

BILL ANALYSIS

C.S.H.B. 3623
By: Elkins
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Covenants not to compete are common in the business world. These are contracts that restrict the ability of an individual to compete with former employers or business partners. A covenant not to compete is generally legal and enforceable, although there are some exceptions.

One such exception was created in 1999, when the legislature was concerned about how contracts containing covenants not to compete entered into between physicians might affect patient care. The purpose of H.B. 3285, 76th Legislature, Regular Session, 1999, was to ensure that the continuity of the physician-patient relationship was not disrupted by such contracts. Some now question whether the language of the legislation extends to covenants not to compete entered into between physicians but involving business ventures other than the practice of medicine. The intent of H.B. 3285 was to protect the physician-patient relationship.

C.S.H.B. 3623 specifies that regulations pertaining to contracts between physicians not to compete apply only to agreements involving the personal services of a physician acting as a physician.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3623 amends the Business & Commerce Code to specify that a covenant not to compete relating to the practice of medicine, if the covenant complies with certain requirements, is enforceable against a person licensed as a physician by the Texas Medical Board.

C.S.H.B. 3623 specifies that provisions relating to such a covenant do not apply to a physician's business ownership interest in a licensed hospital or licensed ambulatory surgical center.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3623 differs from the original by specifying that the substitute's provisions pertain to a covenant not to compete relating to the practice of medicine, and removing from the original the requirement that a covenant not to compete be part of an agreement that obligates the physician to perform personal services as a licensed physician. The substitute adds a provision not in the original to specify that provisions relating to such covenants do not apply to a physician's business ownership interest in a licensed hospital or licensed ambulatory surgical center. The substitute removes a provision in the original requiring a court to reform a deficient non-compete

clause as necessary to comply with the law and enforce the reformed covenant with certain exceptions.