



2023 South Dakota Legislature
House Bill 1185
ENROLLED

AN ACT

ENTITLED An Act to prohibit certain restrictions in employment contracts.

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

Section 1. That § 53-9-11 be AMENDED:

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

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

53-9-11.1. For purposes of section 3 of this Act, a practitioner means:

- (1) A physician licensed in accordance with chapter 36-4;
- (2) A physician assistant licensed in accordance with chapter 36-4A;
- (3) A paramedic or emergency medical technician licensed in accordance with chapter 36-4B;
- (4) A respiratory care practitioner licensed in accordance with chapter 36-4C;
- (5) A chiropractor licensed in accordance with chapter 36-5;
- (6) A dentist licensed in accordance with chapter 36-6A;
- (7) An optometrist licensed in accordance with chapter 36-7;
- (8) A podiatrist licensed in accordance with chapter 36-8;
- (9) A registered nurse authorized to practice in accordance with § 36-9-3;
- (10) A certified registered nurse anesthetist authorized to practice in accordance with § 36-9-3.1;

- (11) A licensed practical nurse authorized to practice in accordance with § 36-9-4;
- (12) A certified nurse practitioner or certified nurse midwife licensed in accordance with chapter 36-9A;
- (13) A certified professional midwife licensed under 36-9C;
- (14) A physical therapist licensed in accordance with chapter 36-10;
- (15) A nutritionist or dietician licensed in accordance with chapter 36-10B;
- (16) A pharmacist licensed in accordance with chapter 36-11;
- (17) An audiologist or hearing aid dispenser licensed in accordance with chapter 36-24;
- (18) A social worker licensed in accordance with chapter 36-26;
- (19) A psychologist licensed in accordance with chapter 36-27A;
- (20) An athletic trainer licensed in accordance with chapter 36-29;
- (21) An occupational therapist licensed in accordance with chapter 36-31;
- (22) A professional counselor or a professional counselor-mental health licensed in accordance with chapter 36-32;
- (23) A marriage and family therapist licensed in accordance with chapter 36-33;
- (24) An addiction and prevention professional licensed or certified in accordance with chapter 36-34;
- (25) A massage therapist licensed in accordance with chapter 36-35;
- (26) A genetic counselor licensed in accordance with chapter 36-36;
- (27) A speech language pathologist licensed in accordance with chapter 36-37; and
- (28) A behavior analyst licensed in accordance with chapter 36-38.

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

Notwithstanding § 53-9-11, a provision of a contract, entered into on or after July 1, 2023, is voidable if it restricts a practitioner, as defined in § 53-9-11.1, from practicing or otherwise providing professional services in accordance with the applicable scope of practice, after the conclusion of the practitioner's employment or after the dissolution of a partnership or other form of professional relationship.

This section does not apply to any contractual provision that:

- (1) Is effective upon the sale of a practice or interest in a practice; or
- (2) Restricts a practitioner from soliciting current patients or clients of the former employer, partnership, or other professional relationship, provided the solicitation complies with the geographic and temporal limitations as referenced in § 53-9-11.

The term, soliciting, as used in this section, means a targeted affirmative act, directed toward any patient or client of the practitioner's former employer, partnership,

or other professional relationship, for the purpose of convincing the patient or client to transfer the patient or client's care or business to the practitioner or to the practitioner's new employer, partner, or professional relationship.

An Act to prohibit certain restrictions in employment contracts.

I certify that the attached Act originated in
the:

House as Bill No. 1185

Received at this Executive Office
this _____ day of _____,
2023 at _____ M.

Chief Clerk

By _____
for the Governor

Speaker of the House

The attached Act is hereby
approved this _____ day of
_____, A.D., 2023

Attest:

Chief Clerk

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

President of the Senate

Attest:

Filed _____, 2023
at _____ o'clock ___ M.

Secretary of the Senate

Secretary of State

House Bill No. 1185
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State