

HOUSE BUSINESS AND EMPLOYMENT COMMITTEE SUBSTITUTE FOR
HOUSE BILL 52

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO PUBLIC HEALTH; MAKING NON-COMPETE PROVISIONS IN
CERTAIN HEALTH CARE PRACTITIONER AGREEMENTS UNENFORCEABLE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] DEFINITIONS.--As used in this
act:

A. "agreement" means a written contract to which a
health care practitioner is a party; and

B. "health care practitioner" means:

- (1) a dentist;
- (2) an osteopathic physician;
- (3) a physician;
- (4) a podiatrist; and
- (5) a certified registered nurse anesthetist.

SECTION 2. [NEW MATERIAL] ENFORCEABILITY OF A NON-COMPETE

1 PROVISION.--A non-compete provision in an agreement, which
2 provision restricts the right of a health care practitioner to
3 provide clinical health care services, shall be unenforceable
4 upon the termination of:

- 5 A. the agreement;
- 6 B. a renewal or extension of the agreement; or
- 7 C. a health care practitioner's employment with a
8 party seeking to enforce the agreement.

9 SECTION 3. [NEW MATERIAL] ENFORCEABILITY OF OTHER

10 PROVISIONS.--Nothing in this act shall be construed to limit
11 the enforceability of:

12 A. a provision in an agreement requiring a health
13 care practitioner who has worked for an employer for an initial
14 period of less than three years to repay all or a portion of:

- 15 (1) a loan;
- 16 (2) relocation expenses;
- 17 (3) a signing bonus or other remuneration to
18 induce the health care practitioner to relocate or establish a
19 health care practice in a specified geographic area; or
- 20 (4) recruiting, education and training

21 expenses;

22 B. a nondisclosure provision relating to
23 confidential information and trade secrets;

24 C. a nonsolicitation provision with respect to
25 patients and employees of the party seeking to enforce the

1 agreement for a period of one year or less after the last date
2 of employment; or

3 D. any other provision of an agreement that is not
4 in violation of law, including a provision for liquidated
5 damages.

6 SECTION 4. [NEW MATERIAL] LIQUIDATED DAMAGES.--

7 A. An agreement may provide for liquidated damages
8 in an amount that is reasonable at the time the agreement is
9 executed and in light of anticipated harm and difficulty of
10 proving the amount of loss resulting from breach of the
11 agreement by any party.

12 B. A provision in an agreement fixing unreasonably
13 large liquidated damages is void as a penalty.

14 SECTION 5. [NEW MATERIAL] APPLICABILITY.--

15 A. This act does not apply to agreements between
16 health care practitioners who are shareholders, owners,
17 partners or directors of a health care practice.

18 B. The provisions of this act apply to agreements,
19 or renewals or extensions of agreements, executed on or after
20 July 1, 2015.