

2023 South Dakota Legislature

House Bill 1087**AMENDMENT 1087A FOR THE INTRODUCED BILL**

1 **An Act to prohibit certain restrictive employment contracts ~~involving mental health~~**
2 **~~professionals and counselors.~~**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 53-9-11 be AMENDED:**

5 **53-9-11.** Except as otherwise provided in § 53-9-11.1 and section 4 of this Act,
6 an employee may agree with an employer at the time of employment or at any time during
7 employment not to engage directly or indirectly in the same business or profession as that
8 of the employer for any period not exceeding two years from the date of termination of
9 the agreement and not to solicit existing customers of the employer within a specified
10 county, first- or second-class municipality, or other specified area for any period not
11 exceeding two years from the date of termination of the agreement, if the employer
12 continues to carry on a like business therein.

13 **Section 2. That § 53-9-11.1 be AMENDED:**

14 **53-9-11.1.** A contract that creates or establishes the terms of employment, a
15 partnership, or any other form of professional relationship, with a health care provider, as
16 defined in section 3 of this Act, may not restrict the right of the health care provider to:

- 17 (1) Practice or provide services for which the provider is licensed, in any geographic
18 area and for any period of time, after the termination of the employment,
19 partnership, or other form of professional relationship;
- 20 (2) Treat, advise, consult with, or establish a provider-patient relationship with any
21 current patient of the employer, or with a patient affiliated with a partnership or
22 other form of professional relationship; or
- 23 (3) Solicit or seek to establish a provider-patient relationship with any current patient
24 of the employer, or with a patient affiliated with a partnership or other form of
25 professional relationship.

1 The prohibition of this section does not apply to a contract in connection with the
2 sale and purchase of a practice.

3 ~~For purposes of this section, a health care provider means:~~

- 4 ~~(1) A physician licensed in accordance with chapter 36-4;~~
5 ~~(2) A physician assistant licensed in accordance with chapter 36-4A;~~
6 ~~(3) A certified nurse practitioner licensed in accordance with chapter 36-9A;~~
7 ~~(4) A certified nurse midwife licensed in accordance with chapter 36-9A;~~
8 ~~(5) A certified registered nurse anesthetist authorized to practice in accordance with~~
9 ~~§ 36-9-3.1;~~
10 ~~(6) A registered nurse authorized to practice in accordance with § 36-9-3; and~~
11 ~~(7) A licensed practical nurse authorized to practice in accordance with § 36-9-4.~~

12 **Section 3. That chapter 53-9 be amended with a NEW SECTION:**

13 For purposes of § 53-9-11.1, a health care provider means:

- 14 (1) A physician licensed in accordance with chapter 36-4;
15 (2) A physician assistant licensed in accordance with chapter 36-4A;
16 (3) A respiratory care practitioner licensed in accordance with chapter 36-4C;
17 (4) A certified nurse practitioner licensed in accordance with chapter 36-9A;
18 ~~(4)(5)~~ A certified nurse midwife licensed in accordance with chapter 36-9A;
19 ~~(5)(6)~~ A certified registered nurse anesthetist authorized to practice in accordance with
20 § 36-9-3.1;
21 ~~(6)(7)~~ A registered nurse authorized to practice in accordance with § 36-9-3;
22 ~~(7)(8)~~ A licensed practical nurse authorized to practice in accordance with § 36-9-4;
23 ~~(8)(9)~~ A physical therapist licensed in accordance with chapter 36-10;
24 (10) A psychologist licensed in accordance with chapter 36-27A;
25 ~~(9)(11)~~ An athletic trainer licensed in accordance with chapter 36-29;
26 (12) An occupational therapist licensed in accordance with chapter 36-31;
27 (13) A professional counselor licensed in accordance with chapter 36-32;
28 ~~(10)(14)~~ A professional counselor--mental health licensed in accordance with chapter 36-
29 32;
30 ~~(11)(15)~~ A marriage and family therapist licensed in accordance with chapter 36-33; and
31 ~~(12)(16)~~ An addiction and prevention professional licensed or certified in accordance with
32 chapter 36-34; and
33 (17) A speech language pathologist licensed in accordance with chapter 36-37.

1 **Section 4. That chapter 53-9 be amended with a NEW SECTION:**

2 A contract that creates or establishes the terms of employment, a partnership, or
3 any other form of professional relationship, with a social worker licensed in accordance
4 with chapter 36-26, may not restrict the right of the social worker to:

5 (1) Practice or provide services for which the social worker is licensed, in any
6 geographic area and for any period of time, after the termination of the
7 employment, partnership, or other form of professional relationship; or

8 (2) Treat, advise, consult with, or establish a relationship with any current client of the
9 employer, or solicit or seek to establish a relationship with a client affiliated with a
10 partnership or other form of professional relationship.

11 The prohibition of this section does not apply to a contract in connection with the
12 sale and purchase of a practice.

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