

Public Health Committee JOINT FAVORABLE REPORT

Bill No.: SB-377

AN ACT PROHIBITING THE USE OF NONCOMPETE CLAUSES IN PHYSICIAN

Title: EMPLOYMENT CONTRACTS.

Vote Date: 3/1/2019

Vote Action: Vote to Draft

PH Date: 2/25/2019

File No.:

***Disclaimer:** The following JOINT FAVORABLE Report is prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either chamber thereof for any purpose.*

SPONSORS OF BILL:

Public Health Committee

REASONS FOR BILL:

To prohibit non-compete covenants in physician employment contracts which will encourage physicians to work in Connecticut.

RESPONSE FROM ADMINISTRATION/AGENCY:

None submitted.

NATURE AND SOURCES OF SUPPORT:

Dr. Scott Walter, Ophthalmologist: Dr. Walter submitted testimony on behalf of the Connecticut Society of Eye Physicians, as well as colleagues in Dermatology, Urology and Ear Nose and Throat specialty. Dr. Walter's testimony focused on two important areas regarding non-compete clauses for physicians in Connecticut. Of utmost importance is the doctor –patient relationship and what is best for the patient. A patient who has established a relationship with a doctor should be able to continue in the care of that physician regardless of changes in the location of the doctor, or how long he has been away from his previous employer. Currently, in Connecticut, many doctors choose not to practice in our state due to non-competes in employment contracts as well as other financial, administrative and legal burdens placed on physician employment. Non-compete clauses negatively impact, not only physicians trying to practice in Connecticut, but also patient choice when seeking treatment from a physician.

Mariam Hakim-Zargar, MD, MPH: Dr. Hakim-Zargar delivered testimony on behalf of the 230 member Connecticut Orthopedic Society. The Society believes physicians need the flexibility to react and respond to a rapidly changing healthcare environment. This legislation will remove obstacles encountered from contractual employment obligations. In 2016, Public Act No. 16-95 made some changes to non-compete clauses in physician employment contracts, but still placed onerous restrictions on location as well as the duration of the non-compete. In the current healthcare landscape, more and more hospitals are employing physicians. Due to restrictive clauses, physicians who no longer want to be an employee of a hospital often have to relocate to areas not conducive to the care of their patients or they leave the state. Our state should strive to increase recruitment of physicians and promote policies that encourage them to stay and practice in our state.

NATURE AND SOURCES OF OPPOSITION:

The Connecticut Hospital Association (CHA): A few years ago the Connecticut General Assembly engaged in a thorough examination of the use of non-compete clauses in physician employment contracts. The result was Public Act No. 16-95 codified in Section 20-14p of the Connecticut General Statutes. The goal of the legislation was to balance the interests of both the employer and the physician. This legislation pertained to contracts amended, extended or renewed on or after July 1, 2016. It limited the extent of the non-compete clause to a period of not more than one year, and a geographic location of no more than 15 miles from the primary site where the physician practices. The statute also provided additional provisions to protect the employer. These provisions discourage an employed physician from leaving to join a competing local healthcare provider, protect the employer's disproportionate investment in a physician's training and development, and mitigate the adverse financial impact on an employer's existing practice. The CHA urges the committee to leave the current statute intact.

The Connecticut Medical Society (CSMS): CSMS supports some action as a protection for physicians employed who are in a large healthcare system, but the Society also recognizes the interests of large employers to retain physicians for their patient population. Public Act No. 16-95 state that the non-compete clause is enforceable "if the employer makes a bona fide offer to renew the contract on the same or similar terms and conditions." If the new contract substantially changes the agreement, then the non-compete clause should not be enforceable. This was implied in PA No. 16-95 but may need to be strengthened or clarified. An alternative may be to offer this bill as an amendment to PA 16-95. CSMS understands the complexity of this issue and supports efforts to enact policies that allow physicians to decide where and how they want to practice. It is time to set strict legislative standards around the non-compete clause. The Society believes that further discussion is necessary and would welcome being involved in this discussion.

Testimony of Yale School of Medicine: The Yale School of Medicine has serious concerns regarding this legislation. Yale Medicine has the most highly specialized physician workforce in the state which is the result of its substantial investment in the development of its faculty physicians. The stability of its faculty and clinical practice is an integral part its mission. Yale uses non-compete clauses for this purpose. PA 16-95 enacted by the General Assembly in 2016 offered a balanced approach to protecting both physicians and their employers. The law has been in place for less than 3 years and sets a high standard. The physician practice

or other employing entity must demonstrate that the clause is necessary, reasonable, and strictly limited to one year in duration and 15 miles in distance. Current law gives ample protection to physicians while preserving the incentives for physician employers and other health care entities to invest in the training and development of their practices. Yale Medicine recommends that the Committee oppose this legislation.

Reported by: Kathleen Panazza

Date: March 21, 2019