

JAN 23 2015

A BILL FOR AN ACT

RELATING TO EMPLOYMENT AGREEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that a restrictive
2 covenant not to compete with a former employer imposes a special
3 hardship on licensed physicians, as these highly specialized
4 professionals are trained to perform specific jobs. Because the
5 geographic area of Hawaii is unique and limited, noncompete
6 agreements unduly restrict future employment opportunities for
7 physicians and have a chilling effect on the stability and
8 progress of medical care offered within the State. Eliminating
9 restrictive covenants for licensed physicians will stimulate
10 Hawaii's economy by preserving jobs for licensed physicians and
11 by providing opportunities for those physicians to establish new
12 job opportunities in the State.

13 The purpose of this Act is to prohibit noncompete
14 agreements and restrictive covenants that forbid post-employment
15 competition of licensed physicians.

16 SECTION 2. Section 480-4, Hawaii Revised Statutes, is
17 amended to read as follows:



1 "§480-4 Combinations in restraint of trade, price-fixing
2 and limitation of production prohibited. (a) Every contract,
3 combination in the form of trust or otherwise, or conspiracy, in
4 restraint of trade or commerce in the State[7] or in any section
5 of this State is illegal.

6 (b) Without limiting the generality of the foregoing, no
7 person, exclusive of members of a single business entity
8 consisting of a sole proprietorship, partnership, trust, or
9 corporation, shall agree, combine, or conspire with any other
10 person or persons[7] or enter into, become a member of, or
11 participate in[7] any understanding, arrangement, pool, or
12 trust[7] to do, directly or indirectly, any of the following
13 acts[7] in the State or any section of the State:

- 14 (1) Fix, control, or maintain[7] the price of any
15 commodity;
- 16 (2) Limit, control, or discontinue[7] the production,
17 manufacture, or sale of any commodity for the purpose
18 or with the result of fixing, controlling, or
19 maintaining its price;



1 (3) Fix, control, or maintain~~[7]~~ any standard of quality
2 of any commodity for the purpose or with the result of
3 fixing, controlling, or maintaining its price;

4 (4) Refuse to deal with any other person or persons for
5 the purpose of effecting any of the acts described in
6 paragraphs (1) to (3) [~~of this subsection~~].

7 (c) Notwithstanding [~~the foregoing~~] subsection (b) and
8 without limiting the application of [~~the foregoing~~] subsection

9 (a) it shall be lawful for a person to enter into any of the
10 following restrictive covenants or agreements ancillary to a
11 legitimate purpose not violative of this chapter, unless the
12 effect thereof may be substantially to lessen competition or to
13 tend to create a monopoly in any line of commerce in any section
14 of the State:

15 (1) A covenant or agreement by the transferor of a
16 business not to compete within a reasonable area and
17 within a reasonable period of time in connection with
18 the sale of the business;

19 (2) A covenant or agreement between partners not to
20 compete with the partnership within a reasonable area



1 and for a reasonable period of time upon the
2 withdrawal of a partner from the partnership;

3 (3) A covenant or agreement of the lessee to be restricted
4 in the use of the leased premises to certain business
5 or agricultural uses, or covenant or agreement of the
6 lessee to be restricted in the use of the leased
7 premises to certain business uses and of the lessor to
8 be restricted in the use of premises reasonably
9 proximate to any such leased premises to certain
10 business uses;

11 (4) A covenant or agreement by an employee or agent not to
12 use the trade secrets of the employer or principal in
13 competition with the employee's or agent's employer or
14 principal, during the term of the agency or
15 thereafter, or after the termination of employment,
16 within such time as may be reasonably necessary for
17 the protection of the employer or principal, without
18 imposing undue hardship on the employee or agent.

19 (d) Except as provided in subsection (c) (4), any
20 employment contract, post-employment contract, or separation
21 agreement containing a noncompete or nonsolicit clause relating



1 to a licensed physician is prohibited. Such agreement shall be
2 void and of no force and effect.

3 As used in this subsection:

4 "Licensed physician" means a physician or osteopathic
5 physician licensed by the Hawaii medical board pursuant to
6 chapter 453.

7 "Noncompete clause" means a clause in an employment
8 contract, post-employment contract, or separation agreement that
9 prohibits an employee from working in a specific geographic area
10 for a specific period of time after leaving employment with the
11 employer.

12 "Nonsolicit clause" means a clause in an employment
13 contract, post-employment contract, or separation agreement that
14 prohibits an employee from soliciting employees of the employer
15 after leaving employment with the employer.

16 This subsection shall apply to all written, binding
17 noncompete and nonsolicit clauses entered into after June 30,
18 2015, and to all amendments adding or amending noncompete and
19 nonsolicit clauses in existing written agreements created prior
20 to July 1, 2015."



S.B. NO. 232

1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect on July 1, 2015.
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S.B. NO. 232

Report Title:

Licensed Physicians; Employment Covenants or Agreements

Description:

Prohibits noncompete agreements and restrictive covenants in employment contracts, post-employment contracts, or separation agreements that forbid post-employment competition of licensed physicians.

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