

First Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 25-0275.01 Josh Schultz x5486

SENATE BILL 25-083

SENATE SPONSORSHIP

Daugherty and Frizell,

HOUSE SPONSORSHIP

Brown and Garcia Sander,

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 CONCERNING LIMITATIONS ON RESTRICTIVE EMPLOYMENT
102 AGREEMENTS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Under current law, there is an exemption from the general prohibition against covenants not to compete. The exemption allows for a covenant not to compete under specified conditions governing an individual who earns an amount of annualized cash compensation equivalent to or greater than the threshold amount for highly compensated

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

workers. The bill excludes from the highly compensated worker exemption a covenant not to compete that restricts the practice of medicine, the practice of advanced practice registered nursing, or the practice of dentistry in this state.

Under current law, there is also an exemption from the general prohibition against covenants not to solicit customers (nonsolicitation covenant) that allows for a nonsolicitation covenant governing an individual who earns an amount of annualized cash compensation equivalent to or greater than 60% of the threshold amount for highly compensated workers if the nonsolicitation covenant is no broader than reasonably necessary to protect the employer's legitimate interest in protecting trade secrets. The bill also excludes from the highly compensated worker exemption for nonsolicitation covenants a covenant not to compete that restricts the practice of medicine, the practice of advanced practice registered nursing, or the practice of dentistry.

A covenant not to compete governing an individual who has a minority ownership share of a business and who received their ownership share in the business as equity compensation or otherwise in connection with services rendered is permissible if the covenant's duration in years does not exceed a number calculated by the total consideration received by the individual from the sale divided by the average annualized cash compensation received by the individual from the business, including income received on account of the individual's ownership interest during the preceding 2 years or during the period of time that the individual was affiliated with the business, whichever period of time is shorter.

The bill prohibits a covenant that prevents or materially restricts a health-care provider from disclosing to a patient to whom the health-care provider was providing consultation or treatment before the health-care provider's departure from a medical practice the following information:

- The health-care provider's continuing practice of medicine;
- The health-care provider's new professional contact information; or
- The patient's right to choose a medical provider.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 8-2-113, **amend**
3 (2)(a), (2)(b), (2)(c) introductory portion, (2)(c)(I), (2)(d), (3)(c), and
4 (9)(a); **repeal** (5); and **add** (2)(c)(I.3), (2)(c)(I.5), (2)(c)(I.6), (2)(c)(I.7),

1 and (5.5) as follows:

2 **8-2-113. Unlawful to intimidate worker - agreement not to**
3 **compete - prohibition - exceptions - notice - rules - definitions.**

4 (2) (a) Except as provided in subsections (2)(b), **(2)(d)**, and (3) of this
5 section, ~~any~~ A covenant not to compete that restricts the right of ~~any~~
6 ~~person~~ AN INDIVIDUAL to receive compensation for performance of labor
7 ~~for any employer~~ is void.

8 (b) EXCEPT FOR A COVENANT NOT TO COMPETE THAT RESTRICTS
9 THE PRACTICE OF MEDICINE, THE PRACTICE OF ADVANCED PRACTICE
10 REGISTERED NURSING, OR THE PRACTICE OF DENTISTRY IN THIS STATE, this
11 subsection (2) does not apply to a covenant not to compete governing a
12 ~~person~~ AN INDIVIDUAL who, at the time the covenant not to compete is
13 entered into and at the time it is enforced, earns an amount of annualized
14 cash compensation equivalent to or greater than the threshold amount for
15 highly compensated workers, if the covenant not to compete is for the
16 protection of trade secrets and is no broader than is reasonably necessary
17 to protect the employer's legitimate interest in protecting trade secrets.

18 (c) As used in this ~~subsection (2)~~ SECTION, UNLESS THE CONTEXT
19 OTHERWISE REQUIRES:

20 (I) "Annualized cash compensation" means:

21 (A) The amount of the gross salary or wage amount, the fee
22 amount, or the other compensation amount for the full year, if the ~~person~~
23 INDIVIDUAL was employed or engaged for a full year; OR

24 (B) The compensation that the ~~person~~ INDIVIDUAL would have
25 earned, based on the worker's gross salary or wage amount, fee, or other
26 compensation if the worker was not employed or engaged for a full year.

27 (I.3) "HEALTH-CARE PROVIDER" MEANS AN INDIVIDUAL LICENSED

1 TO ENGAGE IN THE PRACTICE OF MEDICINE, REGISTERED TO ENGAGE IN THE
2 PRACTICE OF ADVANCED PRACTICE REGISTERED NURSING, OR LICENSED TO
3 ENGAGE IN THE PRACTICE OF DENTISTRY.

4 (I.5) "PRACTICE OF ADVANCED PRACTICE REGISTERED NURSING"
5 HAS THE MEANING SET FORTH IN SECTION 12-255-104 (8).

6 (I.6) "PRACTICE OF DENTISTRY" HAS THE SAME MEANING AS
7 "DENTISTRY" SET FORTH IN SECTION 12-220-104 (6).

8 (I.7) "PRACTICE OF MEDICINE" HAS THE MEANING SET FORTH IN
9 SECTION 12-240-107 (1) AND INCLUDES PRACTICE AS A PHYSICIAN
10 ASSISTANT PURSUANT TO SECTION 12-240-113.

11 (d) EXCEPT FOR A COVENANT NOT TO COMPETE THAT RESTRICTS
12 THE PRACTICE OF MEDICINE, THE PRACTICE OF ADVANCED PRACTICE
13 REGISTERED NURSING, OR THE PRACTICE OF DENTISTRY IN THIS STATE, this
14 subsection (2) does not apply to a covenant not to solicit customers
15 governing ~~a person~~ AN INDIVIDUAL who, at the time the covenant is
16 entered into and at the time it is enforced, earns an amount of annualized
17 cash compensation equivalent to or greater than sixty percent of the
18 threshold amount for highly compensated workers, if the nonsolicitation
19 covenant is no broader than reasonably necessary to protect the
20 employer's legitimate interest in protecting trade secrets.

21 (3) The following covenants are not prohibited by subsection (2)
22 of this section:

23 (c) A covenant ~~for the purchase and sale of a business or the~~
24 ~~assets of a business; or~~ NOT TO COMPETE RELATED TO THE PURCHASE AND
25 SALE OF A BUSINESS, A DIRECT OR INDIRECT OWNERSHIP SHARE IN A
26 BUSINESS, OR ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF A BUSINESS
27 THAT RESTRICTS COMPETITION BY AN OWNER OF AN INTEREST IN THE

1 BUSINESS. FOR AN INDIVIDUAL WHO OWNS A MINORITY OWNERSHIP SHARE
2 OF THE BUSINESS AND WHO RECEIVED THEIR OWNERSHIP SHARE IN THE
3 BUSINESS AS EQUITY COMPENSATION OR OTHERWISE IN CONNECTION WITH
4 SERVICES RENDERED, THE DURATION IN YEARS OF A COVENANT NOT TO
5 COMPETE DESCRIBED IN THIS SUBSECTION (3)(c) MUST NOT EXCEED A
6 NUMBER CALCULATED BY THE TOTAL CONSIDERATION RECEIVED BY THE
7 INDIVIDUAL FROM THE SALE DIVIDED BY THE AVERAGE ANNUALIZED CASH
8 COMPENSATION RECEIVED BY THE INDIVIDUAL FROM THE BUSINESS,
9 INCLUDING INCOME RECEIVED ON ACCOUNT OF THEIR OWNERSHIP
10 INTEREST DURING THE PRECEDING TWO YEARS OR DURING THE PERIOD OF
11 TIME THAT THE INDIVIDUAL WAS AFFILIATED WITH THE BUSINESS,
12 WHICHEVER PERIOD OF TIME IS SHORTER.

13 ~~(5) (a) Any covenant not to compete provision of an employment,~~
14 ~~partnership, or corporate agreement between physicians that restricts the~~
15 ~~right of a physician to practice medicine, as defined in section~~
16 ~~12-240-107, upon termination of the agreement, is void; except that all~~
17 ~~other provisions of the agreement enforceable at law, including~~
18 ~~provisions that require the payment of damages in an amount that is~~
19 ~~reasonably related to the injury suffered by reason of termination of the~~
20 ~~agreement, are enforceable. Provisions of a covenant not to compete that~~
21 ~~require the payment of damages upon termination of the agreement may~~
22 ~~include damages related to competition.~~

23 ~~(b) Notwithstanding subsection (5)(a) of this section, after~~
24 ~~termination of an agreement described in subsection (5)(a) of this section,~~
25 ~~a physician may disclose his or her continuing practice of medicine and~~
26 ~~new professional contact information to any patient with a rare disorder,~~
27 ~~as defined in accordance with criteria developed by the National~~

1 ~~Organization for Rare Disorders, Inc., or a successor organization, to~~
2 ~~whom the physician was providing consultation or treatment before~~
3 ~~termination of the agreement. Neither the physician nor the physician's~~
4 ~~employer, if any, is liable to any party to the prior agreement for damages~~
5 ~~alleged to have resulted from the disclosure or from the physician's~~
6 ~~treatment of the patient after termination of the prior agreement.~~

7 (5.5) A COVENANT IS DEEMED A COVENANT THAT RESTRICTS THE
8 PRACTICE OF MEDICINE, THE PRACTICE OF ADVANCED PRACTICE
9 REGISTERED NURSING, OR THE PRACTICE OF DENTISTRY IF IT PROHIBITS OR
10 MATERIALLY RESTRICTS A HEALTH-CARE PROVIDER FROM DISCLOSING TO
11 A PATIENT TO WHOM THE HEALTH-CARE PROVIDER WAS PROVIDING
12 CONSULTATION OR TREATMENT BEFORE THE HEALTH-CARE PROVIDER'S
13 DEPARTURE FROM A MEDICAL OR DENTAL PRACTICE THE FOLLOWING
14 INFORMATION:

15 (a) THE HEALTH-CARE PROVIDER'S CONTINUING PRACTICE OF
16 MEDICINE;

17 (b) THE HEALTH-CARE PROVIDER'S NEW PROFESSIONAL CONTACT
18 INFORMATION; OR

19 (c) THE PATIENT'S RIGHT TO CHOOSE A HEALTH-CARE PROVIDER.

20 (9) (a) The attorney general may enforce subsections (2), (3), (4),
21 (5.5), (6), and (8)(a) of this section.

22 **SECTION 2. Act subject to petition - effective date -**
23 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
24 the expiration of the ninety-day period after final adjournment of the
25 general assembly; except that, if a referendum petition is filed pursuant
26 to section 1 (3) of article V of the state constitution against this act or an
27 item, section, or part of this act within such period, then the act, item,

1 section, or part will not take effect unless approved by the people at the
2 general election to be held in November 2026 and, in such case, will take
3 effect on the date of the official declaration of the vote thereon by the
4 governor.

5 (2) This act applies to covenants not to compete entered into or
6 renewed on or after the applicable effective date of this act.