

except that local ordinances may not restrict hours of operations other than between midnight and 6 a.m. Any ordinance that conflicts with this subsection is void. Nothing in this section shall affect the authority of a county or municipality to establish land use controls or require a pawnbroker to obtain a local occupational license.

(21) TRANSITION PERIOD FOR LICENSING.—Each pawnbroker operating a pawnshop in business on the effective date of this section shall have 6 months from the effective date of this section to comply with the registration and security provisions before the agency may initiate any administrative or civil action.

History.—s. 1, ch. 96-242.

Note.—Section 775.084 does not refer to misdemeanors.

539.002 Applicability.—Chapter 538 does not apply to pawnbrokers licensed under the Florida Pawnbroking Act. This act does not abrogate any provision of chapters 671-680.

History.—s. 2, ch. 96-242.

539.003 Confidentiality.—All records relating to pawnbroker transactions delivered to appropriate law enforcement officials pursuant to s. 539.001 are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may be used only for official law enforcement purposes. This exemption is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2001, unless reviewed and saved from repeal through reenactment by the Legislature.

History.—s. 1, ch. 96-241.

CHAPTER 542

COMBINATIONS RESTRICTING TRADE OR COMMERCE

- 542.28 Civil investigative demand.
542.331 Applicability of s. 542.33.
542.335 Valid restraints of trade or commerce.

542.28 Civil investigative demand.—

(1) Whenever the Attorney General, or a state attorney with appropriate jurisdiction and with the written consent of the Attorney General, has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information, which documentary material or information is relevant to a civil antitrust investigation authorized by s. 542.27(3), the Attorney General or such state attorney may, prior to the institution of a civil or criminal proceeding thereon, issue in writing and cause to be served upon such person a civil investigative demand requiring such person to:

- (a) Produce such documentary material for inspection and copying or reproduction;
- (b) Answer, under oath and in writing, written interrogatories;
- (c) Give sworn oral testimony concerning the documentary material or information; or

(d) Furnish any combination of such material, answers, or testimony.

(2) The demand shall:

(a) Be served upon the person in the manner required for service of process in this state or by certified mail showing receipt by the addressee or by the authorized agent of the addressee.

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

(c) Describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such materials to be reasonably identified.

(d) Prescribe a date and time at which the person must appear to testify, under oath or affirmation, or by which the person must answer written interrogatories or produce the documentary material for inspection or copying; however, such date shall not be earlier than 30 days from the date of service of the investigative demand.

(e) Specify a place for the taking of testimony or for the submission of answers to interrogatories and identify the person who is to take custody of any documentary material. Inspection and copying of documentary material shall be carried out at the place where the documentary material is located or at such other place as may be thereafter agreed to by the person and such designated custodian. Upon written agreement between the person and the designated custodian, copies may be substituted for original documents.

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

(a) The standards applicable to subpoenas or subpoenas duces tecum issued by a court of this state in aid of a grand jury investigation; or

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

(4) Nothing in this section, however, shall limit the power of the Attorney General or a state attorney to require the appearance of witnesses or production of documents or other tangible evidence located outside the state.

(5) Within 30 days after the service of an investigative demand upon any person or at any time before the return date specified therein, whichever period is longer, the person served may file in the circuit court in and for the county in which the person resides or transacts business, and serve upon the Attorney General or state attorney, a petition for an order of the court modifying or setting aside the demand. The time allowed for compliance in whole or in part with the demand as deemed proper and ordered by the court shall not run while the petition is pending before the court. The petition shall specify each ground upon which the petitioner relies in seeking relief and may be based upon the failure of the

demand to comply with the provisions of this chapter or upon any constitutional or other legal right or privilege of such person.

(6) In case of the failure of any person to comply in whole or in part with a written investigative demand and when such person has not filed a petition under subsection (5), any circuit court of this state, upon application of the Attorney General or state attorney, may issue an order requiring compliance. The failure to obey the order of the court shall be punishable as a contempt of court.

(7) The examination of all witnesses under this section shall be conducted by the Attorney General, or a state attorney with appropriate jurisdiction, before an officer authorized to administer oaths in this state. The testimony shall be taken stenographically or by a sound-recording device. Any person compelled to appear under a demand for oral testimony pursuant to this section may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, either upon the request of such person or upon counsel's own initiative, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for any such objection. If such person refuses to answer any question, the person conducting the examination may petition the circuit court as provided by subsection (11).

(8) When the testimony is fully transcribed, the person conducting the deposition shall afford the witness, and counsel if any, a reasonable opportunity to examine the transcript, and the transcript shall be read to or by the witness, unless such examination and reading is waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer, the Attorney General, or a state attorney, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness unless the witness waives the signing in writing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days of his being afforded a reasonable opportunity to examine it, the person conducting the examination shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or refusal to sign, together with the reason, if any, given therefor. Any person required to testify or to submit documentary evidence is entitled, on payment of reasonable costs, to procure a copy of any document produced by such person and of his own testimony as stenographically reported or, in the case of a deposition, as reduced to writing by or under the direction of the person taking the deposition.

(9) Notwithstanding s. 119.07(1), it is the duty of the Attorney General or a state attorney to maintain the secrecy of all evidence, testimony, documents, work product, or other results of such investigative demand. However, the Attorney General or state attorney may disclose such investigative evidence to:

- (a) Any court or tribunal in this state; or
- (b) Other law enforcement authorities of the Federal Government or other state governments that have restrictions governing confidentiality similar to those contained in this subsection.

(10) The Attorney General shall have the authority to stipulate to protective orders with respect to documents and information submitted in response to an investigative demand under this section.

(11) The Attorney General or a state attorney may request that any natural person who refuses to comply with any provisions of this section on the ground that the testimony or documents may incriminate him be ordered by the circuit court to provide the testimony or the documents. Except in a prosecution for perjury, a natural person who complies with a court order to provide testimony or documents after asserting a privilege against self-incrimination to which he is entitled by law may not be subject to a criminal proceeding or to the civil penalty of s. 542.21(1), with respect to the transaction to which he is required to testify or produce documents. Any natural person who fails to comply with such a court order to testify or produce documents may be adjudged in contempt and imprisoned until the time he purges himself of the contempt.

(12) While in the possession of the custodian, documentary material, answers to interrogatories, and transcripts of oral testimony shall be available, under such reasonable terms and conditions as the Attorney General or a state attorney shall prescribe, for examination by the person who produced such materials or answers, or his duly authorized representative.

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

- (a) Institute a civil proceeding under s. 542.22;
- (b) Lay before a grand jury of this state evidence concerning a violation of this chapter;
- (c) Invoke the power of a court to compel the production of evidence before a grand jury; or
- (d) File a civil complaint or criminal indictment alleging a violation of this chapter.

(14)(a) No person, knowing or having reason to believe that a demand pursuant to this section is pending, shall:

- 1. Alter, destroy, conceal, or remove any record, document, or thing with the purpose of impairing its verity or availability in such proceeding or investigation; or
- 2. Make, present, or use any record, document, or thing, knowing it to be false.

(b) Any person who violates a provision of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(15) When copies of documentary material made available pursuant to an investigative demand are no longer required for use in a pending proceeding or, absent any pending proceeding, are no longer required in connection with the investigation for which they were demanded, or at the end of 24 months following the date when the material was made available, whichever is sooner, all copies of the material shall be returned, unless a request to extend the period beyond 24 months has been filed in the court in which a request for an order compelling compliance pursuant to subsection (6) could be filed. This subsection does not require the return of any copies of the documentary material that have passed into the control of any court or grand jury.

History.—s. 1, ch. 80-28; s. 2, ch. 84-146; s. 1, ch. 92-24; s. 342, ch. 96-406.

542.331 Applicability of s. 542.33.—Section 542.33 is hereby repealed with respect to restrictive covenants entered into or having an effective date on or after July 1, 1996. Section 542.33 shall continue to govern enforcement of restrictive covenants entered into before July 1, 1996.

History.—s. 2, ch. 96-257.

542.335 Valid restraints of trade or commerce.—

(1) Notwithstanding s. 542.18 and subsection (2), enforcement of contracts that restrict or prohibit competition during or after the term of restrictive covenants, so long as such contracts are reasonable in time, area, and line of business, is not prohibited. In any action concerning enforcement of a restrictive covenant:

(a) A court shall not enforce a restrictive covenant unless it is set forth in a writing signed by the person against whom enforcement is sought.

(b) The person seeking enforcement of a restrictive covenant shall plead and prove the existence of one or more legitimate business interests justifying the restrictive covenant. The term "legitimate business interest" includes, but is not limited to:

1. Trade secrets, as defined in s. 688.002(4).
2. Valuable confidential business or professional information that otherwise does not qualify as trade secrets.
3. Substantial relationships with specific prospective or existing customers, patients, or clients.
4. Customer, patient, or client goodwill associated with:
 - a. An ongoing business or professional practice, by way of trade name, trademark, service mark, or "trade dress";
 - b. A specific geographic location; or
 - c. A specific marketing or trade area.
5. Extraordinary or specialized training.

Any restrictive covenant not supported by a legitimate business interest is unlawful and is void and unenforceable.

(c) A person seeking enforcement of a restrictive covenant also shall plead and prove that the contractually specified restraint is reasonably necessary to protect the legitimate business interest or interests justifying the restriction. If a person seeking enforcement of the restrictive covenant establishes prima facie that the restraint is reasonably necessary, the person opposing enforcement has the burden of establishing that the contractually specified restraint is overbroad, overlong, or otherwise not reasonably necessary to protect the established legitimate business interest or interests. If a contractually specified restraint is overbroad, overlong, or otherwise not reasonably necessary to protect the legitimate business interest or interests, a court shall modify the restraint and grant only the relief reasonably necessary to protect such interest or interests.

(d) In determining the reasonableness in time of a postterm restrictive covenant not predicated upon the protection of trade secrets, a court shall apply the following rebuttable presumptions:

1. In the case of a restrictive covenant sought to be enforced against a former employee, agent, or independent contractor, and not associated with the sale of all or a part of:

- a. The assets of a business or professional practice, or
- b. The shares of a corporation, or
- c. A partnership interest, or
- d. A limited liability company membership, or
- e. An equity interest, of any other type, in a business or professional practice,

a court shall presume reasonable in time any restraint 6 months or less in duration and shall presume unreasonable in time any restraint more than 2 years in duration.

2. In the case of a restrictive covenant sought to be enforced against a former distributor, dealer, franchisee, or licensee of a trademark or service mark and not associated with the sale of all or a part of:

- a. The assets of a business or professional practice, or
- b. The shares of a corporation, or
- c. A partnership interest, or
- d. A limited liability company membership, or
- e. An equity interest, of any other type, in a business or professional practice,

a court shall presume reasonable in time any restraint 1 year or less in duration and shall presume unreasonable in time any restraint more than 3 years in duration.

3. In the case of a restrictive covenant sought to be enforced against the seller of all or a part of:

- a. The assets of a business or professional practice, or
- b. The shares of a corporation, or
- c. A partnership interest, or
- d. A limited liability company membership, or
- e. An equity interest, of any other type, in a business or professional practice,

a court shall presume reasonable in time any restraint 3 years or less in duration and shall presume unreasonable in time any restraint more than 7 years in duration.

(e) In determining the reasonableness in time of a postterm restrictive covenant predicated upon the protection of trade secrets, a court shall presume reasonable in time any restraint of 5 years or less and shall presume unreasonable in time any restraint of more than 10 years. All such presumptions shall be rebuttable presumptions.

(f) The court shall not refuse enforcement of a restrictive covenant on the ground that the person seeking enforcement is a third-party beneficiary of such contract or is an assignee or successor to a party to such contract, provided:

1. In the case of a third-party beneficiary, the restrictive covenant expressly identified the person as a third-party beneficiary of the contract and expressly stated that the restrictive covenant was intended for the benefit of such person.

2. In the case of an assignee or successor, the restrictive covenant expressly authorized enforcement by a party's assignee or successor.

(g) In determining the enforceability of a restrictive covenant, a court:

1. Shall not consider any individualized economic or other hardship that might be caused to the person against whom enforcement is sought.

2. May consider as a defense the fact that the person seeking enforcement no longer continues in business in the area or line of business that is the subject of the action to enforce the restrictive covenant only if such discontinuance of business is not the result of a violation of the restriction.

3. Shall consider all other pertinent legal and equitable defenses.

4. Shall consider the effect of enforcement upon the public health, safety, and welfare.

(h) A court shall construe a restrictive covenant in favor of providing reasonable protection to all legitimate business interests established by the person seeking enforcement. A court shall not employ any rule of contract construction that requires the court to construe a restrictive covenant narrowly, against the restraint, or against the drafter of the contract.

(i) No court may refuse enforcement of an otherwise enforceable restrictive covenant on the ground that the contract violates public policy unless such public policy is articulated specifically by the court and the court finds that the specified public policy requirements substantially outweigh the need to protect the legitimate business interest or interests established by the person seeking enforcement of the restraint.

(j) A court shall enforce a restrictive covenant by any appropriate and effective remedy, including, but not limited to, temporary and permanent injunctions. The violation of an enforceable restrictive covenant creates a presumption of irreparable injury to the person seeking enforcement of a restrictive covenant. No temporary injunction shall be entered unless the person seeking enforcement of a restrictive covenant gives a proper bond, and the court shall not enforce any contractual provision waiving the requirement of an injunction bond or limiting the amount of such bond.

(k) In the absence of a contractual provision authorizing an award of attorney's fees and costs to the prevailing party, a court may award attorney's fees and costs to the prevailing party in any action seeking enforcement of, or challenging the enforceability of, a restrictive covenant. A court shall not enforce any contractual provision limiting the court's authority under this section.

(2) Nothing in this section shall be construed or interpreted to legalize or make enforceable any restraint of trade or commerce otherwise illegal or unenforceable under the laws of the United States or of this state.

(3) This act shall apply prospectively, and it shall not apply in actions determining the enforceability of restrictive covenants entered into before July 1, 1996.

History.—ss. 1, 3, ch. 96-257.

Note.—Section 4, ch. 96-257, provides that "[t]his act shall take effect July 1, 1996, and shall apply only to contracts entered into on or after such date."

CHAPTER 548

PUGILISTIC EXHIBITIONS

548.077 State Athletic Commission; collection and disposition of moneys.

548.077 State Athletic Commission; collection and disposition of moneys.—All fees, fines, forfeitures, and other moneys collected under the provisions of this chapter shall be paid by the commission to the State Treasurer who, after the expenses of the commission are paid, shall deposit them in the Professional Regulation Trust Fund to be used for the administration and operation of the commission and to enforce the laws and rules under its jurisdiction. In the event the unexpended balance of such moneys collected under the provisions of this chapter exceeds \$250,000, any excess of that amount shall be deposited in the General Revenue Fund.

History.—ss. 2, 4, ch. 84-246; s. 1, ch. 88-132; s. 4, ch. 91-429; s. 43, ch. 96-418.

CHAPTER 550

PARI-MUTUEL WAGERING

- 550.002 Definitions.
- 550.01215 License application; periods of operation; bond, conversion of permit.
- 550.0251 The powers and duties of the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation.
- 550.0351 Charity racing days.
- 550.0951 Payment of daily license fee and taxes.
- 550.09511 Jai alai taxes; abandoned interest in a permit for nonpayment of taxes.
- 550.09514 Greyhound dogracing taxes; purse requirements.
- 550.09515 Thoroughbred horse taxes; abandoned interest in a permit for nonpayment of taxes.
- 550.135 Division of moneys derived under this law.
- 550.24055 Use of controlled substances or alcohol prohibited; testing of certain occupational licensees; penalty; evidence of test or action taken and admissibility for criminal prosecution limited.
- 550.2415 Racing of animals under certain conditions prohibited; penalties; exceptions.
- 550.2625 Horseracing; minimum purse requirement, Florida breeders' and owners' awards.
- 550.26352 Breeders' Cup Meet; pools authorized; conflicts; taxes; credits; transmission of races; rules; application.
- 550.3551 Transmission of racing and jai alai information; commingling of pari-mutuel pools.
- 550.475 Lease of pari-mutuel facilities by pari-mutuel permitholders.
- 550.5251 Florida thoroughbred racing; certain permits; operating days.
- 550.615 Intertrack wagering.
- 550.6305 Intertrack wagering; guest track payments; accounting rules.
- 550.6335 Surcharge.
- 550.70 Jai alai general provisions; chief court judges required; extension of time to construct fronton; amateur jai alai contests permitted under certain conditions; playing days' limitations; locking of pari-mutuel machines.