between two or more **[corporations or other]**
81 business entities seeking to preserve workforce stability
82 (which shall be deemed to be among the protectable interests
83 of each **[corporation or]** such business entity) during, and
84 for a reasonable period following, negotiations between such
85 **[corporations or]** business entities for the acquisition of
86 all or a part of one or more of such **[corporations or]**
87 business entities;

88 (2) Between two or more **[corporations or]** business
89 entities engaged in a joint venture or other legally
90 permissible business arrangement where such covenant seeks
91 to protect against possible misuse of confidential business
92 or proprietary information or trade **[secret business**

93 information] secrets shared or to be shared between or among
94 such [corporations or] entities;

95 (3) Between [an employer] a business entity and one or
96 more employees of such business entity seeking on the part
97 of the [employer] business entity to protect:

98 (a) Confidential business or proprietary information
99 or trade [secret business information] secrets; or

100 (b) Customer or supplier relationships, goodwill or
101 loyalty, which shall be deemed to be among the protectable
102 interests of the [employer] business entity; or

103 (4) Between [an employer] a business entity and one or
104 more employees of such business entity, notwithstanding the
105 absence of the protectable interests described in
106 subdivision (3) of this subsection, so long as such covenant
107 does not continue for more than [one year] two years
108 following the employee's employment or business relationship
109 with the business entity; provided, however, that this
110 subdivision shall not apply to covenants signed by employees
111 who provide only secretarial or clerical services and who
112 own no shares, partnership interest, membership or
113 membership interest in a limited liability company or series
114 limited liability company, or equity interest, ownership,
115 profit participation, or other interest of any type in the
116 business entity.

117 2. Whether a covenant covered by subsection 1 of this
118 section is reasonable shall be determined based upon the
119 facts and circumstances pertaining to such covenant, but a
120 covenant covered exclusively by subdivision (3) or (4) of
121 subsection 1 of this section shall be conclusively presumed
122 to be reasonable if its postemployment or postbusiness
123 duration is no more than [one year] two years.

124 3. A reasonable covenant in writing promising not to
125 solicit, induce, persuade, encourage, service, accept

126 business from, or otherwise interfere with, directly or
127 indirectly, a business entity's customers, including,
128 without limitation, any reduction, termination, or transfer
129 of any customer's business, in whole or in part, for
130 purposes of providing any product or any service that is
131 competitive with those provided by the business entity,
132 shall be enforceable, and not a restraint of trade pursuant
133 to subsection 1 of section 416.031, if the covenant is
134 limited to customers with whom the employee dealt during the
135 employee's employment or other business relationship with
136 the business entity, and if:

137 (1) The covenant is between a business entity and one
138 or more current or former employees of the business entity
139 and is not associated with the sale or ownership of all or
140 any part of:

141 (a) The assets of a business entity; or

142 (b) Any interest in a business entity, including, but
143 not limited to, all or any part of the shares of a
144 corporation, a partnership interest, a membership or
145 membership interest in a limited liability company or series
146 limited liability company, or an equity interest, ownership,
147 profit participation, or other interest of any type in any
148 business entity;

149 so long as the covenant does not continue for more than two
150 years following the end of the employee's employment or
151 business relationship with the business entity.

152 Notwithstanding the foregoing, this subdivision shall not
153 apply to covenants with current or former distributors,
154 dealers, franchisees, lessees of real or personal property,
155 or licensees of a trademark, trade dress, or service mark;

156 (2) The covenant is between a business entity and a
157 current or former distributor, dealer, franchisee, lessee of
158 real or personal property, or licensee of a trademark, trade

159 dress, or service mark, and is not associated with the sale
160 or ownership of all or any part of any of the items provided
161 in paragraphs (a) or (b) of subdivision (1) of this
162 subsection, so long as such covenant does not continue for
163 more than three years following the end of the business
164 relationship; or

165 (3) The covenant is between a business entity and the
166 owner or seller of all or any part of any of the items
167 provided in paragraphs (a) or (b) of subdivision (1) of this
168 subsection, so long as the covenant does not continue for
169 more than the longer of five years in duration or the period
170 of time during which payments are being made to the owner or
171 seller as a result of any sale measured from the date of
172 termination, closing, or disposition of such items.

173 (a) A breach or threatened breach of a covenant
174 described in this subdivision shall create a conclusive
175 presumption of irreparable harm in the absence of an
176 issuance of injunctive relief in connection with the
177 enforcement of the covenant, without the necessity of
178 establishing by prima facie evidence any actual or
179 threatened damages or harm. Nothing in this paragraph shall
180 be construed to change any other applicable evidentiary
181 standard or other standards necessary for obtaining
182 temporary, preliminary, or permanent injunctive relief
183 relating to the enforcement of covenants.

184 (b) A provision in writing by which an employee
185 promises to provide prior notice to a business entity of the
186 employee's intent to terminate, sell, or otherwise dispose
187 of all or any part of any of the items covered by this
188 subdivision shall be conclusively presumed to be
189 enforceable, and not a restraint of trade pursuant to
190 subsection 1 of section 416.031, if the specified notice
191 period is no longer than thirty days in duration and the

192 business entity agrees in writing to pay the employee at the
193 employee's regular rate of pay and to provide the employee
194 with the employee's regular benefits during the applicable
195 notice period even if the business entity does not require
196 the employee to provide services during the notice period.

197 4. Whether a covenant covered by subsection 3 of this
198 section is reasonable shall be determined based upon the
199 facts and circumstances pertaining to the covenant, but a
200 covenant covered by subdivisions (1) to (3) of subsection 3
201 of this section shall be conclusively presumed to be
202 reasonable if its postemployment, posttermination,
203 postbusiness relationship, postsale, or postdisposition
204 duration is consistent with the applicable duration set
205 forth in subdivisions (1) to (3) of subsection 3 of this
206 section.

207 5. No express reference to geographic area shall be
208 required for a covenant described in this section to be
209 enforceable.

210 6. If a covenant is overbroad, overlong, or otherwise
211 not reasonably necessary to protect the legitimate business
212 interests of the person seeking enforcement of the covenant,
213 a court shall modify the covenant, enforce the covenant as
214 modified, and grant only the relief reasonably necessary to
215 protect such interests.

216 7. Nothing in subdivision (3) or (4) of subsection 1
217 or subdivisions (1) to (3) of subsection 3 of this section
218 is intended to create, or to affect the validity or
219 enforceability of, [employer-employee] covenants not to
220 compete, other types of covenants, or nondisclosure or
221 confidentiality agreements, except as expressly provided in
222 this section.

223 [4.] 8. Nothing in this section shall preclude a
224 covenant described in subsection 1 of this section from

225 being enforceable in circumstances other than those
226 described in subdivisions (1) to (4) of subsection 1 of this
227 section, or a covenant described in subsection 3 of this
228 section from being enforceable in circumstances other than
229 those described in subdivisions (1) to (3) of subsection 3
230 of this section, where such covenant is reasonably necessary
231 to protect a party's legally permissible business interests.

232 [5.] 9. Except as otherwise expressly provided in this
233 section, nothing [is] in this section shall be construed to
234 limit an employee's ability to seek or accept employment
235 with another employer immediately upon, or at any time
236 subsequent to, termination of employment, whether said
237 termination was voluntary or nonvoluntary.

238 [6.] 10. This section shall have retrospective as well
239 as prospective effect."; and

240 Further amend the title and enacting clause accordingly.