

2023 South Dakota Legislature

House Bill 1185**AMENDMENT 1185F
FOR THE HOUSE COMMERCE AND ENERGY ENGROSSED
BILL**

1 **An Act to prohibit certain restrictions in employment contracts.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 53-9-11 be AMENDED:**

4 **53-9-11.** Except as otherwise provided in ~~§ 53-9-11.1~~ section 3 of this Act, an
5 employee may agree with an employer at the time of employment or at any time during
6 employment not to engage directly or indirectly in the same business or profession as that
7 of the employer for any period not exceeding two years from the date of termination of
8 the agreement and not to solicit existing customers of the employer within a specified
9 county, first- or second-class municipality, or other specified area for any period not
10 exceeding two years from the date of termination of the agreement, if the employer
11 continues to carry on a like business therein.

12 **Section 2. That § 53-9-11.1 be AMENDED:**

13 **53-9-11.1.** ~~A contract that creates or establishes the terms of employment, a~~
14 ~~partnership, or any other form of professional relationship, with a health care provider,~~
15 ~~may not restrict the right of the health care provider to:~~

16 (1) ~~Practice or provide services for which the provider is licensed, in any geographic~~
17 ~~area and for any period of time, after the termination of the employment, partnership, or~~
18 ~~other form of professional relationship;~~

19 (2) ~~Treat, advise, consult with, or establish a provider-patient relationship with any~~
20 ~~current patient of the employer, or with a patient affiliated with a partnership or other~~
21 ~~form of professional relationship; or~~

22 (3) ~~Solicit or seek to establish a provider-patient relationship with any current~~
23 ~~patient of the employer, or with a patient affiliated with a partnership or other form of~~
24 ~~professional relationship.~~

1 The prohibition of this section does not apply to a contract in connection with the
2 ~~sale and purchase of a practice.~~

3 For purposes of ~~this section~~ 3 of this Act, a ~~health care provider/practitioner~~ means:

- 4 (1) A physician licensed in accordance with chapter 36-4;
5 (2) A physician assistant licensed in accordance with chapter 36-4A;
6 (3) A certified nurse practitioner licensed in accordance with chapter 36-9A;
7 (4) A certified nurse midwife licensed in accordance with chapter 36-9A;
8 (5) A certified registered nurse anesthetist authorized to practice in accordance with
9 § 36-9-3.1;
10 (6) A registered nurse authorized to practice in accordance with § 36-9-3; ~~and~~
11 (7) A licensed practical nurse authorized to practice in accordance with § 36-9-4;
12 (8) ~~A respiratory care practitioner licensed in accordance with chapter 36-4C;~~
13 (9) A chiropractor licensed in accordance with chapter 36-5;
14 (10) A dentist licensed in accordance with chapter 36-6A;
15 (11) A podiatrist licensed in accordance with chapter 36-8;
16 (12) A physical therapist licensed in accordance with chapter 36-10;
17 ~~(10)(13)~~ A social worker licensed in accordance with chapter 36-26;
18 ~~(11)(14)~~ A psychologist licensed in accordance with chapter 36-27A;
19 ~~(12)(15)~~ An athletic trainer licensed in accordance with chapter 36-29;
20 ~~(13)(16)~~ An occupational therapist licensed in accordance with chapter 36-31;
21 ~~(14)(17)~~ A professional counselor licensed in accordance with chapter 36-32;
22 ~~(15)(18)~~ A professional counselor-mental health licensed in accordance with chapter 36-
23 32;
24 ~~(16)(19)~~ A marriage and family therapist licensed in accordance with chapter 36-33;
25 ~~(17)(20)~~ An addiction and prevention professional licensed or certified in accordance with
26 chapter 36-34; and
27 ~~(18)(21)~~ A speech language pathologist licensed in accordance with chapter 36-37.

28 **Section 3. That chapter 53-9 be amended with a NEW SECTION:**

29 Notwithstanding § 53-9-11, a provision of a contract is voidable if it restricts a
30 practitioner, as defined in § 53-9-11.1, from practicing or otherwise providing professional
31 services in accordance with the applicable scope of practice, after the conclusion of the
32 practitioner's employment or after the dissolution of a partnership or other form of
33 professional relationship.

34 This section does not apply to any contractual provision that:

- 1 (1) Is effective upon the sale of a practice or interest in a practice; or
- 2 (2) Restricts a practitioner from soliciting current patients or clients of the former
- 3 employer, partnership, or other professional relationship, provided the solicitation
- 4 complies with the geographic and temporal limitations as referenced in § 53-9-11.
- 5 The term, soliciting, as used in this section, means a targeted affirmative act,
- 6 directed toward any patient or client of the practitioner's former employer, partnership,
- 7 or other professional relationship, for the purpose of convincing the patient or client to
- 8 transfer the patient or client's care or business to the practitioner or to the practitioner's
- 9 new employer, partner, or professional relationship.

