

By: Smith

H.B. No. 5149

A BILL TO BE ENTITLED

AN ACT

relating to covenants not to compete for certain psychology or counseling professions.

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

SECTION 1. Section 15.50, Business & Commerce Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a) Notwithstanding Section 15.05 of this code, and subject to any applicable provision of Subsection (b) or (b-1), 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-1) A covenant not to compete relating to the practice of psychology or other counseling profession is enforceable against a person licensed under Subtitle I, Title 3, Occupations Code, if the covenant complies with the following requirements:

(1) the covenant must:

(A) not deny the person access to a list of the person's clients or patients who have been provided services within one year of termination of the contract or employment;

(B) provide access to client or patient records

1 upon authorization of the client or patient and any copies of client
2 or patient records for a reasonable fee as established by the
3 appropriate licensing or regulatory authority; and

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

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

14 (3) the covenant must provide that the person will not
15 be prohibited from providing continuing services to a specific
16 client or patient during the course of an acute event even after the
17 contract or employment has been terminated.

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

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