

## **BILL ANALYSIS**

Senate Research Center  
81R26609 CLG-F

H.B. 3623  
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Administration  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Covenants not to compete are common in the business world. These are contracts that restrict the ability of an individual to compete with his or her former employers or business partners. In general, these agreements ask former employees not to perform similar work within a designated area for a specified amount of time after leaving their original employer or business partner. A covenant not to compete is generally legal and enforceable, although there are some exceptions.

One exception, created by the 76th Legislature, provides that a covenant not to compete is enforceable against a physician if it does not deny the physician access to a list of his patients whom he had seen or treated within one year of termination of the contract or employment; provides access to medical records of the physician's patients; provides a buy-out of the covenant by the physician at a reasonable price; and provides that the physician will not be prohibited from providing continuing care and treatment to a specific patient or patients during the course of an acute illness even after the contract or employment has been terminated. Some question whether the language extends to covenants not to compete involving business ventures that do not involve the practice of medicine.

H.B. 3623 clarifies that covenants not to compete only apply to agreements involving the personal services of a physician acting as a physician and it allows courts to conform a deficient noncompete clause as necessary to comply with the law and protect patient access to medical care.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 15.50, Business & Commerce Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that a covenant not to compete relating to the practice of medicine is enforceable against a person licensed as a physician by the Texas Medical Board, rather than the Texas State Board of Medical Examiners, if such covenant complies with certain requirements.

(c) Provides that Subsection (b) does not apply to a physician's business ownership interest in a licensed hospital or licensed ambulatory surgical center.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2009.