



2023 South Dakota Legislature

House Bill 1185

HOUSE COMMERCE AND ENERGY ENGROSSED

Introduced by: **Representative** Deutsch

1 **An Act to prohibit certain restrictions in employment contracts.**

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

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

4 **53-9-11.** Except as otherwise provided in ~~§ 53-9-11.1~~ section 3 of this Act, an
 5 employee may agree with an employer at the time of employment or at any time during
 6 employment not to engage directly or indirectly in the same business or profession as that
 7 of the employer for any period not exceeding two years from the date of termination of
 8 the agreement and not to solicit existing customers of the employer within a specified
 9 county, first- or second-class municipality, or other specified area for any period not
 10 exceeding two years from the date of termination of the agreement, if the employer
 11 continues to carry on a like business therein.

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

13 **53-9-11.1.** ~~A contract that creates or establishes the terms of employment, a~~
 14 ~~partnership, or any other form of professional relationship, with a health care provider,~~
 15 ~~may not restrict the right of the health care provider to:~~

16 ~~(1) Practice or provide services for which the provider is licensed, in any geographic~~
 17 ~~area and for any period of time, after the termination of the employment, partnership, or~~
 18 ~~other form of professional relationship;~~

19 ~~(2) Treat, advise, consult with, or establish a provider-patient relationship with any~~
 20 ~~current patient of the employer, or with a patient affiliated with a partnership or other~~
 21 ~~form of professional relationship; or~~

22 ~~(3) Solicit or seek to establish a provider-patient relationship with any current~~
 23 ~~patient of the employer, or with a patient affiliated with a partnership or other form of~~
 24 ~~professional relationship.~~

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

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

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

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

Notwithstanding § 53-9-11, a provision of a contract is voidable if it restricts a practitioner, as defined in § 53-9-11.1, from practicing or otherwise providing professional services in accordance with the applicable scope of practice, after the conclusion of the practitioner's employment or after the dissolution of a partnership or other form of professional relationship.

This section does not apply to any contractual provision that:

- (1) Is effective upon the sale of a practice or interest in a practice; or
- (2) Restricts a practitioner from soliciting current patients or clients of the former employer, partnership, or other professional relationship, provided the solicitation complies with the geographic and temporal limitations as referenced in § 53-9-11.

1 The term, soliciting, as used in this section, means a targeted affirmative act,
2 directed toward any patient or client of the practitioner's former employer, partnership,
3 or other professional relationship, for the purpose of convincing the patient or client to
4 transfer the patient or client's care or business to the practitioner or to the practitioner's
5 new employer, partner, or professional relationship.