

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 608

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
LIMITING COVENANT NOT TO COMPETE PROVISIONS OF EMPLOYMENT,
PARTNERSHIP, CORPORATE OR OTHER AGREEMENTS RELATING TO THE
PROVISION OF HEALTH CARE SERVICES BY A HEALTH CARE
PRACTITIONER; DECLARING AN EMERGENCY.

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

SECTION 1. DEFINITIONS.--As used in Sections 1 through 4
of this act:

A. "agreement" means an employment, partnership,
corporate or other contract to which a health care practitioner
is a party;

B. "health care practitioner" means:

(1) a certified nurse-midwife licensed by the
board of nursing as a registered nurse and licensed by the

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1 public health division of the department of health to practice
2 nurse-midwifery as a certified nurse-midwife;

3 (2) a dentist or dental hygienist licensed
4 pursuant to the Dental Health Care Act;

5 (3) an optometrist licensed pursuant to the
6 provisions of the Optometry Act;

7 (4) an osteopathic physician licensed pursuant
8 to the provisions of Chapter 61, Article 10 NMSA 1978 or an
9 osteopathic physician's assistant licensed pursuant to the
10 provisions of the Osteopathic Physicians' Assistants Act;

11 (5) a physician or physician assistant
12 licensed pursuant to the provisions of Chapter 61, Article 6
13 NMSA 1978;

14 (6) a podiatrist licensed pursuant to the
15 provisions of the Podiatry Act;

16 (7) a clinical psychologist licensed pursuant
17 to the provisions of the Professional Psychologist Act;

18 (8) a registered nurse in advanced practice
19 who has been prepared through additional formal education as
20 provided in Sections 61-3-23.2 through 61-3-23.4 NMSA 1978 to
21 function beyond the scope of practice of professional
22 registered nursing, including certified nurse practitioners,
23 certified registered nurse anesthetists and clinical nurse
24 specialists; and

25 (9) a doctor of oriental medicine licensed

1 pursuant to the provisions of the Acupuncture and Oriental
2 Medicine Practice Act; and

3 C. "health care underserved area" means a
4 geographic area or practice location in which it has been
5 determined by the department of health, through the use of
6 indices and other standards set by the department of health,
7 that sufficient health care services are not being provided.

8 SECTION 2. AGREEMENT NOT ANCILLARY TO THE SALE OF A
9 BUSINESS CONTAINING COVENANT NOT TO COMPETE PROVISION
10 RESTRICTING HEALTH CARE PRACTITIONER FROM PROVIDING HEALTH CARE
11 SERVICES.--

12 A. A covenant not to compete provision in an
13 agreement that is not ancillary to the sale of a business that
14 restricts the right of a health care practitioner to provide
15 health care services shall be void upon the termination of such
16 agreement.

17 B. All other provisions of the agreement, including
18 provisions that require the payment of damages in an amount
19 that is reasonably related to the injury suffered by reason of
20 the termination of the agreement, shall be enforceable.

21 C. Provisions in an agreement that require the
22 payment of damages upon termination of the agreement may
23 include damages related to competition.

24 SECTION 3. AGREEMENT ANCILLARY TO THE SALE OF A BUSINESS
25 CONTAINING COVENANT NOT TO COMPETE PROVISION RESTRICTING HEALTH

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1 CARE PRACTITIONER FROM PROVIDING HEALTH CARE SERVICES.--A
2 covenant not to compete provision in an agreement ancillary to
3 the sale of a business that restricts the right of a health
4 care practitioner to provide health care services shall not be
5 enforceable if:

6 A. the restraint is greater than is needed to
7 protect the buyer's legitimate interest;

8 B. the buyer's legitimate interest is outweighed by
9 the hardship to the seller; or

10 C. enforcement of the covenant not to compete would
11 unduly interfere with the public interest in a health care
12 underserved area of the state.

13 SECTION 4. APPLICABILITY.--

14 A. The provisions of Sections 1 and 2 of this act
15 do not apply to:

16 (1) a provision providing for repayment of a
17 loan, relocation expenses, signing bonus or other remuneration
18 to induce a health care practitioner to relocate or establish a
19 health care practice in a specified geographic area;

20 (2) a nondisclosure covenant relating to
21 confidential information and trade secrets;

22 (3) a nonsolicitation covenant with respect to
23 employees of the health care practitioner's employer;

24 (4) a provision in an agreement providing for
25 the recovery of the expense of educating and training an

1 employee who has worked for an employer for a period of less
2 than two years; and

3 (5) executive and management personnel and
4 officers and employees who constitute professional staff to
5 executive management and personnel.

6 B. The provisions of this act apply to agreements
7 executed on or after the effective date of this act.

8 SECTION 5. EMERGENCY.--It is necessary for the public
9 peace, health and safety that this act take effect immediately.

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