

Representative Rosalind J. McGee proposes the following substitute bill:

**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 the sale of the physician's practice; or
 - imposes financial penalties on a physician for terminating a professional relationship;
- ▶ permits certain financial penalties when a physician leaves a practice; and
- ▶ permits a contract to limit a departing physician's ability to solicit 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;

(ii) the restriction, if permissible under Subsection (1)(a)(i), 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 costs of recruiting the physician as detailed in the contract which may include:

(I) startup costs of the practice such as relocation expenses and recruiter fees;

(II) salary bonuses;

(III) marketing costs;

(IV) malpractice insurance costs;

(V) student loan pay offs; or
(VI) other costs detailed in the contract;
(B) stipulated damages of up to any earned portion of the physician's first year salary if termination occurs within 24 months from the initial date of service unless:
(I) termination is for cause by the physician; or
(II) without cause by the person contracting with the physician;
(C) 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
(D) the departing physician's responsibility for shared liabilities of the practice after taking into account the status and distribution of shared assets in those instances where the physician has an ownership interest in the practice.
(2) Notwithstanding Subsection (1), a contract may restrict the right of a physician to directly and affirmatively solicit the patients of a practice to which the physician is no longer affiliated.
(3) If a contract includes a nonsolicitation clause as permitted in Subsection (2), a patient may request information regarding the departing physician, and upon request by the patient, written notice shall be sent to the patient that includes:
(a) a statement regarding the physician's departure;
(b) the departing physician's new contact information;
(c) an offer to forward a copy of the patient's medical records to the departing physician's new practice location upon request and the cost, if any, to the patient for such request, which shall be reasonable and based on actual costs and shall be waived if paid for by the departing physician; and
(d) a statement, if applicable, of the practice's desire to continue the relationship with the patient.
(3) This section only applies to contracts entered into after July 1, 2006.
Section 2. Section **58-68-804** is enacted to read:
58-68-804. 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:

88 (i) (A) the contract is for the sale of the physician's practice;
89 (B) the physician or group of physicians selling their interest in the practice hold at
90 least 51% interest in the ownership and control of the practice; and
91 (C) the goodwill and all or substantially all of the practice's assets are included in the
92 sale;
93 (ii) the restriction, if permissible under Subsection (1)(a)(i), is only as broad in
94 geographic scope and duration as is necessary to reasonably advance the legitimate purposes
95 for that restriction; and
96 (b) (i) imposes any form of financial penalty on a physician for terminating an
97 employment, partnership, independent contractor, or any other form of a professional
98 relationship; and
99 (ii) for purposes of this Subsection (1)(b), "financial penalty" does not include:
100 (A) the costs of recruiting the physician as detailed in the contract which may include:
101 (I) startup costs of the practice such as relocation expenses and recruiter fees;
102 (II) salary bonuses;
103 (III) marketing costs;
104 (IV) malpractice insurance costs;
105 (V) student loan pay offs; or
106 (VI) other costs detailed in the contract;
107 (B) stipulated damages of up to any earned portion of the physician's first year salary if
108 termination occurs within 24 months from the initial date of service unless:
109 (I) termination is for cause by the physician; or
110 (II) without cause by the person contracting with the physician;
111 (C) the actual, reasonable, and quantifiable costs to the practice that are directly related
112 to the physician's termination, including the cost of copying and forwarding patient records; or
113 (D) the departing physician's responsibility for shared liabilities of the practice after
114 taking into account the status and distribution of shared assets in those instances where the
115 physician has an ownership interest in the practice.
116 (2) Notwithstanding Subsection (1), a contract may restrict the right of a physician to
117 directly and affirmatively solicit the patients of a practice to which the physician is no longer
118 affiliated.

119 (3) If a contract includes a nonsolicitation clause as permitted in Subsection (2), a
120 patient may request information regarding the departing physician, and upon request by the
121 patient, written notice shall be sent to the patient that includes:

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

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

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

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

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

Fiscal Note**Limitation of Physician Noncompetition Agreements***10-Feb-06***Bill Number HB0092S01***10:23 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