

1 AN ACT relating to physician employment contracts.

2 WHEREAS, the Centers for Medicare and Medicaid Services find that national
3 health expenditures as a percentage of gross domestic product has reached 17.9% in
4 2017; and

5 WHEREAS, one study estimated that health expenditures are expected to increase
6 at an average annual rate of 5.8% between 2014 and 2024; and

7 WHEREAS, physician employment contracts that contain a covenant not to
8 compete are a restraint of trade; and

9 WHEREAS, covenants not to compete in the healthcare field restrict competition,
10 disrupt continuity of care and potentially deprive the public of medical services; and

11 WHEREAS, a 2018 joint report by the U.S. Department of Health and Human
12 Services, U.S. Department of the Treasury, and U.S. Department of Labor stated that
13 "[b]y suppressing competition, these clauses may inflate healthcare prices, elevating
14 patient and federal spending on healthcare . . ."; and

15 WHEREAS, one study estimated that approximately 45% of physicians are bound
16 by a covenant not to compete; and

17 WHEREAS, the physician-patient relationship is sacrosanct and entitled to unique
18 protection, and this bill is deemed the "Follow My Doctor Act";

19 NOW, THEREFORE,

20 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

21 ➔SECTION 1. A NEW SECTION OF KRS 311.530 TO 311.620 IS CREATED
22 TO READ AS FOLLOWS:

23 ***(1) For the purposes of this section, "covenant not to compete" means any provision***
24 ***of an employment contract or other agreement that creates or establishes a***
25 ***professional relationship with a physician and restricts the ability of a physician***
26 ***to practice medicine in any geographic area of the state for any period of time***
27 ***after the termination or cessation of the partnership, employment, or other***

1 professional relationship. The term does not include restrictions on the
2 solicitation of patient relationships within the current patients of the partnership
3 or employer that entered into the covenant not to compete.

4 (2) It is the finding of the General Assembly that covenants not to compete are
5 contrary to the public policy of the Commonwealth for the following reasons:

6 (a) The American Medical Association's Code of Medical Ethics discourages
7 covenants not to compete and that same code finds that ethical medical
8 practice thrives best under free market conditions when patients can freely
9 choose among competing physicians. The Code of Medical Ethics has been
10 incorporated into the Kentucky Board of Medical Licensure's Medical
11 Practice Act;

12 (b) Physicians are increasingly seeking employment with health care systems
13 instead of pursuing solo practice, necessitating more employment contracts;

14 (c) The Commonwealth is ranked thirty-sixth among U.S. states by the
15 Association of American Medical Colleges in terms of active physicians per
16 capita, and rural areas in particular face current and future physician
17 shortages; and

18 (d) Labor mobility, free market principles, and patient choice all serve as
19 potential cost containment factors in the health care field.

20 (3) Any contract or other agreement containing a covenant not to compete shall be
21 void and unenforceable with respect to that restriction as a matter of public policy
22 of the Commonwealth. The remaining provisions of any contract or other
23 agreement that includes a covenant not to compete shall remain in full force and
24 effect.

25 (4) Notwithstanding subsection (3) of this section, the prohibition on physician
26 covenants not to compete shall not apply when the covenant:

27 (a) Restricts a physician's competitive activities for a period of no more than

1 one (1) year and in a geographic region of no more than ten (10) miles from
2 the primary site where the physician practices; and

3 **(b) 1. Is entered in connection with the purchase and sale of a physician**
4 **practice; or**

5 **2. Is between an accredited medical school or osteopathic school located**
6 **in the Commonwealth and a physician who is a faculty member of**
7 **that school.**

8 ➔Section 2. This Act may be cited as the "Follow My Doctor Act."