

**LIMITATION OF PHYSICIAN
NONCOMPETITION AGREEMENTS**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rosalind J. McGee

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Utah Medical Practices Act and the Utah Osteopathic Medical Practice Act to establish limitations on the use of noncompetition clauses in physician contracts.

Highlighted Provisions:

This bill:

- ▶ beginning with contracts signed after July 1, 2006, invalidates contracts to the extent that the contract:
 - imposes a restriction on the right of a physician to practice medicine within a particular geographic area, unless the contract is for certain specific circumstances; or
 - imposes financial penalties on a physician for terminating a professional relationship;
- ▶ creates limited exceptions to the prohibition against financial penalties; and
- ▶ permits a contract to limit a departing physician's ability to recruit patients from an existing practice.

Monies Appropriated in this Bill:

None

Other Special Clauses:



None

Utah Code Sections Affected:

ENACTS:

58-67-804, Utah Code Annotated 1953

58-68-804, Utah Code Annotated 1953

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

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

58-67-804. Limitation of noncompetition agreements.

(1) A contract shall be invalid to the extent that it:

(a) imposes any form of restriction on the right of a physician licensed under this chapter to practice medicine within a particular geographic area of this state unless:

(i) (A) the contract is for the sale of the physician's practice;

(B) the physician or group of physicians selling their interest in the practice hold at least 51% interest in the ownership and control of the practice; and

(C) the goodwill and all or substantially all of the practice's assets are included in the sale; or

(ii) the contract is between physicians who have jointly entered into an exclusive agreement with a hospital to provide hospital-based physician services within that hospital; and

(iii) the restriction, if permissible under Subsection (1)(a)(i) or (ii), is only as broad in geographic scope and duration as is necessary to reasonably advance the legitimate purposes for that restriction; and

(b) (i) imposes any form of financial penalty on a physician for terminating an employment, partnership, independent contractor, or any other form of a professional relationship; and

(ii) for purposes of this Subsection (1)(b), "financial penalty" does not include:

(A) the actual costs of recruiting the physician as detailed in the contract, and up to 1/2 of the physician's first year salary if termination occurs within 24 months from the initial date of service;

(B) the actual, reasonable, and quantifiable costs to the practice that are directly related to the physician's termination, including the cost of copying and forwarding patient records; or

59 (C) the departing physician's responsibility for shared liabilities of the practice after
60 taking into account the status and distribution of shared assets in those instances where the
61 physician has an ownership interest in the practice.

62 (2) Notwithstanding Subsection (1), a contract may restrict the right of a physician to
63 directly and affirmatively solicit the patients of a practice to which the physician is no longer
64 affiliated, provided that, at the time of termination, a written notification is sent to the patients
65 who have been treated by the departing physician either upon a patient's request or as otherwise
66 agreed to by the parties that includes:

67 (a) a statement regarding the physician's departure;

68 (b) the departing physician's new contact information;

69 (c) an offer to forward a copy of the patient's medical records to the departing
70 physician's new practice location upon request and the cost, if any, to the patient for such
71 request, which shall be reasonable and based on actual costs and shall be waived if paid for by
72 the departing physician; and

73 (d) a statement, if applicable, of the practice's desire to continue the relationship with
74 the patient.

75 (3) This section only applies to contracts entered into after July 1, 2006.

76 Section 2. Section **58-68-804** is enacted to read:

77 **58-68-804. Limitation of noncompetition agreements.**

78 (1) A contract shall be invalid to the extent that it:

79 (a) imposes any form of restriction on the right of a physician licensed under this
80 chapter to practice medicine within a particular geographic area of this state unless:

81 (i) (A) the contract is for the sale of the physician's practice;

82 (B) the physician or group of physicians selling their interest in the practice hold at
83 least 51% interest in the ownership and control of the practice; and

84 (C) the goodwill and all or substantially all of the practice's assets are included in the
85 sale; or

86 (ii) the contract is between physicians who have jointly entered into an exclusive
87 agreement with a hospital to provide hospital-based physician services within that hospital; and

88 (iii) the restriction, if permissible under Subsection (1)(a)(i) or (ii), is only as broad in
89 geographic scope and duration as is necessary to reasonably advance the legitimate purposes

90 for that restriction; and

91 (b) (i) imposes any form of financial penalty on a physician for terminating an
92 employment, partnership, independent contractor, or any other form of a professional
93 relationship; and

94 (ii) for purposes of this Subsection (1)(b), "financial penalty" does not include:

95 (A) the actual costs of recruiting the physician as detailed in the contract and up to 1/2
96 of the physician's first year salary if termination occurs within 24 months from the initial date
97 of service;

98 (B) the actual, reasonable, and quantifiable costs to the practice that are directly related
99 to the physician's termination, including the cost of copying and forwarding patient records; or

100 (C) the departing physician's responsibility for shared liabilities of the practice after
101 taking into account the status and distribution of shared assets in those instances where the
102 physician has an ownership interest in the practice.

103 (2) Notwithstanding Subsection (1), a contract may restrict the right of a physician to
104 directly and affirmatively solicit the patients of a practice to which the physician is no longer
105 affiliated, provided that, at the time of termination, a written notification is sent to the patients
106 who have been treated by the departing physician either upon a patient's request or as otherwise
107 agreed to by the parties that includes:

108 (a) a statement regarding the physician's departure;

109 (b) the departing physician's new contact information;

110 (c) an offer to forward a copy of the patient's medical records to the departing
111 physician's new practice location upon request and the cost, if any, to the patient for such
112 request, which shall be reasonable and based on actual costs and shall be waived if paid for by
113 the departing physician; and

114 (d) a statement, if applicable, of the practice's desire to continue the relationship with
115 the patient.

116 (3) This section only applies to contracts entered into after July 1, 2006.

Legislative Review Note
as of 12-1-05 9:13 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 HB0092

Limitation of Physician Noncompetition Agreements

16-Jan-06

8:18 AM

State Impact

No fiscal impact.

Individual and Business Impact

The fiscal impact on affected individuals and businesses will vary according to their particular circumstances.

Office of the Legislative Fiscal Analyst