
Health Care & Wellness Committee

HB 1173

Brief Description: Prohibiting noncompete agreements that restrict the right of physicians to practice in a geographic area for a period of time after termination of an employment contract.

Sponsors: Representatives Carlyle, Reykdal and Stanford.

Brief Summary of Bill

- Prohibits employment or other professional contracts with physicians and osteopathic physicians that restrict the person's right to practice medicine or osteopathic medicine in a geographic area for a period of time after termination of the contract.
- Permits an employment or other professional contract to provide for damages in an amount that is reasonably related to the injury suffered due to termination.

Hearing Date: 2/4/15

Staff: Alexa Silver (786-7190).

Background:

Enforcement of Non-Compete Agreements.

Non-compete agreements or clauses are provisions in an employment contract that impose post-employment restrictions on an employee. Typically, a non-compete agreement restricts a person's ability to work within a specific geographic area for a specific period of time. Non-compete agreements in the health care field may also restrict a physician from soliciting or serving former patients for some period of time.

Courts in Washington enforce "reasonable" non-compete agreements, taking into consideration the following three factors:

- whether the agreement is necessary to protect a legitimate business interest;

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- whether the agreement is any broader than reasonably necessary to secure the employer's business or goodwill; and
- whether the loss of the employee's services or skills injures the public to such a degree that the agreement should not be enforced.

Several other states restrict the use of non-compete agreements, and some states specifically address physician non-compete agreements. For example, under Colorado and Delaware law, any covenant not to compete that restricts the right to practice medicine is void, although an agreement may require the payment of damages related to competition. In Texas, an agreement restricting a physician's right to practice medicine is enforceable only if it provides for a reasonable buy-out by the physician, does not prohibit the physician from providing continuing care during an acute illness, does not deny access to a list of patients, and provides access to medical records in their original format.

American Medical Association Code of Medical Ethics.

The American Medical Association Council on Ethical and Judicial Affairs discourages physicians from entering into contracts that: (1) unreasonably restrict the right of a physician to practice medicine for a specified period of time or in a specified geographic area on termination of the contractual relationship; and (2) do not make reasonable accommodation for patients' choice of physician.

Summary of Bill:

A provision in an employment or other professional contract with a licensed physician or osteopathic physician that restricts the person's right to practice medicine or osteopathic medicine in a geographic area for a period of time after termination of the contract is void and unenforceable.

An employment or other professional contract may provide for damages in an amount that is reasonably related to the injury suffered due to termination of the contract. The injured party has the burden of establishing the reasonableness of the damages with clear and convincing evidence. Unreasonably large damages are void as a penalty.

"Employment or other professional contract" means a contract that establishes the terms of a partnership, employment, or other form of professional relationship with a licensed physician or a licensed osteopathic physician.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.