

By: Jetton

H.B. No. 3139

A BILL TO BE ENTITLED

AN ACT

relating to the enforceability of covenants not to compete against physicians.

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

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

Sec. 15.50. CRITERIA FOR ENFORCEABILITY OF COVENANTS NOT TO COMPETE. (a) Notwithstanding Section 15.05 of this code, and subject to any applicable provision of this section [~~Subsection (b)~~], 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) Except as provided by Subsection (b-1), a [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 his patients whom he had seen or treated within one year of termination of the contract or employment;

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

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

10 (2) the covenant must provide for a buy out of the
11 covenant by the physician at a reasonable price or, at the option of
12 either party, as determined by a mutually agreed upon arbitrator
13 or, in the case of an inability to agree, an arbitrator of the court
14 whose decision shall be binding on the parties; and

15 (3) the covenant must provide that the physician will
16 not be prohibited from providing continuing care and treatment to a
17 specific patient or patients during the course of an acute illness
18 even after the contract or employment has been terminated.

19 (b-1) A covenant not to compete relating to the practice of
20 medicine that restricts a person licensed as a physician by the
21 Texas Medical Board from practicing medicine in any geographic area
22 for any period of time after the termination of a contract, a
23 partnership, employment, or another professional relationship is
24 void and unenforceable. This subsection does not apply to a
25 covenant not to compete that:

26 (1) places a restriction on research conducted by the
27 physician under the terms of a contract or in furtherance of a

1 partnership, employment, or another professional relationship
2 unless the restriction impairs the continuing care and treatment of
3 a patient receiving care or treatment as a part of the research;

4 (2) restricts a physician, other than a primary care
5 physician or pediatrician, who has an adjusted gross income for
6 federal income tax purposes of at least \$250,000 for the current or
7 preceding tax year, and that income is attributable to compensation
8 earned as a physician; or

9 (3) is ancillary to the sale, transfer, or other
10 disposition of any portion of a physician's ownership interest in a
11 medical practice or a medical practice management company.

12 (c) This section [~~Subsection (b)~~] does not apply to a
13 physician's business ownership interest in a licensed hospital or
14 licensed ambulatory surgical center.

15 SECTION 2. This Act applies only to an agreement entered
16 into on or after the effective date of this Act. An agreement
17 entered into before the effective date of this Act is governed by
18 the law in effect at the time the agreement was entered into, and
19 that law is continued in effect for that purpose.

20 SECTION 3. This Act takes effect September 1, 2023.