

1 **PROHIBITION AGAINST CERTAIN MEDICAL**
2 **NONCOMPETITION AGREEMENTS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Allen M. Christensen**

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Utah Medical Practice Act to prohibit certain noncompetition
10 agreements.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms; and
14 ▶ prohibits freestanding ambulatory surgical centers from restricting a physician's
15 right to compete.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 ENACTS:

22 **58-67-804**, Utah Code Annotated 1953

24 *Be it enacted by the Legislature of the state of Utah:*

25 Section 1. Section **58-67-804** is enacted to read:

26 **58-67-804. Noncompete agreements -- Freestanding ambulatory surgical centers.**

27 (1) The Legislature finds that the state is experiencing a severe shortage of physicians



28 and surgeons to provide necessary medical care to the population, and that this shortage is
29 expected to grow worse in the future as the population grows and continues to age.
30 Noncompetition agreements exacerbate this shortage by prohibiting physicians and surgeons
31 from establishing ambulatory surgical centers and providing outpatient medical and surgical
32 services in locations where such services do not otherwise exist, by making it harder for
33 medical practices in the state to recruit new physicians, and by contributing to a maldistribution
34 of health care providers throughout the state generally and especially in rural areas. Therefore,
35 to protect and advance the health and general welfare of the citizenry, the Legislature finds that
36 such noncompetition provisions should be invalidated.

37 (2) For purposes of this section:

38 (a) "Freestanding ambulatory surgical center" means any distinct entity licensed under
39 Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act:

40 (i) which exclusively provides outpatient surgical procedures and services to patients
41 not requiring overnight hospitalization;

42 (ii) which is neither part of nor located on a hospital campus; and

43 (iii) in which no hospital or corporation owning multiple hospitals has an ownership
44 interest.

45 (b) "Physician" means a person licensed to practice medicine under Title 58, Chapter
46 67, Utah Medical Practice Act.

47 (3) Any provision of a corporate, partnership, investment, or ownership agreement of a
48 freestanding ambulatory surgical center which prohibits competition by a physician or restricts
49 the right of a physician to establish, own, invest in, or be compensated by another freestanding
50 ambulatory surgical center is null and void and unenforceable with respect to the restriction.
51 All other provisions or terms of any such agreement shall remain enforceable to the extent
52 allowed by law.

53 (4) This section shall have retrospective as well as prospective effect.

Legislative Review Note

as of 1-26-05 8:58 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0145

Prohibition Against Certain Medical Noncompetition Agreements

02-Feb-05

4:37 PM

State Impact

No fiscal impact.

Individual and Business Impact

This bill may allow certain physicians to compete with a freestanding ambulatory surgical center, which could provide them with additional income.

Office of the Legislative Fiscal Analyst