1988

Session Law 88-400

Florida Senate & House of Representatives

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### Senate/House Journals

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### Other Documentation

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FINAL
LEGISLATIVE BILL
INFORMATION

1987 Special Sessions B, C, D
1988 Regular Session
1988 Special Sessions E, F

prepared by:

Joint Legislative Management Committee
Legislative Information Division
Capitol Building, Room 826 — 488-4371
117 GENERAL BILL ENG by Wallace (Similar S 188). Compare H 1377, S 763
Trade Marks, provides that certain contracts that restrain person from engaging in lawful profession, trade, or business are valid, requires provision that declares certain contracts to be void, provides that certain agreements in restraint of trade entered into by licensees of use of service marks are exceptions to prohibition of contracts in restraint of trade. Amends 542.33 Effective Date, 10/05/88
05/05/88 HOUSE Prefiled
04/06/88 HOUSE Introduced, referred to Commerce—HJ 87
04/14/88 HOUSE On Committee agenda—Commerce, 04/18/88, 11 15 pm, 317C—For ratification of subreferral
04/17/88 HOUSE On subcommittee agenda—Commerce, 04/20/88, 10:00 am, 317-HOB
04/20/88 HOUSE Subcommittee Recommendation pending ratification by full Committee Favorable
04/25/88 HOUSE On Committee agenda—Commerce, 04/27/88, 8:00 am, 317C
05/27/88 HOUSE Preliminary Committee Action by Commerce Favorable, Comm Report. Favorable by Commerce, placed on Calendar —HJ 267
06/24/88 HOUSE Placed on Special Order Calendar
06/26/88 HOUSE Read second time—HJ 762, Amendments adopted; Read third time, Passed as amended, YEAS 115 NAYS 0—HJ 763
06/26/88 HOUSE In Messages
06/30/88 SENATE Received, referred to Commerce—SJ 470
07/01/88 SENATE Withdrawn from Commerce, Substituted for SB 188, Passed, YEAS 33 NAYS 0—SJ 703
07/01/88 SENATE Ordered enrolled
07/01/88 SENATE Signed by Officers and presented to Governor
07/01/88 SENATE Approved by Governor, Chapter No 88-400

918 LOCAL BILL ENG by Frankel
West Palm Beach Police Pension. (Palm Beach Co.) amends various provisions re West Palm Beach Police Pension & Relief Fund, etc Effective Date 07/07/88.
04/01/88 HOUSE Prefiled
04/06/88 HOUSE Introduced, referred to Community Affairs, Retirement, Personnel & Collective Bargaining—HJ 88
05/02/88 HOUSE On Committee agenda—Community Affairs, 05/04/88, 9:00 am, 212-HOB
05/04/88 HOUSE Preliminary Committee Action by Community Affairs Favorable with 13 amendments
05/05/88 HOUSE Comm Report. Favorable with 13 amendment(s) by Community Affairs—HJ 359; Now in Retirement, Personnel & Collective Bargaining—HJ 369
05/18/88 HOUSE Withdrawn from Retirement, Personnel & Collective Bargaining—HJ 361, Placed on Calendar
05/24/88 HOUSE Placed on Local Calendar, Read second time—HJ 662, Amendments adopted; Read third time, Passed as amended, YEAS 119 NAYS 0—HJ 663
05/24/88 HOUSE In Messages
06/01/88 SENATE Received, referred to Rules and Calendar—SJ 617
06/02/88 SENATE Considered by Rules and Calendar, placed on Local Calendar—SJ 716, Passed as amended, YEAS 37 NAYS 0—SJ 760
06/02/88 HOUSE In Messages
06/03/88 HOUSE Concurred, Passed as further amended, YEAS 119 NAYS 0—HJ 1344
06/03/88 HOUSE Ordered engrossed, then enrolled
06/21/88 SENATE Signed by Officers and presented to Governor
07/07/88 HOUSE Became Law without Governor’s Signature, Chapter No 88-563

919 GENERAL BILL ENG by Bankhead (Compare S 1294)
Juvenile Delinquency Hearings School Board, requires notification of district school superintendent or designee of arrest of juvenile who is student under certain circumstances, requires notification of principal & guidance counselor, provides for confidentiality, provides for removal of information Amendments 39 03 Effective Date Upon becoming law.
04/01/88 HOUSE Prefiled
04/14/88 HOUSE Introduced, referred to Youth—HJ 88
04/14/88 HOUSE On Committee agenda—Youth, 04/18/88, 3:30 pm, 413C
04/19/88 HOUSE Preliminary Committee Action by Youth Favorable
04/19/88 HOUSE Comm Report. Favorable by Youth, placed on Calendar—HJ 208
05/28/88 HOUSE Placed on Special Order Calendar, Read second time—HJ 281, Amendments adopted—HJ 284
05/03/88 HOUSE Read third time, Amendment adopted; Passed as amended, YEAS 107 NAYS 6—HJ 314
05/04/88 SENATE In Messages
06/04/88 SENATE Referred to Education—SJ 212
06/17/88 SENATE Extension of time granted Committee Education
06/19/88 SENATE Introduced, referred to Education

H 920 LOCAL BILL by Harris (Similar S 361)
Broward Utilities Commission. (Highlands Co.) provides that one member of said commission may reside outside city limits if the possesses specified qualifications, provides for referendum Effective Date Contingent.
04/01/88 HOUSE Prefiled
04/06/88 HOUSE Placed on calendar, referred to Community Affairs—HJ 88
05/02/88 HOUSE On Committee agenda—Community Affairs, 05/04/88, 8:00 am, 212-HOB—Temporarily passed
06/07/88 HOUSE Died in Committee on Community Affairs, Died /Sim / Compare bill passed, refer to SB 681 (Ch 88-444)

H 921 LOCAL BILL by Harris
Spring Lake Improvement District. (Highlands Co.) provides for staggered election of supervisors to three-member board to serve for term of 3 years each. Effective Date Upon becoming law
04/01/88 HOUSE Prefiled
04/08/88 HOUSE Introduced, referred to Community Affairs—HJ 89
05/24/88 HOUSE Withdrawn from Community Affairs, Withdrawn from further consideration—HJ 649

H 922 GENERAL BILL by Sample
Nonprofit Charitable Organizations, revises requirements which must be met by charitable, nonprofit, or veterans’ organizations authorized to conduct bingo games Amendments 849 093 Effective Date 10/01/88.
04/01/88 HOUSE Prefiled
04/06/88 HOUSE Introduced, referred to Regulated Industries & Licensing—HJ 89
04/13/88 HOUSE Subreferred to Subcommittee on Par-mutuals and the Lottery
04/14/88 HOUSE On Committee agenda—Regulated Industries & Licensing, 04/15/88, 11:35 pm, 413C—For ratification of subreferral
04/18/88 HOUSE On subcommittee agenda—Regulated Industries & Licensing, 04/20/88, 10:00 am, 413C
04/20/88 HOUSE Subcommittee Recommendation pending ratification by full Committee Favorable
04/25/88 HOUSE On Committee agenda—Regulated Industries & Licensing, 04/27/88, 8:00 am, 413C
04/27/88 HOUSE Preliminary Committee Action by Regulated Industries & Licensing Favorable
04/29/88 HOUSE Comm Report Favorable by Regulated Industries & Licensing, placed on Calendar—HJ 101
06/01/88 HOUSE Placed on Consent Calendar, Read second time, Read third time, Passed, YEAS 112 NAYS 0—HJ 1174
06/01/88 SENATE In Messages
06/07/88 SENATE Died in Messages

H 923 GENERAL BILL/CS ENG by Natural Resources; Wallace (Similar CS 607/CS 788)
Marine Research Institute, expands duties of Marine Resources Div of DNR, establishes Fla. Marine Research Institute within div., provides for establishment of citizen support organizations to assist dept., specifies qualifications for such organizations, limits authority of such organizations re receipt of funds, authorizes dept. to permit such organizations to use property & facilities, subject to certain conditions, requires annual audit, etc Amendments 370 02 Effective Date 07/06/88
04/01/88 HOUSE Prefiled
04/08/88 HOUSE Introduced, referred to Natural Resources, Appropriations—HJ 89
04/15/88 HOUSE On Committee agenda—Natural Resources, 04/19/88, 4:30 pm, Morris Hall—For ratification of subreferral
04/19/88 HOUSE On subcommittee agenda—Natural Resources, 04/21/88, 8:00 am, 317-HOB
04/21/88 HOUSE Subcommittee Recommendation pending ratification by full Committee Favorable with 3 amendments; On Committee agenda, pending subcommittee action—Natural Resources, 04/21/88, 8:00 am, Morris Hall—Temporarily passed
04/25/88 HOUSE On Committee agenda—Natural Resources, 04/27/88, 3:30 pm, Morris Hall
04/27/88 HOUSE Preliminary Committee Action by Natural Resources Favorable as a Committee Substitute
05/13/88 HOUSE Comm Report CS by Natural Resources—HJ 499, CS read first time—HJ 496, Now in Appropriations—HJ 499
05/24/88 HOUSE Withdrawn from Appropriations—HJ 649, Placed on Calendar
05/11/88 HOUSE Placed on Special Order Calendar
06/01/88 HOUSE Read second time, Amendments adopted, Read third time, CS passed as amended, YEAS 114 NAYS 0—HJ 1103
06/01/88 SENATE In Messages
06/03/88 SENATE Received—SJ 783, Substituted for CS, CS/SB 517, CS passed, YEAS 36 NAYS 0—SJ 893
06/03/88 HOUSE Ordered enrolled
06/21/88 SENATE Signed by Officers and presented to Governor

H 924 GENERAL BILL by Webster (Similar ENG 828)
Professional Service Providers, Inc., provides alternative to professional liability insurance for certain service providers who contract with DOR

FLORIDA LEGISLATURE—REGULAR SESSION—1988
HISTORY OF HOUSE BILLS
FLORIDA LEGISLATURE—REGULAR SESSION—1988
HISTORY OF HOUSE BILLS

H 1373 (CONTINUED)
04/13/88 HOUSE Introduced, referred to Community Affairs, Finance & Taxation -HJ 171
05/02/88 HOUSE On Committee agenda—Community Affairs, 05/04/88, 8:00 am, 212-HOB
05/04/88 HOUSE Preliminary Committee Action by Community Affairs Favorable with 1 amendment
05/06/88 HOUSE Comm. Report Favorable with 1 amendment(a) by Community Affairs -HJ 365, Now in Finance & Taxation -HJ 265
05/09/88 HOUSE On Committee agenda—Finance & Taxation, 05/11/88, 1:30 pm, 21-HOB—For sub referral only
06/17/88 HOUSE Withdrawn from Finance & Taxation—HJ 514; Placed on Calendar
06/24/88 HOUSE Placed on Local Calendar, Read second time, Amendment adopted, Read third time, Passed as amended; YEAS 110 NAYS 0—HJ 657
05/24/88 SENATE In Messages
05/25/88 SENATE Received, referred to Natural Resources and Conservation, Rules and Calendar -SJ 381, Immediately withdrawn from Natural Resources and Conservation, Rules and Calendar, Substituted for SB 977; Passed, YEAS 40 NAYS 0—SJ 383
Ordered enrolled
06/02/88 Signed by Officers and presented to Governor—HJ 1261
06/18/88 Became Law without Governor's Signature, Chapter No 81-88

H 1374 GENERAL BILL by Woodruff (Compare ENG/H 1653)
Uniform Interstate Extradition—provides for presumed validity of issue of Governor's warrant of arrest & provides that person arrested for extraditable crime is not eligible for bail except under specified circumstances—Ameda 941 10 Effective Date Upon becoming law
04/07/88 HOUSE Filed
04/13/88 HOUSE Introduced, referred to Criminal Justice, Appropriations -HJ 171
04/15/88 HOUSE Subreferred to Subcommittee on Crimes, Penalties and Prosecutions; On subcommittee agenda—Criminal Justice, 04/19/88, 1:15 pm, Morris Hall
04/19/88 HOUSE Subcommittee Recommendation, pending ratification by full Committee Favorable, On Committee agenda, pending subcommittee action—Criminal Justice, 04/20/88, 3:30 pm, Morris Hall
05/23/88 HOUSE On Committee agenda—Appropriations, 05/24/88, 8:00 am, Morris Hall—For ratification of subreferral
06/07/88 HOUSE Died in Committee on Appropriations, Idem /Sim / Compare bill passed, refer to HB 1653 (Ch 88-335)

H 1375 GENERAL BILL/CS by Transportation; Ostrau (Similar S 1003, Compare ENG/H 1639)
Provision to Empower Authority—provides that shall assume annual costs of operations & maintenance of Sawgrass Expressway under certain circumstances, provides for time frame for payment of such costs; provides for payment from sinking fund under described circumstances, provides for retroactive application Effective Date 07/01/88
04/07/88 HOUSE Filed
04/13/88 HOUSE Introduced, referred to Transportation, Appropriations -HJ 171
04/15/88 HOUSE Subreferred to Subcommittee on Transportation Facilities and Services, On Committee agenda—Transportation, 04/19/88, 1:15 pm, 214C—for ratification of subreferral
04/29/88 HOUSE On Committee agenda—Transportation, 05/03/88, 8:30 am, 214C
05/03/88 HOUSE Preliminary Committee Action by Transportation Favorable as a Committee Substitute
05/11/88 HOUSE Comm. Report CS by Transportation—HJ 450, CS read first time—HJ 450; Now in Appropriations—HJ 450
06/07/88 HOUSE Died in Committee on Appropriations, Idem /Sim / Compare bill passed, refer to HB 1639 (Ch 88-286)

H 1376 GENERAL BILL by Rush (Similar ENG/S 1356)
Banking Code, amends provision re permission for affiliated trust companies or affiliated banks trust departments to agree to substitution of trust company or bank's trust dept with affiliated bank's trust dept, & for substitution of all of predecessor's fiduciary powers, duties, & responsibilities & to permit successor to provide various trust services in predecessor's & successor's offices for their trust customers, etc Amendments 560.33 Effective Date Upon becoming law
04/07/88 HOUSE Filed
04/13/88 HOUSE Introduced, referred to Commerce -HJ 171
04/14/88 HOUSE On Committee agenda—Commerce, 04/18/88, 11:15 pm, 131C
04/21/88 HOUSE On subcommittee agenda—Commerce, 04/25/88, 3:30 pm, 311C

H 1377 GENERAL BILL by Tison (Identical S 763, Compare ENG/H 917, S 188)
Contracts/Restraints of Trade, provides that certain contracts that restrain person from exercising lawful profession, trade, or business are valid, removes provision that declares certain such contracts to be void. Amendments 545.33 Effective Date 10/6/88
04/07/88 HOUSE Filed
04/13/88 HOUSE Introduced, referred to Commerce, Appropriations—HJ 171
04/14/88 HOUSE On Committee agenda—Commerce, 04/19/88, 11:15 pm—317C—for ratification of subreferral
04/21/88 HOUSE On subcommittee agenda—Commerce, 04/25/88, 4:30 pm—317-HOB
04/25/88 HOUSE On Committee agenda, pending subcommittee action—Commerce, 04/27/88, 8:00 am, 317C
04/27/88 HOUSE Preliminary Committee Action by Commerce Favorable; Comm. Report Favorable by Commerce—HJ 267; Now Appropriations—HJ 57
05/19/88 HOUSE Withdrawn from Appropriations—HJ 596, Placed on Calendar
05/31/88 HOUSE Placed on Special Order Calendar
06/01/88 HOUSE Retained on Regular Calendar
06/07/88 HOUSE Died on Calendar, Idem /Sim / Compare Bill passed, refer to HB 917 (Ch 88-400)

H 1378 GENERAL BILL by Patchett (Compare CS/CS/ENG/H 126; CS/CS/ENG/S 792)
Arts & Historic Preservation—specifies additional duties of Fla Arts Council—award of grants for acquisition, renovation, or construction of facilities for acquisition of annual lump-sum appropriations to fund historic preservation grants-in-aid; authorizes Historic Preservation Advisory Council to review applications for such grants & to recommend to Secretary of State priority for allocating grants, etc Amendments 265 267 267 0167 creates 265.701 Effective Date 07/01/88 or upon becoming law, whichever occurs later
04/07/88 HOUSE Filed
04/13/88 HOUSE Introduced, referred to Tourism & Cultural Affairs, Appropriations—HJ 172
04/15/88 HOUSE On Committee agenda—Tourism & Cultural Affairs—04/19/88, 1:15 pm, 212-HOB—Temporarily passed, 04/20/88, 3:30 pm, Morris Hall—Meeting canceled
04/22/88 HOUSE On subcommittee agenda—Tourism & Cultural Affairs 04/25/88, 3:30 pm, 211C—Meeting canceled
04/26/88 HOUSE On subcommittee agenda—Tourism & Cultural Affairs—04/28/88, 9:00 am, 212-HOB—Meeting canceled, On Committee agenda, pending subcommittee action—Tourism & Cultural Affairs, 04/28/88, 9:30 am, 212-HOB—Meeting canceled
04/29/88 HOUSE On subcommittee agenda—Tourism & Cultural Affairs—05/03/88, 8:45 am, 212-HOB—Temporarily passed, 05/03/88, 10:15 am, 212-HOB—Meeting canceled
05/03/88 HOUSE On subcommittee agenda, pending subcommittee action—Tourism & Cultural Affairs, 05/03/88, upon adjournment of subcommittee, 212-HOB—Not considered
06/07/88 HOUSE Died in Committee on Tourism & Cultural Affairs, Idem /Sim / Compare bill passed, refer to CS/CS/SSB 792 (C 88-337)

H 1379 LOCAL BILL/ENG by Tothassen; Basu, Benjamin
Penmanship/Tiremen's Pension Fund (Encumbia Co.) provides for membership—Firemen's Relief & Pension Fund Board of Trustees Effective Date 07/07/88
04/07/88 HOUSE Filed
04/13/88 HOUSE Introduced, referred to Community Affairs, Retirement Personnel & Collective Bargaining—HJ 172
05/02/88 HOUSE On Committee agenda—Community Affairs, 05/04/88, 8:00 am, 212-HOB
05/04/88 HOUSE Preliminary Committee Action by Community Affairs Favorable with 1 amendment
05/35/88 HOUSE Comm. Report Favorable with 1 amendment(s) by Community Affairs—HJ 359, Now in Retirement, Personnel & Collective Bargaining—HJ 359
05/10/88 HOUSE Withdrawn from Retirement, Personnel & Collective Bargaining—HJ 359, Placed on Calendar

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492.116 S 900, H 1526

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494.055 S 283, H 656

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496.042 S 662, H 515

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499.067 S 212, H 1603

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500.003 S 1186
500.002 H 1186
500.012 H 1186
500.02 H 1186

(Continued on next page)
A bill to be entitled
An act relating to contracts in restraint of
trade; amending s. 542.33, F.S.; providing that
certain contracts that restrain a person from
exercising a lawful profession, trade, or
business are valid; removing a provision that
declares certain such contracts to be void;
providing an effective date

Be It Enacted by the Legislature of the State of Florida:

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

542 33 Contracts in restraint of trade valid invalid;
exceptions --
(1) Notwithstanding other provisions of this chapter
to the contrary, each Every contract by which any person
anyone is restrained from exercising a lawful profession,
trade, or business of any kind, as otherwise-than-is provided
by subsections (2) and (3) hereof, is to that extent valid
void.

Section 2 This act shall take effect October 1, 1988.

SENATE SUMMARY

Provides that certain contracts in restraint of trade are
valid. Removes provision that declares certain such
contracts to be void.

CODING: Words stricken are deletions; words underlined are additions.
This publication was produced at an average cost of 1.12 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

CODING: Words stricken are deletions; words underlined are additions.
A bill to be entitled

An act relating to contracts in restraint of trade; amending s. 542.33, F.S.; providing that certain contracts that restrain a person from exercising a lawful profession, trade, or business are valid; removing a provision that declares certain such contracts to be void; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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

542.33 Contracts in restraint of trade valid in certain exceptions.--

(1) Notwithstanding other provisions of this chapter to the contrary, each contract by which any person anyone is restrained from exercising a lawful profession, trade, or business of any kind, as otherwise-than those provided by subsections (2) and (3) hereof, is to that extent valid void.

Section 2. This act shall take effect October 1, 1988.

**********************************************************
SENATE SUMMARY

Provides that certain contracts in restraint of trade are valid. Removes provision that declares certain such contracts to be void.

CODING: Words stricken are deletions; words underlined are additions.
(b) The licensee, or any person deriving title from
the licensee, of the use of a trademark or service mark, and
the identifiable business format or system identified by that
trademark or service mark, may agree with the licensor to
refrain from carrying on or engaging in a similar business and
from soliciting old customers of such licensor within a
reasonably limited time and area, so long as the licensor, or
any person deriving title from the licensor, continues to
carry on a like business therein. Said agreements may, in the
discretion of a court of competent jurisdiction, be enforced
by injunction.

(3) Partners may, upon or in anticipation of a
dissolution of the partnership, agree that all or some of them
will not carry on a similar business within a reasonably
limited time and area.

(4) This section does not apply to any litigation
which may be pending, or to any cause of action which may have
accrued, prior to May 27, 1953.

Section 2. This act shall take effect October 1, 1988.

SENATE SUMMARY

Provides that certain agreements in restraint of trade
entered into by licensees of the use of service marks are
valid.

This publication was produced at an average cost of 1.12 cents
per single page in compliance with the Rules and for
the information of members of the Legislature and the public.

CODING: Words struck are deletions; words underlined are additions.
A bill to be entitled

An act relating to contracts in restraint of trade; amending s. 542.33, F.S.; providing that certain agreements in restraint of trade entered into by licensees of the use of service marks are exceptions to the prohibition of contracts in restraint of trade; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 542.33, Florida Statutes, is amended to read:

542.33 Contracts in restraint of trade invalid; exceptions.--

(1) Every contract by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, otherwise than as provided by subsections (2) and (3) hereof, is to that extent void.

(2)(a) One who sells the goodwill of a business, or any shareholder of a corporation selling or otherwise disposing of all of his shares in said corporation, may agree with the buyer, and one who is employed as an agent, independent contractor, or employee may agree with his employer, to refrain from carrying on or engaging in a similar business and from soliciting old customers of such employer within a reasonably limited time and area, so long as the buyer or any person deriving title to the goodwill from him, and so long as such employer, continues to carry on a like business therein. Said agreements may, in the discretion of a court of competent jurisdiction, be enforced by injunction.

CODING: Words stricken are deletions; words underlined are additions.
(b) The licensee, or any person deriving title from
the licensee, of the use of a trademark or service mark, and
the identifiable business format or system identified by that
trademark or service mark, may agree with the licensor to
refrain from carrying on or engaging in a similar business and
from soliciting old customers of such licensor within a
reasonably limited time and area, so long as the licensor, or
any person deriving title from the licensor, continues to
carry on a like business therein. Said agreements may, in the
discretion of a court of competent jurisdiction, be enforced
by injunction.

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dissolution of the partnership, agree that all or some of them
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SENATE SUMMARY
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CODING: Words stricken are deletions; words underlined are additions.
A bill to be entitled
An act relating to contracts in restraint of trade; amending s. 542.33, F.S.; providing that certain agreements in restraint of trade entered into by licensees of the use of service marks are exceptions to the prohibition of contracts in restraint of trade; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 542.33, Florida Statutes, is amended to read:
542.33 Contracts in restraint of trade invalid; exceptions.--
(1) Every contract by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, otherwise than is provided by subsections (2) and (3) hereof, is to that extent void.
(2)(a) One who sells the goodwill of a business, or any shareholder of a corporation selling or otherwise disposing of all of his shares in said corporation, may agree with the buyer, and one who is employed as an agent, independent contractor, or employee may agree with his employer, to refrain from carrying on or engaging in a similar business and from soliciting old customers of such employer within a reasonably limited time and area, so long as the buyer or any person deriving title to the goodwill from him, and so long as such employer, continues to carry on a like business therein. Said agreements may, in the discretion of a court of competent jurisdiction, be enforced by injunction.

CODING: Words stricken are deletions; words underlined are additions.
I. SUMMARY:

House Bill 1377 changes the title of Section 542.33, Florida Statutes, to clarify that it relates to making covenants not to compete valid with certain restrictions, rather than making all contracts in restraint of trade invalid with exceptions. The section itself is also amended to clarify that by validating certain kinds of contracts in restraint of trade, it is to operate as an exception to the rest of Florida's antitrust law, as contained in Chapter 542, F.S.

A. PRESENT SITUATION:

State law generally prohibits monopolies and contracts in restraint of trade, Chapter 542, F.S., (the Florida Antitrust Act of 1980). The Legislature intended for this statute to compliment the various federal antitrust laws in an effort to foster competition, (s. 542.16, F.S.).

Section 542.33, F.S., generally renders contracts which restrain anyone from pursuing a lawful profession, trade, or business as void. There are several exceptions, however. One such exception involves contracts for employment where, as a part of the contract, an "agent", "employee", or "independent contractor" agrees not to compete against the employer in a similar business, or solicit his customers. This is what is known as a covenant not to compete.

Allowable covenants not to compete are limited to particular relationships as set out in the statute. In addition to the above mentioned employment contracts, these involve an owner selling the goodwill of his business, a shareholder selling all of his shares in the corporation, and a licensee of a trademark or identifiable business format. In addition, partners may, upon dissolution of the partnership, agree that all or some of them will not carry on a similar business. Covenants not to compete must always be limited to a reasonable time and geographic area.
Bill #: HB 1377
Date: April 14, 1988

It should be noted that the Florida Antitrust Act replaced previously existing Florida antitrust law with language complimentary to the federal antitrust laws. Section 542.32, F.S., provides legislative intent that "... great weight be given to the interpretations of the federal courts relating to comparable federal antitrust statutes..."; specifically incorporating by reference substantive provisions of s. 3 of the Clayton Act, 15 U.S.C. s. 14 into ss. 542.18 and 542.19, of the Florida Act. Section 542.33, F.S., embodies the only two provisions of the old law to survive in the Act. It would appear that this section as worded is inconsistent with federal decisions. As mentioned, s. 542.33, F.S. renders as void all contracts in restraint of trade not encompassed within its exceptions. Federal court decisions have said that only contracts that unreasonably restrain trade or commerce are unlawful.

B. EFFECT OF PROPOSED CHANGES:

House Bill 1377 would switch around the section's approach to prohibition of contracts in restraint of trade. Currently, the statute renders all contracts not contained within the exceptions to be void. The bill eliminates the general prohibition and replaces it with language that makes valid all contracts that fit within the exceptions.

Another way to think of this is that the current language of the section draws a circle around certain contracts in restraint of trade and declares that everything outside the circle is void. This bill would draw the same circle and declare that anything inside the circle is valid - not mentioning the status of things outside the circle.

In this way, the bill intends to clarify that the balance of the chapter other than s. 542.33, F.S., is the antitrust law of Florida and that s. 542.33, F.S., is an exception making some types of contracts (certain covenants not to compete) valid. Furthermore, this change is intended to conform this section with the rest of the chapter which incorporates by reference federal decisions relating to similarly worded federal antitrust statutes.

The bill provides an effective date of October 1, 1988.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:
   None.

2. Recurring or Annualized Continuation Effects:
   None.

3. Long Run Effects Other Than Normal Growth:
   None.
Date: April 14, 1988

4. Appropriations Consequences:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise, and Employment Markets:

Chapter 542, F.S., is remedial in nature and therefore the bill would most likely be applied retroactively to all cases in progress on the date of its enactment possibly rendering as valid some contracts which under current law are invalid.

D. FISCAL COMMENTS:

None.

III. LONG RANGE CONSEQUENCES:

House Bill 1377 should clarify s. 542.33, F.S., and eliminate confusion about its application and enforcement.

IV. COMMENTS:

The Antitrust Committee of the Corporation, Banking, and Business Law Section of the Florida Bar recommends this change to the law.

V. AMENDMENTS:

None.
VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: David Sigerson

[Signature]

FINANCE & TAXATION:
Prepared by:

Staff Director: Vr Fred Varn

APPROPRIATIONS:
Prepared by:

Staff Director:
I. SUMMARY:

House Bill 917 expands the language in Section 452.33, Florida Statutes, to include "service marks" in certain contractual arrangements. In addition, HB 917 changes the section itself to clarify that by validating certain kinds of contracts in restraint of trade, it is to operate as an exception to the rest of Florida's antitrust law, as contained in Chapter 542, F.S.

A. PRESENT SITUATION:

Generally, s. 542.33, F.S., renders contracts in restraint of trade as invalid with certain enumerated exceptions which are known as covenants not to compete. Typical examples include certain employment contracts and the sale of the "good will" of a business.

Currently, s. 542.33, F.S., recognizes the use of a trade mark in contractual relationships between licensee and licensor relative to agreements refraining from carrying on or engaging in similar businesses and from soliciting old customers within a reasonable length of time.

B. EFFECT OF PROPOSED CHANGES:

House Bill 917 was amended on the House Floor to incorporate HB 1377 which reverses Florida's statutory approach to prohibition of contracts in restraint of trade (s. 542.33(1), F.S.). Currently, the statute renders all contracts not contained within the exceptions to be void. The bill eliminates the general prohibition and replaces it with language that makes valid all contracts that fit within the exceptions.
In addition, HB 917 (as originally drafted) expands the language in s. 542.33(2)(b), F.S., to include "service mark" giving them equal recognition with "trade mark". "Trade mark" meaning any word, name, symbol, character, design, drawing or service of any kind or combination thereof, adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others. The definition of "service mark" means any word, name, symbol, character, design, drawing or device or any combination thereof, and the distinctive features of radio, television or other advertising, adopted and used by a person to identify services rendered or offered by him and to distinguish them from services rendered or offered by others.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:
   1. Non-recurring or First Year Start-Up Effects:
      None.
   2. Recurring or Annualized Continuation Effects:
      None.
   3. Long Run Effects Other Than Normal Growth:
      None.
   4. Appropriations Consequences:
      None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:
   1. Non-recurring or First Year Start-Up Effects:
      None.
   2. Recurring or Annualized Continuation Effects:
      None.
   3. Long Run Effects Other Than Normal Growth:
      None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
   1. Direct Private Sector Costs:
      None.
2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise, and Employment Markets:

Chapter 542, F.S., is remedial in nature, therefore, the bill would most likely be applied retroactively to all cases in progress on the date of its enactment possibly rendering as valid some contracts which under current law are invalid.

D. FISCAL COMMENTS:

None.

III. STATE COMPREHENSIVE PLAN IMPACT:

House Bill 917 has no negative impact on Florida's State Comprehensive Plan. By incorporating HB 1377 within HB 917, the bill would clarify s. 542,33, F.S., and eliminate confusion about its application and enforcement.

IV. COMMENTS:

LEGISLATIVE HISTORY:

Enacted Bill:

House Bill 917, by Represenative Wallace was prefiled on March 31, 1988, and referred to the Commerce Committee. The Full House Commerce Committee reported the bill favorably on April 27. On May 24, the bill was placed on the Special Order Calendar (HJ 00267). After being amended on the House Floor to include HB 1377 on May 26, HB 917 passed the House by a vote of 115 to 0 (HJ 00753). On May 30, HB 917 was referred to the Senate Commerce Committee. On June 1, HB 917 was withdrawn from Commerce, substituted for its Senate companion, and passed by a vote of 35 to 0 (SJ 00703).

Disposition of Companion:

On February 1, 1988, Senate Bill 188, by Senator Malchon and others, was prefiled and subsequently referred and introduced to the Commerce Committee (SJ 00023). On May 5, SB 188 was reported favorably and placed on the Consent Calendar on May 31 (SJ 00611). On June 1, the bill was laid on the table as its similar HB 917 was substituted and passed (SJ 00703).

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: M.E. Menge, Jr. Staff Director: H. Fred Varn
I. SUMMARY:

A. Present Situation:

Chapter 542, F.S., is known as the "Florida Antitrust Act of 1980." The stated purpose of the act is to complement the body of federal law prohibiting restraints of trade or commerce in order to foster effective competition.

Section 542.33, F.S., provides that, with certain specified exceptions, every contract in which anyone is restrained from exercising a lawful profession, trade, or business of any kind is to that extent void. One of the specified exceptions (section 542.33(2)(b), F.S.) is a contract in which the licensee, or any person deriving title from the licensee, of the use of a trademark agrees with the licensor to refrain from carrying on or engaging in a similar business and from soliciting old customers of the licensor within a reasonably limited time and area, so long as the licensor, or any person deriving title from the licensor, continues to carry on a like business.

A trademark for purposes of registrability with the Department of State, Division of Corporations, is defined in section 495.011(1), F.S., as any word, name, symbol, character, design, drawing or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others. A service mark is defined in section 495.011(2), F.S., as any word, name, symbol, character, design, drawing or device or any combination thereof, and the distinctive features of radio, television or other advertising, adopted and used by a person to identify services rendered or offered by him and to distinguish them from services rendered or offered by others.

B. Effect of Proposed Changes:

The bill amends section 542.33(2)(b), F.S., to include service marks as well as trade marks within those types of contractual noncompete agreements which are permitted by the law.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Certain licensees of service marks who contractually agree not to engage in a similar business of the licensor may experience a loss in income. Conversely, certain licensors of service marks who contractually agree with a licensee may experience the positive economic impact that comes from prohibiting licensees from engaging in a similar business.
B. Government:

None.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.
GENERAL ACTS
RESOLUTIONS AND MEMORIALS
ADOPTED BY THE
TENTH LEGISLATURE OF FLORIDA
UNDER THE CONSTITUTION
AS REVISED IN 1968
During the Regular Session
April 5, 1988 through June 7, 1988
and Special Sessions
September 21 - October 8, 1987; October 12 - 14, 1987;
December 8 - 10, 1987; February 2 - 4, 1988; and
June 8, 1988

Volume I, Part Three
Published by Authority of Law
Under Direction of the
JOINT LEGISLATIVE MANAGEMENT COMMITTEE
TALLAHASSEE
1988
vocational preparatory programs who have not obtained high school diplomas or the equivalent or who have basic skills which have been determined to be at or below the eighth-grade level as provided by State Board of Education rule are exempt from this requirement. When college preparatory and vocational preparatory instruction are provided in the same class section, the community college may charge a single fee for both types of instruction.

3. All students enrolled in college preparatory programs shall be charged fees equivalent to the fees charged for credit courses at the community college.

4. No fees shall be charged for citizenship instruction offered through community instructional services.

5. Fees collected annually for recreation and leisure time programs courses shall be equal to, but not exceed, the cost of providing such programs by a school district or community college equivalent to the student's proportional share of the costs associated with the provision of such instruction.

Section 2. Paragraph (e) of subsection (5) of section 240.301, Florida Statutes, is amended to read:

240.301 Community colleges; definition, mission, and responsibilities.--

(5) Student fees for the provision of instruction shall be charged as follows:

(e) Fees collected annually for recreation and leisure time programs courses shall be equal to, but not exceed, the cost of providing such programs equivalent to the student's proportional share of the costs associated with the provision of such instruction.

Section 3. This act shall take effect July 1, 1988, or upon becoming a law, whichever occurs later.

Approved by the Governor July 6, 1988.

Filed in Office Secretary of State July 6, 1988.

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CHAPTER 88-400

House Bill No. 917

An act relating to contracts in restraint of trade; amending s. 542.33, F.S.; providing that certain contracts that restrain a person from exercising a lawful profession, trade, or business are valid; removing a provision that declares certain such contracts to be void; providing that certain agreements in restraint of trade entered into by licensees of the use of service marks are exceptions to the prohibition of contracts in restraint of trade; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 542.33, Florida Statutes, is amended to read:
CHAPTER 88-400

LAWS OF FLORIDA

542.33 Contracts in restraint of trade valid

Exceptions.--

(1) Notwithstanding other provisions of this chapter to the contrary, each contract by which any person is restrained from exercising a lawful profession, trade, or business of any kind, as otherwise-than-as provided by subsections (2) and (3) hereof, is to that extent valid and all other contracts in restraint of trade are void.

(2)(a) One who sells the goodwill of a business, or any shareholder of a corporation selling or otherwise disposing of all of his shares in said corporation, may agree with the buyer, and one who is employed as an agent, independent contractor, or employee may agree with his employer, to refrain from carrying on or engaging in a similar business and from soliciting old customers of such employer within a reasonably limited time and area, so long as the buyer or any person deriving title to the goodwill from him, and so long as such employer, continues to carry on a like business therein. Said agreements may, in the discretion of a court of competent jurisdiction, be enforced by injunction.

(b) The licensee, or any person deriving title from the licensee, of the use of a trademark or service mark, and the identifiable business format or system identified by that trademark or service mark, may agree with the licensor to refrain from carrying on or engaging in a similar business and from soliciting old customers of such licensor within a reasonably limited time and area, so long as the licensor, or any person deriving title from the licensor, continues to carry on a like business therein. Said agreements may, in the discretion of a court of competent jurisdiction, be enforced by injunction.

(3) Partners may, upon or in anticipation of a dissolution of the partnership, agree that all or some of them will not carry on a similar business within a reasonably limited time and area.

(4) This section does not apply to any litigation which may be pending, or to any cause of action which may have accrued, prior to May 27, 1953.

Section 2. This act shall take effect October 1, 1988.

Approved by the Governor July 6, 1988.

Filed in Office Secretary of State July 6, 1988.

CHAPTER 88-401

House Bill No. 1162

An act relating to tax on sales, use, and other transactions; amending s. 212.0305, F.S.; revising uses of the proceeds of the charter county convention development tax; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

2363
FLORIDA LEGISLATURE

FINAL
LEGISLATIVE BILL
INFORMATION

1987 Special Sessions B, C, D
1988 Regular Session
1988 Special Sessions E, F

prepared by:

Joint Legislative Management Committee
Legislative Information Division
Capitol Building, Room 826 — 488-4371
FLORIDA LEGISLATURE—REGULAR SESSION—1988
HISTORY OF SENATE BILLS

S 187 (CONTINUED)
cor area differentials for university employees in certain specified counties. Amends 509 209 Effective Date 07/01/88 or upon becoming law, whichever occurs later
02/01/88 SENATE Prefiled
02/11/88 SENATE Referred to Personnel, Retirement and Collective Bargaining
04/05/88 SENATE Introduced, referred to Personnel, Retirement and Collective Bargaining
04/15/88 SENATE Extension of time granted Committee Personnel, Retirement and Collective Bargaining
05/02/88 SENATE Extension of time granted Committee Personnel, Retirement and Collective Bargaining
05/13/88 SENATE Extension of time granted Committee Personnel, Retirement and Collective Bargaining
05/27/88 SENATE Died in Committee on Personnel, Retirement and Collective Bargaining
06/07/88 SENATE Died in Committee on Personnel, Retirement and Collective Bargaining

S 188 GENERAL BILL by Malchin and others (Similar ENG/H 917, Compare H 1377, S 763)
Trade/Service Marks provided that agreements in restraint of trade entered into by licensees of use of service marks are exceptions to prohibition of contracts in restraint of trade Amends 542 33 Effective Date 10/01/88
02/05/88 SENATE Prefiled
02/11/88 SENATE Referred to Commerce
04/05/88 SENATE Introduced, referred to Commerce—SJ 23
04/15/88 SENATE Extension of time granted Committee Commerce
04/29/88 SENATE Extension of time granted Committee Commerce
05/03/88 SENATE On Committee Agenda—Commerce, 05/09/88, 1:00 pm, Room-A
05/05/88 SENATE Comm Report Favorable by Commerce, placed on Calendar—SJ 346
05/10/88 SENATE Placed on Consent Calendar—SJ 568
06/01/88 SENATE Placed on Consent Calendar—SJ 611, Amendments adopted, Iden /Sim House Bill substituted, Land on Table under Rule, Iden /Sim /Compare Bill passed, refer to HB 917 (Ch 88-400) —SJ 703

S 189 LOCAL BILL by Weinstine and others (Similar CS/H 144)
West Palm Beach/Beach/D. Ferguson, compensates Deborah L. Ferguson for personal injuries resulting from diving accident in West Palm Beach, provides for payment of claim $1,500,000 Effective Date Upon becoming law
02/05/88 SENATE Prefiled
02/11/88 SENATE Referred to The Special Master on Claims, Finance, Taxation and Claims
04/05/88 SENATE Introduced, referred to The Special Master on Claims, Finance, Taxation and Claims
04/19/88 SENATE Extension of time granted Committee The Special Master on Claims
05/29/88 SENATE Extension of time granted Committee The Special Master on Claims
05/12/88 SENATE Comm Report Favorable with amendment(a) by The Special Master on Claims—SJ 279; Now in Finance, Taxation and Claims
05/13/88 SENATE Extension of time granted Committee Finance, Taxation and Claims
05/18/88 SENATE On Committee Agenda—Select Subcommittee on Claims, 05/19/88, 6:00 am, Room—JC—SJ 341
05/19/88 SENATE On Committee Agenda—Select Subcommittee on Claims, 05/19/88, 1:00 pm, Room—JC—SJ 355
05/20/88 SENATE On Committee Agenda—Finance, Taxation and Claims, 05/24/88, 2:00 pm, Room—JC
05/24/88 SENATE Comm Report Favorable with amendment(s) by Finance, Taxation and Claims, placed on Calendar—SJ 426
06/07/88 SENATE Died on Calendar

S 190 GENERAL BILL by Malchin (Similar H 256, H 356)
Child Health Supervision/Insurance, provides that coverage for child health supervision services is optional in certain insurance policies Amends 627 646 Effective Date 10/01/88
02/02/88 SENATE Prefiled
02/11/88 SENATE Referred to Commerce
04/05/88 SENATE Introduced, referred to Commerce—SJ 23
04/15/88 SENATE Extension of time granted Committee Commerce
04/29/88 SENATE Extension of time granted Committee Commerce
05/13/88 SENATE Extension of time granted Committee Commerce
05/27/88 SENATE Extension of time granted Committee Commerce
06/07/88 SENATE Died in Committee on Commerce

S 191 GENERAL BILL by Ros-Lehtinen (Identical H 392, Similar H 131, H 1200, H 3-E, CS/S 89, S 9-E, Compare ENG/H 1826, CSH 1647, CS/S 600, ENG/S 1031)
Professions & Occupations/Licenses, provides for establishment of initial license fee by rule modifies eligibility requirements for examination for licensure

PAGE NUMBERS REFLECT DAILY SENATE AND HOUSE JOURNEYS AND NOT FINAL BOUND JOURNEYS

S 192 GENERAL BILL by Gordon (Identical H 362)
Child Health Supervision/Insurance, provides that coverage for child health supervision services is optional in certain insurance policies Amends 549 107 Effective Date 07/01/88 or upon becoming law, whichever occurs later
02/05/88 SENATE Prefiled
02/11/88 SENATE Referred to Education, Appropriations
04/07/88 SENATE Introduced, referred to Education, Appropriations—SJ 24
04/11/88 SENATE On Committee Agenda—Education, 04/13/88, 9:00 am, Room-A
04/13/88 SENATE Comm Report Favorable by Education, placed on Calendar—SJ 91; Now in Appropriations—SJ 91
05/04/88 SENATE Extension of time granted Committee Appropriations
05/19/88 SENATE Extension of time granted Committee Appropriations
06/07/88 SENATE Died in Committee on Appropriations

S 193 GENERAL BILL by Gordon (Identical H 977)
Colleges-Level Exam/Semester Hours, reduces number of semester hours necessary to take College-Level Communication & Computational Skills Examination Amends 507 107 Effective Date 07/01/88 or upon becoming law, whichever occurs later
02/02/88 SENATE Prefiled
02/11/88 SENATE Referred to Education, Appropriations
04/05/88 SENATE Introduced, referred to Education, Appropriations—SJ 24
04/11/88 SENATE On Committee Agenda—Education, 04/13/88, 9:00 am, Room-A
04/13/88 SENATE Comm Report Favorable by Education, placed on Calendar—SJ 91; Now in Appropriations—SJ 91
05/04/88 SENATE Extension of time granted Committee Appropriations
05/19/88 SENATE Extension of time granted Committee Appropriations
06/07/88 SENATE Died in Committee on Appropriations

S 194 GENERAL BILL by Gordon (Identical H 745)
Gambling/Slot Machines, revives definition of antique slot machines which may be legally defined as Amends 949 235 Effective Date 10/01/88
02/02/88 SENATE Prefiled
02/11/88 SENATE Referred to Judiciary-Criminal
04/05/88 SENATE Introduced, referred to Judiciary-Criminal—SJ 24
04/07/88 SENATE On Committee Agenda—Judiciary-Criminal, 04/11/88, 2:00 pm, Room—C
04/11/88 SENATE Comm Report Favorable by Judiciary-Criminal, placed on Calendar—SJ 193, Passed, YEAS 38 NAYS 0—SJ 204
05/03/88 HOUSE In Messages
05/04/88 HOUSE Received, placed on Calendar—SJ 319
05/10/88 HOUSE Placed on Special Order Calendar
05/16/88 HOUSE Substituted for HB 765, Read second time—HJ 490
05/17/88 HOUSE Third time—PASSED YEAS 38 NAYS 0—HJ 506
05/18/88 HOUSE Ordered enrolled—SJ 319
05/25/88 HOUSE Signed by Officers and presented to Governor—SJ 425
06/02/88 HOUSE Became Law without Governor’s Signature, Chapter No 88-71—SJ 787

Judges/General Revenues, provides for exclusion of certain persons from jury service for medical reasons, excludes persons who have served as jurors from further service until jury list is exhausted, authorizes driver-data base list to be used for selection of jurors in conjunction with registered electors, requires circuit court clerk to purge jury list once a month of convicted felons, mentally incompetent & deceased persons, etc Amends Ch 40, 905 37 Effective Date 10/01/88
02/01/88 SENATE Prefiled
02/17/88 SENATE Referred to Judiciary-Civil
04/05/88 SENATE Introduced, referred to Judiciary-Civil—SJ 24
04/15/88 SENATE Extension of time granted Committee Judiciary-Civil

(Continued on next page)
A bill to be entitled
An act relating to contracts in restraint of
trade; amending s. 542.33, F.S.; providing that
certain agreements in restraint of trade
entered into by licensees of the use of service
marks are exceptions to the prohibition of
contracts in restraint of trade; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 542.33, Florida Statutes, is amended to read:

542.33 Contracts in restraint of trade invalid;
exceptions.--

(1) Every contract by which anyone is restrained from
exercising a lawful profession, trade, or business of any
kind, otherwise than is provided by subsections (2) and (3)
hereof, is to that extent void.

(2)(a) One who sells the goodwill of a business, or
any shareholder of a corporation selling or otherwise
disposing of all of his shares in said corporation, may agree
with the buyer, and one who is employed as an agent,
independent contractor, or employee may agree with his
employer, to refrain from carrying on or engaging in a similar
business and from soliciting old customers of such employer
within a reasonably limited time and area, so long as the
buyer or any person deriving title to the goodwill from him,
and so long as such employer, continues to carry on a like
business therein. Said agreements may, in the discretion of a
court of competent jurisdiction, be enforced by injunction.
(b) The licensee, or any person deriving title from the licensee, of the use of a trademark or service mark, and the identifiable business format or system identified by that trademark or service mark, may agree with the licensor to refrain from carrying on or engaging in a similar business and from soliciting old customers of such licensor within a reasonably limited time and area, so long as the licensor, or any person deriving title from the licensor, continues to carry on a like business therein. Said agreements may, in the discretion of a court of competent jurisdiction, be enforced by injunction.

(3) Partners may, upon or in anticipation of a dissolution of the partnership, agree that all or some of them will not carry on a similar business within a reasonably limited time and area.

(4) This section does not apply to any litigation which may be pending, or to any cause of action which may have accrued, prior to May 27, 1953.

Section 2. This act shall take effect October 1, 1988.

SENATE SUMMARY

Provides that certain agreements in restraint of trade entered into by licensees of the use of service marks are valid.

CODING: Words struck are deletions; words underlined are additions.
I. SUMMARY:

A. Present Situation:

Chapter 542, F.S., is known as the "Florida Antitrust Act of 1980." The stated purpose of the act is to complement the body of federal law prohibiting restraints of trade or commerce in order to foster effective competition.

Section 542.33, F.S., provides that, with certain specified exceptions, every contract in which anyone is restrained from exercising a lawful profession, trade, or business of any kind is to that extent void. One of the specified exceptions (section 542.33(2)(b), F.S.) is a contract in which the licensee, or any person deriving title from the licensee, of the use of a trademark agrees with the licensor to refrain from carrying on or engaging in a similar business and from soliciting old customers of the licensor within a reasonably limited time and area, so long as the licensor, or any person deriving title from the licensor, continues to carry on a like business.

A trademark for purposes of registrability with the Department of State, Division of Corporations, is defined in section 495.011(1), F.S., as any word, name, symbol, character, design, drawing or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others. A service mark is defined in section 495.011(2), F.S., as any word, name, symbol, character, design, drawing or device or any combination thereof, and the distinctive features of radio, television or other advertising, adopted and used by a person to identify services rendered or offered by him and to distinguish them from services rendered or offered by others.

B. Effect of Proposed Changes:

The bill amends section 542.33(2)(b), F.S., to include service marks as well as trade marks within those types of contractual noncompete agreements which are permitted by the law.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Certain licensees of service marks who contractually agree not to engage in a similar business of the licensor may experience a loss in income. Conversely, certain licensors of service marks who contractually agree with a licensee may experience the positive economic impact that comes from prohibiting licensees from engaging in a similar business.
III. COMMENTS:
None.

IV. AMENDMENTS:
None.
A bill to be entitled
An act relating to contracts in restraint of
trade; amending s. 542.33, F.S.; providing that
certain contracts that restrain a person from
exercising a lawful profession, trade, or
business are valid; removing a provision that
declares certain such contracts to be void;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 542.33, Florida
Statutes, is amended to read:
542.33 Contracts in restraint of trade valid in
exceptions. --
(1) Notwithstanding other provisions of this chapter
to the contrary, every contract by which any person
anyone is restrained from exercising a lawful profession,
trade, or business of any kind, as otherwise-than-as provided
by subsections (2) and (3) hereof is to that extent valid
void.

Section 2. This act shall take effect October 1, 1988.

SENATE SUMMARY
Provides that certain contracts in restraint of trade are
valid. Removes provision that declares certain such
contracts to be void.

CODING: Words stricken are deletions; words underlined are additions.
A bill to be entitled
An act relating to contracts in restraint of
trade; amending s. 542.33, F.S., providing that
certain agreements in restraint of trade
entered into by licensees of the use of service
marks are exceptions to the prohibition of
contracts in restraint of trade; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida,

Section 1. Section 542.33, Florida Statutes, is
amended to read:
542.33 Contracts in restraint of trade invalid;
exceptions. --
(1) Every contract by which anyone is restrained from
exercising a lawful profession, trade, or business of any
kind, otherwise than as provided by subsections (2) and (3)
hereof, is to that extent void.
(2)(a) One who sells the goodwill of a business, or
any shareholder of a corporation selling or otherwise
disposing of all of his shares in said corporation, may agree
with the buyer, and one who is employed as an agent,
independent contractor, or employee may agree with his
employer, to refrain from carrying on or engaging in a similar
business and from soliciting old customers of such employer
within a reasonably limited time and area, so long as the
buyer or any person deriving title to the goodwill from him,
and so long as such employer, continues to carry on a like
business therein. Said agreements may, in the discretion of a
court of competent jurisdiction, be enforced by injunction.

CODING: Words struck are deletions, words underlined are additions.
(b) The licensee, or any person deriving title from
the licensee, of the use of a trademark or service mark, and
the identifiable business format or system identified by that
trademark or service mark, may agree with the licensor to
refrain from carrying on or engaging in a similar business and
from soliciting old customers of such licensor within a
reasonably limited time and area, so long as the licensor, or
any person deriving title from the licensor, continues to
carry on a like business therein. Said agreements may, in the
discretion of a court of competent jurisdiction, be enforced
by injunction.

(3) Partners may, upon or in anticipation of a
dissolution of the partnership, agree that all or some of them
will not carry on a similar business within a reasonably
limited time and area.

(4) This section does not apply to any litigation
which may be pending, or to any cause of action which may have
accrued, prior to May 27, 1953.

Section 2. This act shall take effect October 1, 1988.

SENATE SUMMARY
Provides that certain agreements in restraint of trade
entered into by licensees of the use of service marks are
valid.

This publication was produced at an average cost of 1.12 cents
per single page in compliance with the Rules and for
the information of members of the Legislature and the public.

CODING: Words stricken are deletions; words underlined are additions.
Journal
of the
Florida
House of Representatives

Ninetieth
Regular Session
since Statehood in 1845
April 5 through June 7, 1988

[Including a record of transmittal of Acts subsequent to sine die adjournment]
finance all or part of the cost thereof may be accomplished upon compliance with the provisions of this part without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special, or local law, and no approval of any bonds issued under this part by the qualified electors or qualified electors who are freeholders in the state or in any county or part of a county, or in any other political subdivision of the state, shall be required for the issuance of such bonds pursuant to this part.

(2) This part shall not be deemed to repeal, rescind, or modify any other law or laws relating to the State Board of Administration, the Department of Transportation, or the Division of Bond Finance of the Department of General Services, but shall be deemed to and shall supersede such other law or laws as are inconsistent with the provisions of this part.

348.992 Consolidation with expressway authorities—Upon this act taking effect, the authority shall succeed to the rights, purposes, property, leases, contract obligations, covenants, responsibilities, commitments, and bonded indebtedness of any expressway authority within Lake, Orange, Okeechobee, or Seminole Counties created in accordance with this chapter and shall thereby supersede such authority which is within Lake, Orange, Okeechobee, or Seminole Counties. Nothing contained in this part shall limit, alter, or impair the rights vested in the holders of bonds issued by such an expressway authority.

Section 2 Section 1 of this act shall take effect only upon its approval by a majority vote of those qualified electors of Orange County and a majority vote of those qualified electors of Seminole County voting in a referendum election to be held by the Boards of County Commissioners of Orange and Seminole Counties in conjunction with the next regular primary or general election in accordance with the provisions of law relating to elections currently in force, except that this section shall take effect upon becoming a law.

Rep Crotty moved the adoption of the amendment. Pending consideration thereof, without objection, the amendment was withdrawn.

On motion by Rep Nergard, the rules were waived by two-thirds vote and HB 1171, as amended, was read a third time by title. On passage, the vote was Yeas—117

The Chair Frankel
Abrams Friedman
Arnold Gardner
Ascherl Langton
Bainger Lockman
Banjimin Lawton
Bankhead Quevedo
Bass Lewis
Bell Liggman
Bloom Lippman
Bronson Lockman
Brown Mackenzie
Burke Mackey
Burnsed Martin
Canady Martinez
Carlton Messegate
Carpenter McEwan
Casas Messersmith
Clark Metcalf
Clements Mitchell
Cosgrove Morse
Cready Nergard
Cutting Ostrau
Danszler Patchett
Davis Peeples
Debush Webster
Deutsch Wetherell
Diaz-Balart Whitmore
Drage Young
Dunbar Reeds
Figg Rehm
Nays—None

So the bill passed, as amended, and was immediately certified to the Senate after engrossment.

HB 1033 was taken up. On motion by Rep Jamerson, SB 178, a similar or companion measure, was substituted for HB 1033. Under the rule, the House bill was laid on the table and—SB 178—A bill to be entitled An act relating to education, creating s. 240.4699, F.S., authorizing continuation of the Virgil Hawkins Fellows Scholarships for certain students, authorizing the restriction of the Virgil Hawkins Fellows Scholarships, defining minority for the purposes of student financial assistance and admission to Florida institutions providing an effective date—was read the second time by title. On motion by Rep Jamerson, the rules were waived by two-thirds vote and the bill was read a third time by title. On passage, the vote was Yeas—84

Abrams Gardner
Arnold Lockman
Ascherl Lippman
Bainger Logan
Bass Long
Bloom Mackenzie
Bronson Mackey
Brown Martn
Burge Martinez
Carleton Patchett
Carpenter Peeples
Casas Peoples
Deutsch Press
Diaz-Balart Reaves
Drape Redick
Frankel Rehm
Friedman Langton
Nays—12

Banjamin Hawkins
Bankhead Ireland Mcewan
Grindle King

Votes after roll call
Yeas—Figg
Yeas to Nays—Clements

So the bill passed and was immediately certified to the Senate.

HB 917—A bill to be entitled An act relating to contracts in restraint of trade, amending s. 542.33, F.S., providing that certain agreements in restraint of trade entered into by licensees of the use of service marks are exceptions to the prohibition of contracts in restraint of trade, providing an effective date—was read the second time by title. Representatives Titone offered the following amendment.

Amendment 1—On page 1, lines 14-19, insert 542.33 Contracts in restraint of trade valid, invalid, exceptions.

(1) Notwithstanding other provisions of this chapter to the contrary, every contract by which any person is restrained from exercising a lawful profession, trade, or business of any kind, as otherwise than as provided by subsection (2) and (3) hereof, is to that extent valid and

Rep Titone moved the adoption of the amendment, which was adopted without objection. Subsequently, on motion by Rep Wallace, the House agreed to reconsider the vote by which Amendment 1 was adopted. The question...
recurred on the adoption of the amendment. Without objection, the amendment was withdrawn.

Representative Titone offered the following title amendment:

Amendment 2—On page 1, line 3, insert after “542.33, F.S.”, providing that certain contracts that restrain a person from exercising a lawful profession, trade, or business are valid, removing a provision that declares certain such contracts to be void.

Rep Titone moved the adoption of the amendment, which was adopted without objection.

On motion by Rep. Wallace, the House agreed to reconsider the vote by which Amendment 2 was adopted. The question recurred on the adoption of the amendment. Without objection, the amendment was withdrawn.

Representatives Titone and Rush offered the following amendment:

Amendment 3—On page 1, lines 14-19, strike all of said lines and insert: S42 33 Contracts in restraint of trade invalid, exceptions.

(1) Notwithstanding other provisions of this chapter to the contrary, each every contract by which any person, anyone is restrained from exercising a lawful profession, trade, or business of any kind, as otherwise provided by subsections (2) and (3) hereof, is to that extent valid and all other contracts in restraint of trade are void.

Rep Titone moved the adoption of the amendment, which was adopted.

Representative Titone offered the following title amendment:

Amendment 4—On page 1, line 3, insert after “542.33, F.S.”, providing that certain contracts that restrain a person from exercising a lawful profession, trade, or business are valid, removing a provision that declares certain such contracts to be void.

Rep Titone moved the adoption of the amendment, which was adopted without objection.

On motion by Rep. Wallace, the rules were waived by two-thirds vote and HB 917, as amended, was read a third time by title. On passage, the vote was:

Yeas—115

ABAEMS—
Freeman
Arndt
Arnold
Ascherl
Banter
Banjan
Bankhead
Bass
Bell
Bloom
Bronson
Brown
Burke
Canady
Carlton
Carpenter
Casas
Clark
Clements
Cosgrove
Crady
Crotty
Dantziier
Davis
Deutsch
Diaz-Balart
Drage
Dunbar
Figg

Jones, D L
Kelly
Garcia
Gardner
Glickman
Gonzalez
Quevedo
Goode
Gordon
Grindle
Guber
Gustafson
Gutman
Hanson
Harden
Hargrett
Harris
Hawkins
Healey
Hill
Hodges
Holland
Holzendorf
Ireland
Irvine
Jamerson
Jennings
Johnson
Johnson
Jones, C F

Renke
Rochlin
Rudd
Rush
Sample
Liberti
Lippman
Locke
Logan
Lombard
Long
Mackenzie
Mackey
Martin
Martinez
McEwan
Messersmith
Metcalf
Mitchell
Morse
Northam
Nergard
Ostrau
Pachett
Peeples
Press
Reaves
Redlick

So the bill passed, as amended, and was immediately certified to the Senate after engrossment.

SB 116—A bill to be entitled An act relating to state university direct-support organizations, amending s 240.299, F.S., specifying which records of such organizations are not considered public records subject to ch 119, F.S., providing for future legislative review of this exemption pursuant to the Open Government Sunset Review Act, providing an effective date—was read the second time by title.

The Committee on Higher Education offered the following amendment:

Amendment 1—On page 1, line 11, strike everything after the enacting clause and insert Section 1 Paragraph (b) of subsection (2) of section 240.299, Florida Statutes, is amended, subsection (3) is renumbered as subsection (4) and amended, and a new subsection (5) is added to said section, to read:

240.299 Direct-support organizations; use of property, board of directors, audit, status—

(b) The Board of Regents shall be authorized to prescribe by rule conditions any limitations with which a university direct-support organization must comply in order to use property, facilities, or personal services at any state university. Such rules shall provide for budget and audit review and oversight by the Board of Regents.

(3) BOARD OF DIRECTORS—The chairman of the Board of Regents may appoint a representative to the board of directors and the executive committee of any direct-support organization established under this section. The president of the university for which the direct-support organization is established, or his designee, shall also serve on the board of directors and the executive committee of any direct-support organization established to benefit that university.

(4) ANNUAL AUDIT—Each direct-support organization shall make provisions for an annual postaudit of its financial accounts to be conducted by an independent, certified public accountant in accordance with rules to be promulgated by the Board of Regents. The annual audit report shall include a management letter and shall be submitted to the Auditor General and the Board of Regents for review. The Board of Regents and the Auditor General shall have the authority to require and receive from the organization or from its independent auditor any detail or supplemental data relative to the operation of the organization. The identity of donors who desire to remain anonymous shall be protected and that anonymity shall be maintained in the auditor's report. Notwithstanding the provison of s 119.14, all records of the organization other than the auditor's report, management letter, and any supplemental data requested by the Board of Regents and the Auditor General shall not be considered public records for the purposes of s 119.07(1) chapter 199.

This exemption is subject to the Open Government Sunset Review Act in accordance with s 119.14

Section 2 This act shall take effect October 1, 1988.

Rep. Liberti moved the adoption of the amendment, which was adopted without objection.

Without objection, further consideration of SB 116 was temporarily deferred.

REPRESENTATIVE MEFFERT IN THE CHAIR

Subsequently, the House reconsidered the vote by which Amendment 1 was adopted.

Representative Liberti offered the following amendment to the amendment:

Amendment 1 to Amendment 1—On page 2, line 23, insert a new Section 2

Section 2 Paragraph (a) of subsection (3) of section 240.209, Florida Statutes is amended to read:

None—None
I. SUMMARY:

House Bill 917 expands the language in Section 452.33, Florida Statutes, to include "service marks" in certain contractual arrangements. In addition, HB 917 changes the section itself to clarify that by validating certain kinds of contracts in restraint of trade, it is to operate as an exception to the rest of Florida's antitrust law, as contained in Chapter 542, F.S.

A. PRESENT SITUATION:

Generally, s. 542.33, F.S., renders contracts in restraint of trade as invalid with certain enumerated exceptions which are known as covenants not to compete. Typical examples include certain employment contracts and the sale of the "good will" of a business.

Currently, s. 542.33, F.S., recognizes the use of a trade mark in contractual relationships between licensee and licensor relative to agreements refraining from carrying on or engaging in similar businesses and from soliciting old customers within a reasonable length of time.

B. EFFECT OF PROPOSED CHANGES:

House Bill 917 was amended on the House Floor to incorporate HB 1377 which reverses Florida's statutory approach to prohibition of contracts in restraint of trade (s. 542.33(1), F.S.). Currently, the statute renders all contracts not contained within the exceptions to be void. The bill eliminates the general prohibition and replaces it with language that makes valid all contracts that fit within the exceptions.
In addition, HB 917 (as originally drafted) expands the language in s. 542.33(2)(b), F.S., to include "service mark" giving them equal recognition with "trade mark". "Trade mark" meaning any word, name, symbol, character, design, drawing or service of any kind or combination thereof, adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others. The definition of "service mark" means any word, name, symbol, character, design, drawing or device or any combination thereof, and the distinctive features of radio, television or other advertising, adopted and used by a person to identify services rendered or offered by him and to distinguish them from services rendered or offered by others.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:
   None.

2. Recurring or Annualized Continuation Effects:
   None.

3. Long Run Effects Other Than Normal Growth:
   None.

4. Appropriations Consequences:
   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   None.

2. Recurring or Annualized Continuation Effects:
   None.

3. Long Run Effects Other Than Normal Growth:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
   None.
2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise, and Employment Markets:

Chapter 542, F.S., is remedial in nature, therefore, the bill would most likely be applied retroactively to all cases in progress on the date of its enactment possibly rendering as valid some contracts which under current law are invalid.

D. FISCAL COMMENTS:

None.

III. STATE COMPREHENSIVE PLAN IMPACT:

House Bill 917 has no negative impact on Florida's State Comprehensive Plan. By incorporating HB 1377 within HB 917, the bill would clarify s. 542.33, F.S., and eliminate confusion about its application and enforcement.

IV. COMMENTS:

LEGISLATIVE HISTORY:

Enacted Bill:

House Bill 917, by Represenative Wallace was prefiled on March 31, 1988, and referred to the Commerce Committee. The Full House Commerce Committee reported the bill favorably on April 27. On May 24, the bill was placed on the Special Order Calendar (HJ 00267). After being amended on the House Floor to include HB 1377 on May 26, HB 917 passed the House by a vote of 115 to 0 (HJ 00753). On May 30, HB 917 was referred to the Senate Commerce Committee. On June 1, HB 917 was withdrawn from Commerce, substituted for its Senate companion, and passed by a vote of 35 to 0 (SJ 00703).

Disposition of Companion:

On February 1, 1988, Senate Bill 188, by Senator Malchon and others, was prefiled and subsequently referred and introduced to the Commerce Committee (SJ 00023). On May 5, SB 188 was reported favorably and placed on the Consent Calendar on May 31 (SJ 00611). On June 1, the bill was laid on the table as its similar HB 917 was substituted and passed (SJ 00703).

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: M.B. Menge, Jr. Staff Director: H. Fred Varn
A bill to be entitled
An act relating to contracts in restraint of
trade; amending s. 542.33, F.S.; providing that
certain contracts that restrain a person from
exercising a lawful profession, trade, or
business are valid; removing a provision that
declares certain such contracts to be void;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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

542.33 Contracts in restraint of trade valid invalid,
exceptions --

(1) Notwithstanding other provisions of this chapter
to the contrary, each contract by which any person
anyone is restrained from exercising a lawful profession,
trade, or business of any kind, as otherwise than as provided
by subsections (2) and (3) hereof, is to that extent valid
void.

Section 2 This act shall take effect October 1, 1988.

*****************************************
SENATE SUMMARY

Provides that certain contracts in restraint of trade are
valid. Removes provision that declares certain such
contracts to be void.

CODING: Words stricken are deletions; words underlined are additions.
I. SUMMARY:

House Bill 1377 changes the title of Section 542.33, Florida Statutes, to clarify that it relates to making covenants not to compete valid with certain restrictions, rather than making all contracts in restraint of trade invalid with exceptions. The section itself is also amended to clarify that by validating certain kinds of contracts in restraint of trade, it is to operate as an exception to the rest of Florida's antitrust law, as contained in Chapter 542, F.S.

A. PRESENT SITUATION:

State law generally prohibits monopolies and contracts in restraint of trade, Chapter 542, F.S., (the Florida Antitrust Act of 1980). The Legislature intended for this statute to compliment the various federal antitrust laws in an effort to foster competition, (s. 542.16, F.S.).

Section 542.33, F.S., generally renders contracts which restrain anyone from pursuing a lawful profession, trade, or business as void. There are several exceptions, however. One such exception involves contracts for employment where, as a part of the contract, an "agent", "employee", or "independent contractor" agrees not to compete against the employer in a similar business, or solicit his customers. This is what is known as a covenant not to compete.

Allowable covenants not to compete are limited to particular relationships as set out in the statute. In addition to the above mentioned employment contracts, these involve an owner selling the goodwill of his business, a shareholder selling all of his shares in the corporation, and a licensee of a trademark or identifiable business format. In addition, partners may, upon dissolution of the partnership, agree that all or some of them will not carry on a similar business. Covenants not to compete must always be limited to a reasonable time and geographic area.
Bill #: HB 1377

Date: April 14, 1988

It should be noted that the Florida Antitrust Act replaced previously existing Florida antitrust law with language complimentary to the federal antitrust laws. Section 542.32, F.S., provides legislative intent that "... great weight be given to the interpretations of the federal courts relating to comparable federal antitrust statutes..."; specifically incorporating by reference substantive provisions of s. 3 of the Clayton Act, 15 U.S.C. s. 14 into ss. 542.18 and 542.19, of the Florida Act. Section 542.33, F.S., embodies the only two provisions of the old law to survive in the Act. It would appear that this section as worded is inconsistent with federal decisions. As mentioned, s. 542.33, F.S. renders as void all contracts in restraint of trade not encompassed within its exceptions. Federal court decisions have said that only contracts that unreasonably restrain trade or commerce are unlawful.

B. EFFECT OF PROPOSED CHANGES:

House Bill 1377 would switch around the section's approach to prohibition of contracts in restraint of trade. Currently, the statute renders all contracts not contained within the exceptions to be void. The bill eliminates the general prohibition and replaces it with language that makes valid all contracts that fit within the exceptions.

Another way to think of this is that the current language of the section draws a circle around certain contracts in restraint of trade and declares that everything outside the circle is void. This bill would draw the same circle and declare that anything inside the circle is valid - not mentioning the status of things outside the circle.

In this way, the bill intends to clarify that the balance of the chapter other than s. 542.33, F.S., is the antitrust law of Florida and that s. 542.33, F.S., is an exception making some types of contracts (certain covenants not to compete) valid. Furthermore, this change is intended to conform this section with the rest of the chapter which incorporates by reference federal decisions relating to similarly worded federal antitrust statutes.

The bill provides an effective date of October 1, 1988.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.
Date: April 14, 1988

4. Appropriations Consequences:
   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:
   1. Non-recurring or First Year Start-Up Effects:
      None.
   2. Recurring or Annualized Continuation Effects:
      None.
   3. Long Run Effects Other Than Normal Growth:
      None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
   1. Direct Private Sector Costs:
      None
   2. Direct Private Sector Benefits:
      None.
   3. Effects on Competition, Private Enterprise, and Employment Markets:
      Chapter 542, F.S., is remedial in nature and therefore the bill would most likely be applied retroactively to all cases in progress on the date of its enactment possibly rendering as valid some contracts which under current law are invalid.

D. FISCAL COMMENTS:
   None.

III. LONG RANGE CONSEQUENCES:

   House Bill 1377 should clarify s. 542.33, F.S., and eliminate confusion about its application and enforcement.

IV. COMMENTS:

   The Antitrust Committee of the Corporation, Banking, and Business Law Section of the Florida Bar recommends this change to the law.

V. AMENDMENTS:

   None.
VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: David Sigerson

FINANCE & TAXATION:
Prepared by:

APPROPRIATIONS:
Prepared by:

Staff Director: H. Fred Varn
finance all or part of the cost thereof may be accomplished upon compliance with the provisions of this part without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special, or local law, and no approval of any bonds issued under this part by the qualified electors or qualified electors who are freeholders in the state or in any county or municipality, or in any other political subdivision of the state, shall be required for the issuance of such bonds pursuant to this part.

(2) This part shall not be deemed to repeal, rescind, or modify any other law or laws relating to the State Board of Administration, the Department of Transportation, or the Division of Bond Finance of the Department of General Services, but shall be deemed to and shall supersede such other law or laws as are inconsistent with the provisions of this part.

348.992 Consolidation with expressway authorities—Upon this act taking effect, the authority shall succeed to the rights, powers, property, leases, contract obligations, covenants, responsibilities, commitments, and bonded indebtedness of any expressway authority within Lake, Orange, Osceola, or Seminole Counties created in accordance with this chapter and shall thereby supersede such authority which is within Lake, Orange, Osceola, or Seminole Counties. Nothing contained in this part shall limit, alter, or impair the rights vested in the holders of bonds issued by such an expressway authority.

Section 2 Section 1 of this act shall take effect only upon its approval by a majority vote of those qualified electors of Orange County and a majority vote of those qualified electors of Seminole County voting in a referendum election to be held by the Boards of County Commissioners of Orange and Seminole Counties in conjunction with the next regular primary or general election in accordance with the provisions of law relating to elections currently in force, except that this section shall take effect upon becoming a law.

Rep Crotty moved the adoption of the amendment. Pending consideration thereof, without objection, the amendment was withdrawn.

On motion by Rep Nergard, the rules were waived by two-thirds vote and HB 1171, as amended, was read a third time by title. On passage, the vote was

**Yeas—117**

- Abrams
- Gardner
- Langston
- Renke

- Arnold
- Glickman
- Lippman
- Rudd

- Ascherl
- Gonzalez
- Locke
- Sample

- Bahter
- Quevedo
- Logan
- Saunders

- Bass
- Goode
- Lombard
- Shelley

- Bell
- Gordon
- Long
- Simon

- Bloom
- Guiter
- Mackenzie
- Simon

- Brion
- Gustafson
- Mackey
- Smith

- Brown
- Hanson
- Martin
- Souto

- Burke
- Harden
- Martinez
- Starks

- Carlton
- Hargrett
- Messersmith
- Stone

- Carpenter
- Healey
- Metcalf
- Titone

- Casas
- Hill
- Mitchell
- Tobbiesen

- Clark
- Hodges
- Ostrau
- Trammell

- Clements
- Holzendorf
- Patchett
- Wetherell

- Crady
- Irvine
- Peeples
- Wise

- Crotty
- Jamerson
- Reaves
- Young

- Deutsch
- Johnson
- Redick
- Rehm

- Diaz-Balart
- Johnson
- Rehm
- Webster

- Drage
- Jones
- Redick
- Rochlin

- Frankel
- Jones, D L
- Rehm
- Yeps—12

- BanJan
- Hawkms
- Lewis
- Troxler

- Bankhead
- Ireland
- McEwan
- Upchurch

- Grindle
- King
- Thomas
- Webster

**Votes after roll call**

**Yeas—Figg**

**Yeas to Nays—Clements**

So the bill passed and was immediately certified to the Senate.

**HB 1030 was taken up On motion by Rep Jamerson, SB 178, a similar or companion measure, was substituted for HB 1030. Under the rule, the House bill was laid on the table and—**

**SB 178—A bill to be entitled An act relating to education, creating s 240.4069, F S, authorizing continuation of the Virgil Hawkins Fellows Scholarships for certain students, authorizing the restriction of the Virgil Hawkins Fellows Scholarships, defining minority for the purposes of student financial assistance and admission to Florida institutions, providing an effective date**

—was read the second time by title. On motion by Rep Jamerson, the rules were waived by two-thirds vote and the bill was read a third time by title. On passage, the vote was

**Yeas—84**

- Abrams
- Gardern
- Lawson
- Rudd

- Arnold
- Glickman
- Lippman
- Rush

- Ascherl
- Gonzalez
- Locke
- Sample

- Bahter
- Quevedo
- Logan
- Saunders

- Bass
- Goode
- Lombard
- Shelley

- Bell
- Gordon
- Long
- Simon

- Bloom
- Guiter
- Mackenzie
- Simon

- Bronn
- Gustafson
- Mackey
- Smith

- Brown
- Hanson
- Martin
- Souto

- Burke
- Harden
- Martinez
- Starks

- Carlton
- Hargrett
- Messersmith
- Stone

- Carpenter
- Healey
- Metcalf
- Titone

- Casas
- Hill
- Mitchell
- Tobbiesen

- Clark
- Hodges
- Ostrau
- Trammell

- Clements
- Holzendorf
- Patchett
- Wetherell

- Crady
- Irvine
- Peeples
- Wise

- Crotty
- Jamerson
- Redick
- Young

- Deutsch
- Johnson, B L
- Rehm
- Webster

- Diaz-Balart
- Johnson, R C
- Redick
- Rehm

- Drage
- Jones, D L
- Redick
- Rehm

- Frankel
- Langton
- Rochlin

- Friedman
- Langton
- Rochlin

**Nays—None**

**So the bill passed, as amended, and was immediately certified to the Senate after engrossment.**

**HB 917—A bill to be entitled An act relating to contracts in restraint of trade, amending s 542.33, F S, providing that certain agreements in restraint of trade entered into by licensees of the use of service marks are exceptions to the prohibition of contracts in restraint of trade, providing an effective date**

—was read the second time by title.

Representative Titone offered the following amendment

Amendment 1—On page 1, lines 14-19, insert 542.33 Contracts in restraint of trade valid invalid; exceptions.

(1) Notwithstanding other provisions of this chapter to the contrary, each Every contract by which any person anyone is restrained from exercising a lawful profession, trade, or business of any kind, as otherwise than is provided by subsection (2) and (3) hereof, is to that extent valid invalid.

Rep Titone moved the adoption of the amendment, which was adopted without objection.

Subsequently, on motion by Rep Wallace, the House agreed to reconsider the vote by which Amendment 1 was adopted. The question
recurred on the adoption of the amendment Without objection, the amendment was withdrawn.

Representative Titone offered the following title amendment

Amendment 2—On page 1, line 3, insert after “542 33, F.S.” providing that certain contracts that restrain a person from exercising a lawful profession, trade, or business are valid, removing a provision that declares certain such contracts to be void,

Rep Titone moved the adoption of the amendment, which was adopted without objection.

On motion by Rep. Wallace, the House agreed to reconsider the vote by which Amendment 2 was adopted. The question recurred on the adoption of the amendment Without objection, the amendment was withdrawn.

Representatives Titone and Rush offered the following amendment.

Amendment 3—On page 1, lines 14-19, strike all of said lines and insert 542 33 Contracts in restraint of trade invalid; exceptions

(1) Notwithstanding other provisions of this chapter to the contrary, each Every contract by which any person restrains from exercising a lawful profession, trade, or business of any kind, as other provisions are provided by subsections (2) and (3) hereof, is to that extent valid and all other contracts in restraint of trade are void.

Rep Titone moved the adoption of the amendment, which was adopted.

Representative Titone offered the following title amendment.

Amendment 4—On page 1, line 3, insert after “542 33, F.S.”; providing that certain contracts that restrain a person from exercising a lawful profession, trade, or business are valid, removing a provision that declares certain such contracts to be void.

Rep Titone moved the adoption of the amendment, which was adopted without objection.

On motion by Rep. Wallace, the rules were waived by two-thirds vote and HB 917, as amended, was read a third time by title. On passage, the vote was

Year—115

The Chair
Friedeman
Abraands
Garcia
Arnold
Gardner
Ascherfi
Ghizman
Bainter
Gonzalez
Banjann
Quevedo
Bankhead
Goode
Bass
Gordon
Bell
Grindle
Bloom
Guber
Bronson
Gustafson
Brown
Gutman
Burke
Hanson
Canady
Harden
Carlton
Hargrett
Carpenter
Harris
Cass
Hawkins
Clark
Healey
Clements
Hill
Cosgrove
Hodges
Cready
Holland
Crotty
Holzendorf
Dantzler
Irving
Davies
Deutsch
Diaz-Balart
Drage
Dunbar
Figg

Nays—None

So the bill passed, as amended, and was immediately certified to the Senate after engagement.

SB 116—A bill to be entitled An act relating to state university direct-support organizations, amending s 240 299, F.S., specifying which records of such organizations are not considered public records subject to ch 119, F.S., providing for future legislative review of this exemption pursuant to the Open Government Sunset Review Act; providing an effective date

—was read the second time by title.

The Committee on Higher Education offered the following amendment.

Amendment 1—On page 1, line 11, strike everything after the enacting clause and insert Section 1 Paragraph (b) of subsection (2) of section 240 299, Florida Statutes, is amended, subsection (3) is renumbered as subsection (4) and amended, and a new subsection (3) is added to said section, to read

240 299 Direct-support organizations, use of property, board of directors, audit, status —

(2) USE OF PROPERTY —

(b) The Board of Regents shall be authorized to prescribe by rule conditions any condition with which a university direct-support organization must comply in order to use property, facilities, or personal services at any state university. Such rules shall provide for budget and audit review and oversight by the Board of Regents.

(3) BOARD OF DIRECTORS — The chairman of the Board of Regents may appoint a representative to the board of directors and the executive committee of any direct-support organization established under this section. The president of the university for which the direct-support organization is established, or his designee, shall also serve on the board of directors and the executive committee of any direct-support organization established to benefit that university.

(4) ANNUAL AUDIT — Each direct-support organization shall make provisions for an annual audit of its financial accounts to be conducted by an independent, certified public accountant in accordance with rules to be promulgated by the Board of Regents. The annual audit report shall include a management letter and shall be submitted to the Auditor General and the Board of Regents for review. The Board of Regents and the Auditor General shall have the authority to require and receive from the organization or from its independent auditor any detail or supplemental data relative to the operation of the organization. The identity of donors who desire to remain anonymous shall be protected and that anonymity shall be maintained in the auditor’s report. Notwithstanding the provisions of s 119 14, all records of the organization other than the auditor’s report, management letter, and any supplemental data requested by the Board of Regents and the Auditor General shall not be considered public records for the purposes of s 119 07 (1) chapter 119. This exemption is subject to the Open Government Sunset Review Act in accordance with s 119 14.

Section 2 This act shall take effect October 1, 1988.

Rep. Liberti moved the adoption of the amendment, which was adopted without objection, further consideration of SB 116 was temporarily deferred.

REPRESENTATIVE MEFFERT IN THE CHAIR

Subsequently, the House reconsidered the vote by which Amendment 1 was adopted.

Representative Liberti offered the following amendment to the amendment.

Amendment 1 to Amendment 1—On page 2, line 23, insert a new Section 2.

Section 2 Paragraph (a) of subsection (3) of section 240 209, Florida Statutes is amended to read...