

By: Bonnen

H.B. No. 3411

A BILL TO BE ENTITLED

AN ACT

relating to restrictions on covenants not to compete for physicians and certain other health care practitioners.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 15.50(b), Business & Commerce Code, is amended to read as follows:

(b) A covenant not to compete relating to the practice of medicine is enforceable against a person licensed as a physician by the Texas Medical Board if such covenant complies with the following requirements:

(1) the covenant must:

(A) not deny the physician access to a list of the ~~his~~ patients whom the physician ~~he~~ had seen or treated within one year of termination of the contract or employment;

(B) provide access to medical records of the physician's patients upon authorization of the patient and any copies of medical records for a reasonable fee as established by the Texas Medical Board under Section 159.008, Occupations Code; and

(C) provide that any access to a list of patients or to patients' medical records after termination of the contract or employment shall not require such list or records to be provided in a format different than that by which such records are maintained except by mutual consent of the parties to the contract;

(2) the covenant must provide for a buyout ~~buy-out~~ of

1 the covenant by the physician in an amount not greater than the
2 physician's total annual salary and wages at the time of
3 termination of the contract or employment; [~~at a reasonable price~~
4 ~~or, at the option of either party, as determined by a mutually~~
5 ~~agreed upon arbitrator or, in the case of an inability to agree, an~~
6 ~~arbitrator of the court whose decision shall be binding on the~~
7 ~~parties, and]~~

8 (3) the covenant must provide that the physician will
9 not be prohibited from providing continuing care and treatment to a
10 specific patient or patients during the course of an acute illness
11 even after the contract or employment has been terminated; and

12 (4) the covenant must provide that:

13 (A) it expires within one year of termination of
14 the contract or employment; and

15 (B) the radius of the geographical area subject
16 to the covenant is not greater than five miles.

17 SECTION 2. Subchapter E, Chapter 15, Business & Commerce
18 Code, is amended by adding Section 15.501 to read as follows:

19 Sec. 15.501. COVENANT NOT TO COMPETE FOR HEALTH CARE
20 PRACTITIONERS. (a) In this section, "health care practitioner"
21 means a person licensed in this state as a dentist, nurse, or
22 physician assistant.

23 (b) An employer may not require a health care practitioner
24 to enter into a covenant not to compete unless the covenant:

25 (1) provides for a buyout of the covenant by the health
26 care practitioner in an amount not greater than the practitioner's
27 total annual salary and wages at the time of termination of the

1 practitioner's contract or employment;

2 (2) provides that it expires within one year of the
3 date of termination of the contract or employment; and

4 (3) provides that the radius of the geographical area
5 subject to the covenant is not greater than five miles.

6 (c) A covenant not to compete entered into by a health care
7 practitioner that fails to comply with Subsection (b) is void and
8 unenforceable.

9 SECTION 3. Section 15.52, Business & Commerce Code, is
10 amended to read as follows:

11 Sec. 15.52. PREEMPTION OF OTHER LAW. The criteria for
12 enforceability of a covenant not to compete provided by Sections
13 [Section] 15.50 and 15.501 [of this code] and the procedures and
14 remedies in an action to enforce a covenant not to compete provided
15 by Section 15.51 [of this code] are exclusive and preempt [any]
16 other law, including [criteria for enforceability of a covenant not
17 to compete or procedures and remedies in an action to enforce a
18 covenant not to compete under] common law [or otherwise].

19 SECTION 4. The changes in law made by this Act apply only to
20 a covenant not to compete entered into or renewed on or after the
21 effective date of this Act. A covenant not to compete entered into
22 or renewed before the effective date of this Act is governed by the
23 law in effect on the date the covenant was entered into or renewed,
24 and the former law is continued in effect for that purpose.

25 SECTION 5. This Act takes effect September 1, 2023.