

By: Schwertner

S.B. No. 1534

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, Business & Commerce Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) Notwithstanding Section 15.05 [~~of this code,~~] and subject to any applicable provision of Subsection (b) and Section 15.501, a covenant not to compete is enforceable if it is ancillary to or part of an otherwise enforceable agreement at the time the agreement is made to the extent that it contains limitations as to time, geographical area, and scope of activity to be restrained that are reasonable and do not impose a greater restraint than is necessary to protect the goodwill or other business interest of the promisee.

(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 physician's [~~his~~] patients whom the physician [~~he~~] had seen or treated within one year of termination of the contract or

1 employment;

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

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

11 (2) the covenant must provide for a buyout [~~buy-out~~] of
12 the covenant by the physician in an amount that is not greater than
13 the physician's total annual salary and wages at the time of
14 termination of the contract or employment [~~at a reasonable price~~
15 ~~or, at the option of either party, as determined by a mutually~~
16 ~~agreed upon arbitrator or, in the case of an inability to agree, an~~
17 ~~arbitrator of the court whose decision shall be binding on the~~
18 ~~parties~~]; [~~and~~]

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

23 (4) the covenant must:

24 (A) expire not later than the one year
25 anniversary of the date the contract or employment terminated; and

26 (B) limit the geographical area subject to the
27 covenant to no more than:

1 (i) a five-mile radius, if more than half of
2 the area subject to the covenant is located in a county with a
3 population of 50,000 or more; or

4 (ii) a 10-mile radius, if more than half of
5 the area subject to the covenant is located in a county with a
6 population of less than 50,000.

7 (d) Notwithstanding any other law, a covenant not to compete
8 relating to the practice of medicine is void and unenforceable
9 against a person licensed as a physician by the Texas Medical Board
10 if the physician is discharged without good cause. For purposes of
11 this subsection, "good cause" means a reasonable basis for
12 discharge of a physician from employment that is directly related
13 to the physician's conduct, including the physician's conduct on
14 the job or otherwise, job performance, and employment record.

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

17 Sec. 15.501. COVENANTS NOT TO COMPETE AGAINST HEALTH CARE
18 PRACTITIONERS. (a) In this section, "health care practitioner"
19 means:

20 (1) a person licensed by the State Board of Dental
21 Examiners to practice dentistry in this state;

22 (2) a person licensed under Chapter 301, Occupations
23 Code, to engage in professional or vocational nursing; or

24 (3) a physician assistant licensed under Chapter 204,
25 Occupations Code.

26 (b) A covenant not to compete against a health care
27 practitioner is not enforceable unless the covenant:

1 (1) provides for a buyout of the covenant by the health
2 care practitioner in an amount that is not greater than the
3 practitioner's total annual salary and wages at the time of
4 termination of the practitioner's contract or employment;

5 (2) expires not later than the one year anniversary of
6 the contract or employment terminated; and

7 (3) limits the geographical area subject to the
8 covenant to no more than:

9 (A) a five-mile radius, if more than half of the
10 area subject to the covenant is located in a county with a
11 population of 50,000 or more; or

12 (B) a 10-mile radius, if more than half of the
13 area subject to the covenant is located in a county with a
14 population of less than 50,000.

15 (c) Notwithstanding any other law, a covenant not to compete
16 is void and unenforceable against a health care practitioner if the
17 health care practitioner is discharged without good cause. For
18 purposes of this subsection, "good cause" means a reasonable basis
19 for discharge of a health care practitioner from employment that is
20 directly related to the health care practitioner's conduct,
21 including the health care practitioner's conduct on the job or
22 otherwise, job performance, and employment record.

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

25 Sec. 15.52. PREEMPTION OF OTHER LAW. The criteria for
26 enforceability of a covenant not to compete provided by Sections
27 [~~Section~~] 15.50 and 15.501 [~~of this code~~] and the procedures and

1 remedies in an action to enforce a covenant not to compete provided
2 by Section 15.51 [~~of this code~~] are exclusive and preempt [~~any~~]
3 other law, including [~~criteria for enforceability of a covenant not~~
4 ~~to compete or procedures and remedies in an action to enforce a~~
5 ~~covenant not to compete under~~] common law [~~or otherwise~~].

6 SECTION 4. The changes in law made by this Act apply only to
7 a covenant not to compete entered into or renewed on or after the
8 effective date of this Act. A covenant not to compete entered into
9 or renewed before the effective date of this Act is governed by the
10 law in effect on the date the covenant was entered into or renewed,
11 and the former law is continued in effect for that purpose.

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