

Non competition contractual clauses

Number: INFORMAL

Date: October 23, 2000

The Honorable Nancy Argenziano
Representative, District 43
6216 West Corporate Oaks Drive
Crystal River, Florida 34429

RE: CONTRACTS--legality of non-competition clauses. ss. 542.33, 542.331, 542.335, Fla. Stat.

Dear Representative Argenziano:

Thank you for contacting this office regarding the legality of contractual "non-competition" clauses. In an effort to provide assistance to you, I offer the following informal comments.

Several statutes address restrictive covenants in contracts. Included among these are sections 542.33, 542.331, and 542.335, Florida Statutes, and copies of each of these statutes and the cases interpreting them is included for your consideration.

Section 542.335, Florida Statutes, appears to address your concerns most directly. This statute provides that:

"(1) [E]nforcement of contracts that restrict or prohibit competition during or after the term of restrictive covenants, so long as such contracts are reasonable in time, area, and line of business, is not prohibited."

The statute requires that a restrictive covenant must be in writing and signed by the person against whom enforcement is sought. (Section 542.335(1)(a), Florida Statutes.) The person seeking enforcement of the non-competition provision must plead and prove "the existence of one or more legitimate business interests justifying the restrictive covenant. (Section 542.335(1)(b), Florida Statutes.) The term "legitimate business interest" is defined for purposes of the statute. In addition, the person seeking to enforce such an agreement is required to plead and prove:

"[T]hat the contractually specified restraint is reasonably necessary to protect the legitimate business interest or interests justifying the restriction. If a person seeking enforcement of the restrictive covenant establishes prima facie that the restraint is reasonably necessary, the person opposing enforcement has the burden of establishing that the contractually specified restraint is overbroad, overlong, or otherwise not reasonably necessary to protect the established legitimate business interest or interests. If a contractually specified restraint is overbroad, overlong, or otherwise not reasonably necessary to protect the legitimate business interest or interests, a court shall modify the restraint and grant only the relief reasonably necessary to protect such interest or interests."

Thus, non-competition provisions in contracts may be valid under Florida law if they meet the standards set forth in the statutes. However, the courts are authorized to review the reasonableness of such provisions and modify the contracts containing such clauses accordingly.

I trust this information and the enclosed copies will be helpful to you in advising your constituents or in considering amendatory legislation.

Sincerely,

Robert A. Butterworth
Attorney General

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Enclosures