

COLORADO LEGISLATURE PASSES LEGISLATION TO FURTHER RESTRICT NON-COMPETITION PROVISIONS

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The Colorado legislature recently passed Senate Bill 25-083 (SB 83), which amends current Colorado law and now makes it more difficult for health care providers to impose restrictive covenants (or noncompetes) on physicians and certain other licensed health care providers—the latest in a series of steps the Colorado legislature and courts have taken to diminish the enforceability of noncompetes. Colorado now joins various other states that have recently prohibited or severely restricted physician noncompetes. SB 83 also similarly prohibits noncompetes with advanced practice registered nurses, physician assistants, and dentists, and places additional restrictions on noncompetes with other health care providers.

Prior to the effective date of SB 83, Colorado law stated in general terms that any noncompete that restricted the right of any person to receive compensation for working for any employer would be void, unless an exception applied and certain parameters were met. Specifically with regard to physicians, the previous law stated that any noncompete related to employment, partnership, or corporate agreement between physicians that restricted the right of a physician to practice medicine upon termination of such agreement was void, but explicitly stated that physicians could be required to pay damages in an amount reasonably related to the injury suffered by reason of termination of the agreement, including damages related to competition. [2]

SB 83 makes major changes to the existing noncompete framework, including removing the physician noncompete carve-out language—which allowed employers of physicians to recover damages from departing physicians, including damages associated with competition—in its entirety. Further, several of the exceptions to the general prohibition against noncompetes applicable to all professions (that would allow noncompetes in certain contexts) have been amended to clarify that those exceptions do not apply to certain health care professionals. Specifically, SB 83 made the following changes:

- The noncompete law's general prohibition on restrictive covenants has been broadened to arguably cover not only agreements with "any employer," but any agreement that restricts the right of "an individual to receive compensation for performance of labor." While the effect of this change remains to be determined, this change could be interpreted as extending the protections against noncompetes to workers who are not employees, such as independent contractors.
- The noncompete law, as amended by SB 83, generally permits a restrictive covenant governing an individual who, at the time the noncompete is entered into and at the time it is enforced, earns an amount of annualized cash compensation equivalent to or greater than the threshold amount for highly compensated workers, if the noncompete is for the protection of trade secrets and is no broader than is reasonably necessary to protect the employer's legitimate interest in protecting trade secrets. However, SB 83 specifically states that this exception to the general prohibition against noncompetes does not apply to a noncompete that restricts the practice of medicine (which includes practice of a physician or physician assistant), the practice of advanced practice registered nursing, or the practice of dentistry in Colorado. Stated differently, noncompetes that restrict the practice of medicine, the practice of advanced practice registered nursing, or the practice of dentistry in Colorado are not permissible.
- Similarly, the noncompete law, as amended by SB 83, generally permits a covenant not to solicit customers governing an individual who, at the time the covenant not to compete is entered into and at the time it is enforced, earns an amount of annualized cash compensation equivalent to or greater than 60% of the threshold amount for highly compensated workers, if the nonsolicitation covenant is no broader than is reasonably necessary to protect the employer's legitimate interest in protecting trade secrets. However, SB 83 specifically states that this exception to the general prohibition against customer (or patients, in the context of health care) nonsolicitations does not apply to a noncompete that restricts the practice of medicine, the practice of advanced practice registered nursing, or the practice of dentistry in Colorado.

- SB 83 narrows the permissible restrictions related to the purchase and sale of a business. Colorado law previously permitted noncompetes related to such transactions. Following the effective date of SB 83, however, for individuals with a minority ownership share and who received their ownership share in the business as equity compensation or otherwise in connection with services rendered, the maximum duration of a noncompete is now limited to the number of years equal to the amount of money the individual received from the sale divided by their average annualized compensation.
- SB 83 specifically bans any provision that “prohibits or materially restricts” a departing health care provider from informing his or her patients of his or her departure, continuing practice of medicine, new professional contact information, and/or the patient’s right to choose a health care provider. For purposes of this provision of the law, the term “Health-Care Provider” is specifically defined to include an individual licensed to engage in the practice of medicine (including as a physician or a physician assistant), registered to engage in the practice of advanced practice registered nursing, licensed to practice as a certified midwife, or licensed to engage in the practice of dentistry.
- Finally, and importantly, SB 83 includes language clarifying that “[a] provision of an employment agreement or any other agreement enforceable at law that does not include an unlawful restrictive covenant remains enforceable and subject to any damages or equitable remedy otherwise available at law.” It remains uncertain how courts will interpret this provision and what types of provisions will be viewed as “unlawful restrictive covenants.”

The law already contains civil and even possible criminal penalties for entering into or attempting to enforce noncompetes that are void under the statute. Therefore, risk to entities entering into unlawful noncompetes can be very high.

SB 83 will only apply to “covenants not to compete entered into or renewed on or after the applicable effective date” of SB 83, which will be on or around August 6, 2025.

Colorado’s SB 83 marks a fundamental change in the enforceability of noncompetes in Colorado, consistent with national trends. Notwithstanding some ambiguity that remains, changes made in SB 83 will empower physicians and other providers to change jobs, start new practices, and maintain patient relationships with less restriction. Health care employers and professionals alike will need to review and revise employment agreements before August 2025 to ensure compliance with the new law and avoid potentially material legal consequences.

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REFERENCES

[1] SB 83 amends existing noncompete laws at C.R.S. 8-2-113.

[2] C.R.S. 8-2-113(5)(a).

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