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SENATE BILL 46

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

Carrol H. Leavell

AN ACT

RELATING TO PUBLIC HEALTH; LIMITING COVENANT NOT TO COMPETE  
PROVISIONS OF EMPLOYMENT, PARTNERSHIP, CORPORATE OR OTHER  
CONTRACTS RELATING TO THE PROVISION OF HEALTH CARE SERVICES BY  
A HEALTH CARE PRACTITIONER.

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

**SECTION 1.** [NEW MATERIAL] 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  
public health division of the department of health to practice

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1 nurse-midwifery as a certified nurse-midwife;

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

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

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

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

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

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

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

24 (9) a doctor of oriental medicine licensed  
25 pursuant to the provisions of the Acupuncture and Oriental

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1 Medicine Practice Act; and

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

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

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

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

20 SECTION 3. [NEW MATERIAL] AGREEMENT ANCILLARY TO THE SALE  
21 OF A BUSINESS CONTAINING COVENANT NOT TO COMPETE PROVISION  
22 RESTRICTING HEALTH CARE PRACTITIONER FROM PROVIDING HEALTH CARE  
23 SERVICES.--A covenant not to compete provision in an agreement  
24 ancillary to the sale of a business that restricts the right of  
25 a health care practitioner to provide health care services

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1 shall not be enforceable if:

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

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

6 C. enforcement of the covenant not to compete would  
7 unduly interfere with the public interest in a health care  
8 underserved area of the state.

9 SECTION 4. [NEW MATERIAL] APPLICABILITY.--

10 A. The provisions of Sections 2 and 3 of this act  
11 do not apply to:

12 (1) a provision in an agreement requiring a  
13 health care practitioner who has worked for an employer for an  
14 initial period of less than two years to repay all or a portion  
15 of:

16 (a) a loan;

17 (b) relocation expenses;

18 (c) a signing bonus or other

19 remuneration to induce the health care practitioner to relocate  
20 or establish a health care practice in a specified geographic  
21 area; or

22 (d) recruiting, education and training  
23 expenses;

24 (2) a nondisclosure covenant relating to  
25 confidential information and trade secrets; and

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(3) a nonsolicitation covenant with respect to employees of the health care practitioner's employer for a period of one year or less after the last date of employment.

B. The provisions of this act apply to agreements, or renewals or extensions of agreements, executed on or after July 1, 2014.