

115TH CONGRESS  
2D SESSION

# S. 3302

To amend title 38, United States Code, to provide for the non-applicability of non-Department of Veterans Affairs covenants not to compete to the appointment of physicians in the Veterans Health Administration, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 31, 2018

Mr. BOOZMAN (for himself, Mr. HELLER, and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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## A BILL

To amend title 38, United States Code, to provide for the non-applicability of non-Department of Veterans Affairs covenants not to compete to the appointment of physicians in the Veterans Health Administration, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “VA Hiring Enhance-  
5 ment Act”.

1 **SEC. 2. NON-APPLICABILITY OF NON-DEPARTMENT OF VET-**  
2 **ERANS AFFAIRS COVENANTS NOT TO COM-**  
3 **PETE TO APPOINTMENT OF PHYSICIANS IN**  
4 **THE VETERANS HEALTH ADMINISTRATION.**

5 (a) IN GENERAL.—Subchapter I of chapter 74 of title  
6 38, United States Code, is amended by adding at the end  
7 the following new section:

8 **“§ 7413. Effect of non-Department covenants not to**  
9 **compete on appointment of physicians**

10 “(a) NON-APPLICABILITY.—Except as provided in  
11 subsection (b), in the case of an individual who is an appli-  
12 cant for appointment to a position as a physician in the  
13 Veterans Health Administration, any covenant not to com-  
14 pete into which the individual has entered with a non-De-  
15 partment facility or other non-Department entity or indi-  
16 vidual shall have no force or effect with respect to the ap-  
17 pointment of the individual to such a position.

18 “(b) SERVICE OBLIGATION.—(1) Any individual who  
19 is appointed as a physician in the Veterans Health Admin-  
20 istration and has entered into a covenant not to compete  
21 that is rendered non-applicable pursuant to subsection (a),  
22 shall, as a condition of such appointment, agree to provide  
23 clinical services at a Department medical facility for the  
24 duration of the period described in paragraph (2).

25 “(2) The period described in this paragraph is the  
26 period that begins on the date on which an individual is

1 appointed as described in paragraph (1) and ends on the  
2 latter of the following dates:

3           “(A) The date that is one year after such date  
4           of appointment.

5           “(B) The date of the termination of any cov-  
6           enant not to compete that is rendered non-applicable  
7           pursuant to subsection (a).

8           “(3) The Secretary may waive the requirement under  
9           paragraph (1) with respect to an individual at the discre-  
10          tion of the Secretary.

11          “(c) TERMINATION OF DEPARTMENT EMPLOY-  
12          MENT.—In the case of an individual who is appointed as  
13          a physician in the Veterans Health Administration and  
14          has entered into a covenant not to compete that is ren-  
15          dered non-applicable pursuant to subsection (a), if the in-  
16          dividual’s employment at the Veterans Health Administra-  
17          tion is terminated for any reason before the specified ter-  
18          mination date of such covenant, subsection (a) shall not  
19          apply with respect to such covenant after the date of the  
20          termination of the individual’s employment at the Vet-  
21          erans Health Administration.

22          “(d) COVENANT NOT TO COMPETE DEFINED.—In  
23          this section, the term ‘covenant not to compete’ means an  
24          agreement between an employee and employer or a con-

1 tractor and principal that restricts such employee or con-  
 2 tractor from performing—

3 “(1) work for another employer for a specified  
 4 period of time;

5 “(2) work in a specified geographical area; or

6 “(3) work for another employer performing  
 7 work that is similar to the work such employee or  
 8 contractor performed for the employer or principal.

9 “(e) APPLICATION.—This section shall apply to any  
 10 covenant not to compete that is entered into after the date  
 11 of the enactment of the VA Hiring Enhancement Act.”.

12 (b) CLERICAL AMENDMENT.—The table of sections  
 13 at the beginning of chapter 74 of such title is amended  
 14 by inserting after the item relating to section 7412 the  
 15 following new item:

“7413. Effect of non-Department covenants not to compete on appointment of  
 physicians.”.

16 **SEC. 3. MODIFICATION OF QUALIFICATIONS TO IMPROVE**  
 17 **RECRUITMENT OF PHYSICIANS.**

18 Section 7402(b)(1) of title 38, United States Code,  
 19 is amended—

20 (1) in the matter preceding subparagraph (A),  
 21 by inserting “or to be offered a contingent appoint-  
 22 ment to such a position” after “position”; and

23 (2) by striking subparagraphs (B) and (C) and  
 24 inserting the following:

1           “(B)(i) have completed a post-graduate resi-  
2           dency training program leading to board eligibility in  
3           a specialty satisfactory to the Secretary; or

4           “(ii) with respect to an offer for a contingent  
5           appointment, complete a post-graduate residency  
6           training program leading to board eligibility in a  
7           specialty satisfactory to the Secretary by not later  
8           than two years after the date of such offer; and

9           “(C)(i) be licensed to practice medicine, sur-  
10          gery, or osteopathy in a State; or

11          “(ii) with respect to an offer for a contingent  
12          appointment, be licensed to practice medicine, sur-  
13          gery, or osteopathy in a State by not later than two  
14          years after the date of such offer.”.

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