



Senate

General Assembly

File No. 589

January Session, 2019

Senate Bill No. 377

Senate, April 10, 2019

The Committee on Public Health reported through SEN. DAUGHERTY ABRAMS of the 13th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT PROHIBITING THE USE OF NONCOMPETE CLAUSES IN PHYSICIAN EMPLOYMENT CONTRACTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 20-14p of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2019*):

3 (a) For purposes of this section: (1) "Covenant not to compete"
4 means any provision of an employment or other contract or agreement
5 that creates or establishes a professional relationship with a physician
6 and restricts the right of a physician to practice medicine in any
7 geographic area of the state for any period of time after the termination
8 or cessation of such partnership, employment or other professional
9 relationship; (2) "physician" means an individual licensed to practice
10 medicine under this chapter; and (3) "primary site where such
11 physician practices" means (A) the office, facility or location where a
12 majority of the revenue derived from such physician's services is
13 generated, or (B) any other office, facility or location where such
14 physician practices and mutually agreed to by the parties and

15 identified in the covenant not to compete.

16 (b) (1) A covenant not to compete that is entered into, amended,
17 extended or renewed prior to July 1, 2019, is valid and enforceable only
18 if it is: (A) Necessary to protect a legitimate business interest; (B)
19 reasonably limited in time, geographic scope and practice restrictions
20 as necessary to protect such business interest; and (C) otherwise
21 consistent with the law and public policy. The party seeking to enforce
22 a covenant not to compete shall have the burden of proof in any
23 proceeding.

24 (2) A covenant not to compete that is entered into, amended,
25 extended or renewed on or after July 1, 2016, until June 30, 2019, shall
26 not: (A) Restrict the physician's competitive activities (i) for a period of
27 more than one year, and (ii) in a geographic region of more than fifteen
28 miles from the primary site where such physician practices; or (B) be
29 enforceable against a physician if (i) such employment contract or
30 agreement was not made in anticipation of, or as part of, a partnership
31 or ownership agreement and such contract or agreement expires and is
32 not renewed, unless, prior to such expiration, the employer makes a
33 bona fide offer to renew the contract on the same or similar terms and
34 conditions, or (ii) the employment or contractual relationship is
35 terminated by the employer, unless such employment or contractual
36 relationship is terminated for cause.

37 (3) Each covenant not to compete entered into, amended or renewed
38 on and after July 1, 2016, until June 30, 2019, shall be separately and
39 individually signed by the physician.

40 (4) On and after July 1, 2019, no employment, partnership or
41 ownership contract or agreement entered into, amended or renewed
42 shall contain a covenant not to compete and each covenant not to
43 compete entered into, amended or renewed on and after said date shall
44 be void and unenforceable. Any physician who is aggrieved by a
45 violation of this subdivision may bring a civil action in the Superior
46 Court to recover damages, together with court costs and reasonable
47 attorney's fees, and for such injunctive and equitable relief as the court

48 deems appropriate.

49 (c) The remaining provisions of any contract or agreement that
50 includes a covenant not to compete that is rendered void and
51 unenforceable, in whole or in part, under the provisions of this section
52 shall remain in full force and effect, including provisions that require
53 the payment of damages resulting from any injury suffered by reason
54 of termination of such contract or agreement.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2019</i>	20-14p

PH *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 20 \$	FY 21 \$
UConn Health Ctr.	Various - Net Revenue Loss	Potential Significant	Potential Significant

Note: Various=Various

Municipal Impact: None

Explanation

The bill, which prohibits physician non-compete clauses in employment contracts, results in a potentially significant revenue loss to the University of Connecticut Health Center beginning in FY 20.

The Health Center currently uses non-compete clauses to aid in physician retention. The Health Center estimates that such clauses are included in the contracts of more than 200 of its physicians. A physician who leaves for another system or private practice nearby, as allowed under the bill, may take with them their patients and the associated revenue. The Health Center then would incur a cost to recruit a replacement physician and could potentially experience a net revenue loss for the first two years of a new physician's employment. In recent years, each new physician has had a net cost to the Health Center of approximately \$300,000 for each of the first two years. It is possible the bill would enable the Health Center to attract new physicians from other nearby systems or practices, but as the Health Center is a large employer with numerous smaller medical groups nearby, it is more likely the Health Center will experience net physician losses.

The bill's revenue loss to the Health Center is potentially significant as national data indicate that each physician affiliated with a hospital generates on average nearly \$2.4 million in net revenue annually. Net revenue per physician varies, with certain specialists netting a hospital \$3 million and above, while primary care physicians net approximately \$2 million. If only four established physicians with average net revenue leave the Health Center as they will no longer be bound by non-compete clauses, the annual revenue loss totals \$9.6 million. The extent of the Health Center's annual revenue loss associated with the bill is dependent on: (1) the number of established physicians who depart the Health Center, (2) the net revenue of each departing physician, and (3) the Health Center's ability to offset revenue losses through recruitment of established physicians from nearby hospitals or practices.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: "Docs Generate an Average \$2.4M a Year Per Hospital," John Commins, *Health Leaders Media*, Feb. 25, 2019, <https://www.healthleadersmedia.com/finance/docs-generate-average-24m-year-hospital>

OLR Bill Analysis**SB 377*****AN ACT PROHIBITING THE USE OF NONCOMPETE CLAUSES IN PHYSICIAN EMPLOYMENT CONTRACTS.*****SUMMARY**

This bill prohibits physician non-compete agreements (“covenants not to compete”) entered into, amended, or renewed on or after July 1, 2019, and renders any such agreement void and unenforceable. It applies to non-compete agreements that are part of physician employment, partnership, or ownership contracts or agreements.

The bill allows an aggrieved physician to sue the employer or other appropriate entity in Superior Court to recover damages, along with court costs and reasonable attorney’s fees, and for injunctive and equitable relief as the court deems appropriate.

Current law sets various restrictions on physician non-compete agreements, including that they (1) may extend for no more than one year and a 15-mile radius from the physician’s primary practice site and (2) are allowed only if necessary to protect a legitimate business interest.

If a covenant is rendered void and unenforceable under the bill’s provisions, the contract’s remaining provisions remain in effect, including provisions requiring the payment of damages for injuries suffered due to the contract’s termination. This already applies to covenants rendered void and unenforceable under current law’s restrictions.

EFFECTIVE DATE: July 1, 2019

DEFINITION OF “COVENANT NOT TO COMPETE”

Under the bill, as under existing law, a physician “covenant not to

compete” is any provision of an employment or other contract or agreement that establishes a professional relationship with a physician and restricts the physician’s right to practice medicine in any area of the state for any period after the end of the partnership, employment, or other professional relationship.

COMMITTEE ACTION

Public Health Committee

Joint Favorable

Yea 21 Nay 0 (03/22/2019)