

# SENATE AMENDMENT NO. \_\_\_\_\_

Offered by \_\_\_\_\_ of \_\_\_\_\_

Amend SS/SCS/Senate Bill No. 931, Page 55, Section 407.475, Line 18,

2 by inserting 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.