

2023 South Dakota Legislature

House Bill 1185**AMENDMENT 1185H
FOR THE SENATE ENGROSSED BILL**

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.~~

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~~ 3 of this Act, a ~~health care provider practitioner~~ 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 paramedic or emergency medical technician licensed in accordance with chapter
7 36-4B;
- 8 (4) A respiratory care practitioner licensed in accordance with chapter 36-4C;
- 9 (5) A chiropractor licensed in accordance with chapter 36-5;
- 10 (6) A dentist licensed in accordance with chapter 36-6A;
- 11 (7) An optometrist licensed in accordance with chapter 36-7;
- 12 (8) A podiatrist licensed in accordance with chapter 36-8;
- 13 (9) A registered nurse authorized to practice in accordance with § 36-9-3;
- 14 (10) A certified registered nurse anesthetist authorized to practice in accordance with §
15 36-9-3.1;
- 16 (11) A licensed practical nurse authorized to practice in accordance with § 36-9-4;
- 17 (12) A certified nurse practitioner or a certified nurse midwife licensed in accordance
18 with chapter 36-9A;
- 19 ~~(4) A certified nurse midwife licensed in accordance with chapter 36-9A;~~
- 20 ~~(5) A certified registered nurse anesthetist authorized to practice in accordance with~~
21 ~~§ 36-9-3.1;~~
- 22 ~~(6) A registered nurse authorized to practice in accordance with § 36-9-3; and~~
- 23 ~~(7) A licensed practical nurse authorized to practice in accordance with § 36-9-4;~~
- 24 ~~(8) A respiratory care practitioner licensed in accordance with chapter 36-4C;~~
- 25 ~~(9) A chiropractor licensed in accordance with chapter 36-5;~~
- 26 ~~(10) A dentist licensed in accordance with chapter 36-6A;~~
- 27 ~~(11) A podiatrist licensed in accordance with chapter 36-8;~~
- 28 ~~(12)~~(13) A certified professional midwife licensed under 36-9C;
- 29 (14) A physical therapist licensed in accordance with chapter 36-10;
- 30 ~~(13)~~(15) A nutritionist or dietitian licensed in accordance with chapter 36-10B;
- 31 (16) A pharmacist licensed in accordance with chapter 36-11;
- 32 (17) An audiologist or hearing aid dispenser licensed in accordance with chapter 36-24;
- 33 (18) A social worker licensed in accordance with chapter 36-26;
- 34 ~~(14)~~(19) A psychologist licensed in accordance with chapter 36-27A;
- 35 ~~(15)~~(20) An athletic trainer licensed in accordance with chapter 36-29;

- 1 ~~(16)~~(21) An occupational therapist licensed in accordance with chapter 36-31;
2 ~~(17)~~(22) A professional counselor or a professional counselor-mental health licensed in
3 accordance with chapter 36-32;
4 ~~(18)~~(23) ~~A professional counselor-mental health licensed in accordance with chapter 36-32;~~
5 ~~(19)~~(23) A marriage and family therapist licensed in accordance with chapter 36-33;
6 ~~(20)~~(24) An addiction and prevention professional licensed or certified in accordance with
7 chapter 36-34; and
8 ~~(21)~~(25) A massage therapist licensed in accordance with chapter 36-35;
9 (26) A genetic counselor licensed in accordance with chapter 36-36;
10 (27) A speech language pathologist licensed in accordance with chapter 36-37; and
11 (28) A behavior analyst licensed in accordance with chapter 36-38.

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

13 Notwithstanding § 53-9-11, a provision of a contract, entered into on or after July
14 1, 2023, is voidable if it restricts a practitioner, as defined in § 53-9-11.1, from practicing
15 or otherwise providing professional services in accordance with the applicable scope of
16 practice, after the conclusion of the practitioner's employment or after the dissolution of
17 a partnership or other form of professional relationship.

18 This section does not apply to any contractual provision that:

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

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

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