

BILL ANALYSIS

Senate Research Center
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S.B. 1713
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Health & Human Services
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As Filed

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 their 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.

As proposed, S.B. 1713 amends current law relating to covenants not to compete by physicians.

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(b), Business & Commerce Code, to provide that a covenant not to compete is enforceable against a person licensed as a physician by the Texas Medical Board, rather than the State Board of Medical Examiners, if such covenant complies with certain requirements including that the covenant is part of an agreement that obligates the physician to perform personal services as a licensed physician. Makes a conforming change.

SECTION 2. Amends Section 15.51, Business & Commerce Code, by adding Subsection (d), as follows:

(d) Requires the court, if a covenant not to compete in which the promisor is a person licensed as a physician by the Texas Medical Board is found to be ancillary to or part of an otherwise enforceable agreement but does not contain the requirements specified in Section 15.50(b), to reform the covenant to the extent necessary to cause the covenant to conform to the requirements specified in Section 15.50(b) and enforce the covenant as reformed, except that the court may not award the promisee damages for a breach of the covenant before its reformation and the relief granted to the promisee is limited to injunctive relief.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.