F I S C A L I M P A C T R E P O R T

SPONSOR Ingle **ORIGINAL DATE** 02/03/15 **LAST UPDATED** 02/12/15 **HB**

SHORT TITLE Health Agreement No-Compete Provisions **SB** 325/aSJC

ANALYST Hanika Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
Attorney General's Office (AGO)
Public School Insurance Authority (PSIA)
General Services Department (GSD)
Office of the Superintendent of Insurance (OSI)
Minor's Hospital (MH)
Board of Nursing (BON)
Medical Board (MB)

SUMMARY

Synopsis of Senate Judiciary Committee Amendment

The Senate Judiciary Committee Amendment provides that the act's limitations do not apply to agreements requiring practitioners working less than three years (as opposed to two years) to repay loans, relocation expenses, signing bonuses, recruiting, education and training expenses. The amendment also reworks paragraph A Section 5 to better clarify the intention of that section.

Synopsis of Bill

Senate Bill 25 (SB 25) limits non-compete provisions in health care practitioner agreements.

Section 1 describes a health care practitioner as a dentist, osteophatic physician, physician, podiatrist and certified registered nurse anesthetist.

Section 2 limits the enforceability of non-compete provisions for certain healthcare practitioners when an employment contract expires or employment is terminated.

Section 3 provides that the limitations do not apply to agreements requiring practitioners working less than two years to repay loans, relocation expenses, signing bonuses, recruiting, education and training expenses. Section 3 also provides that nondisclosure provisions relating to confidential information and trade secrets are not limited by the act nor are nonsolicitation provisions with respect to patients and employees for one year or less after employment ends.

Section 4 allows contracts to contain a provision for reasonable liquidated damages but specifically voids as a penalty unreasonably large liquidated damages provisions.

Section 5 provides that the act does not apply to a practitioner that is a principal of a practice against whom a party to an agreement seeks to enforce a non-compete provision.

FISCAL IMPLICATIONS

The bill may enhance the availability of primary care providers in underserved areas of the state.

NMPSIA notes relaxing non-compete enforcement may foster competition and the trickle-down effect may be improved provider payment rates which would positively impact claims costs.

SIGNIFICANT ISSUES

The bill would allow certain practitioners who have terminated contracts with health care facilities or other providers to go work for a different facility or another provider and practice their profession without regard to a non-compete provision with their previous employer.

The act applies to agreements, renewals or extensions of agreements executed after July 1, 2015.

PERFORMANCE IMPLICATIONS

The AGO notes that it is possible this bill may conflict with businesses' right to contract.

Covenants not to compete are restrictions in employment contracts used by employers to limit the ability of an employee to compete with the employer once the employee leaves that employer. Current law on this issue defers to the courts, on a case-by-case basis, to determine whether a non-compete clause is reasonable based on facts germane to a particular contract.

TECHNICAL ISSUES

The bill does not include mid-level practitioners in the definition of "health care practitioner".

The AGO notes Section 4(B) states liquidated damages that are "unreasonably large" are void as a penalty. This language may be too vague and create potential for litigation in the future.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The opportunity to increase access to primary care in underserved areas might be diminished.

AHO/bb/aml