

AMENDMENTS TO HOUSE BILL NO. 681

Sponsor: REPRESENTATIVE FRANKEL

Printer's No. 640

1 Amend Bill, page 2, line 6, by striking out "prohibits and
2 prevents" and inserting

3 can prohibit and prevent

4 Amend Bill, page 2, lines 10 through 12, by striking out all
5 of said lines and inserting

6 (7) It is in the public interest to limit the use of
7 restrictive covenants in health care.

8 Amend Bill, page 2, by inserting between lines 23 and 24

9 "Primary health care facility or office." The office,
10 facility or location where a majority of the revenue derived
11 from a health care practitioner's services are generated.

12 Amend Bill, page 2, line 30; page 3, line 1; by striking out
13 "The authorized scope of practice of a" in line 30 on page 2 and
14 all of line 1 on page 3 and inserting

15 The activities or professional services a health care
16 practitioner may provide to a patient based on the license the
17 health care practitioner holds.

18 Amend Bill, page 3, lines 6 through 12, by striking out all
19 of said lines and inserting

20 (a) General rule.--A covenant not to compete is deemed
21 contrary to public policy and is void and unenforceable to the
22 extent the covenant not to compete restricts the right of a
23 health care practitioner to practice in any geographic area for
24 any period of time after a separating event.

25 (b) Exception.--An employer may enforce a covenant not to
26 compete if all of the following apply:

27 (1) The health care practitioner's primary health care
28 facility or office is located in a county of the sixth,
29 seventh or eighth class.

30 (2) The geographic restriction is less than a 45-mile

1 radius from the primary health care facility or office of the
2 health care practitioner.

3 (3) The length of the covenant not to compete is no more
4 than two years.

5 (4) The restriction applies only to the primary health
6 care facility or office of the health care practitioner.

7 (c) Non-affiliation.--Notwithstanding subsection (b)(1) and
8 subject to subsection (b)(2), (3) and (4), an employer in any
9 county of this Commonwealth may enforce a covenant not to
10 compete if the employer is a provider-owned independent practice
11 not affiliated with any health care system, health care provider
12 or hospital.

13 Amend Bill, page 3, line 13, by striking out "(b)" and
14 inserting

15 (d)

16 Amend Bill, page 3, by inserting between lines 19 and 20

17 (e) Construction.--

18 (1) Nothing in this section shall be construed to
19 prohibit the enforcement of a provision in any contract or
20 agreement with a health care practitioner that allows for the
21 recovery of expenses incurred by an employer to recruit a
22 health care practitioner or to establish the health care
23 practitioner's patient base, if all the following apply:

24 (i) The health care practitioner did not discontinue
25 employment with the employer for cause.

26 (ii) The expenses are reasonably allocated to the
27 health care practitioner and are reasonably amortized
28 over a period of time not to exceed five years from the
29 commencement of the relationship.

30 (2) As used in this subsection, the term "for cause"
31 includes any of the following:

32 (i) A health care practitioner's compensation or
33 fringe benefits are materially reduced.

34 (ii) A health care practitioner's authority,
35 responsibility and duties are materially altered to the
36 detriment of the health care practitioner.

37 (f) Damages clauses.--A contract or agreement with a health
38 care practitioner may include a liquidated damages clause for
39 the expenses incurred under subsection (e) if the amount does
40 not exceed 50% of the health care practitioner's annual
41 compensation, excluding fringe benefits, in the first year of
42 the relationship and is not otherwise unreasonably excessive.

43 Amend Bill, page 3, lines 21 through 26, by striking out all
44 of said lines and inserting

45 Within 60 days after a separating event, an employer shall
46 provide notice of a health care practitioner's departure to the

1 health care practitioner's prior patients. The notice under this
2 section shall include information to the prior patients
3 regarding how to request the transfer of their medical records
4 to the departing health care practitioner.

5 Amend Bill, page 3, line 30, by inserting a period after
6 "practitioner"

7 Amend Bill, page 4, lines 1 through 6, by striking out all of
8 said lines

9 Amend Bill, page 4, by inserting between lines 18 and 19
10 Section 8. Applicability.

11 This act shall apply to an agreement entered into or amended
12 on or after the effective date of this section and upon the
13 renewal of a health care practitioner's license, registration or
14 certification in this Commonwealth on or after the effective
15 date of this section.

16 Amend Bill, page 4, line 19, by striking out "8" and
17 inserting

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