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HOUSE BILL 52

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Nora Espinoza

AN ACT

RELATING TO PUBLIC HEALTH; LIMITING COVENANT NOT TO COMPETE  
PROVISIONS OF EMPLOYMENT, PARTNERSHIP, CORPORATE OR OTHER  
CONTRACTS RELATING TO THE PROVISION OF HEALTH CARE SERVICES BY  
A HEALTH CARE PRACTITIONER IN LEA, CHAVES OR EDDY COUNTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** [NEW MATERIAL] DEFINITIONS.--As used in  
Sections 1 through 4 of this act:

A. "agreement" means an employment, partnership,  
corporate or other contract to which a health care practitioner  
is a party; and

B. "health care practitioner" means:

(1) a certified nurse-midwife licensed by the  
board of nursing as a registered nurse and licensed by the  
public health division of the department of health to practice

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1 nurse-midwifery as a certified nurse-midwife;

2 (2) a dentist or dental hygienist licensed  
3 pursuant to the Dental Health Care Act;

4 (3) an optometrist licensed pursuant to the  
5 provisions of the Optometry Act;

6 (4) an osteopathic physician licensed pursuant  
7 to the provisions of Chapter 61, Article 10 NMSA 1978 or an  
8 osteopathic physician's assistant licensed pursuant to the  
9 provisions of the Osteopathic Physicians' Assistants Act;

10 (5) a physician or physician assistant  
11 licensed pursuant to the provisions of Chapter 61, Article 6  
12 NMSA 1978;

13 (6) a podiatrist licensed pursuant to the  
14 provisions of the Podiatry Act;

15 (7) a clinical psychologist licensed pursuant  
16 to the provisions of the Professional Psychologist Act;

17 (8) a registered nurse in advanced practice  
18 who has been prepared through additional formal education as  
19 provided in Sections 61-3-23.2 through 61-3-23.4 NMSA 1978 to  
20 function beyond the scope of practice of professional  
21 registered nursing, including certified nurse practitioners,  
22 certified registered nurse anesthetists and clinical nurse  
23 specialists; and

24 (9) a doctor of oriental medicine licensed  
25 pursuant to the provisions of the Acupuncture and Oriental

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1 Medicine Practice Act.

2 SECTION 2. [NEW MATERIAL] AGREEMENT NOT ANCILLARY TO THE  
3 SALE OF A BUSINESS OR SALE OF AN INTEREST IN A BUSINESS  
4 CONTAINING COVENANT NOT TO COMPETE PROVISION RESTRICTING HEALTH  
5 CARE PRACTITIONER FROM PROVIDING HEALTH CARE SERVICES.--

6 A. A covenant not to compete provision in an  
7 agreement that is not ancillary to the sale of a business or  
8 sale of an interest in a business that restricts the right of a  
9 health care practitioner to provide health care services in  
10 Lea, Chaves or Eddy county shall be void upon the termination  
11 of such agreement or of any renewal or extension of such  
12 agreement.

13 B. All other provisions of the agreement, including  
14 provisions that require the payment of damages in an amount  
15 that is reasonably related to the injury suffered by reason of  
16 the termination of the agreement, shall be enforceable.

17 SECTION 3. [NEW MATERIAL] AGREEMENT ANCILLARY TO THE SALE  
18 OF A BUSINESS OR SALE OF AN INTEREST IN A BUSINESS CONTAINING  
19 COVENANT NOT TO COMPETE PROVISION RESTRICTING HEALTH CARE  
20 PRACTITIONER FROM PROVIDING HEALTH CARE SERVICES.--A covenant  
21 not to compete provision in an agreement ancillary to the sale  
22 of a business or sale of an interest in a business that  
23 restricts the right of a health care practitioner to provide  
24 health care services in Lea, Chaves or Eddy county shall not be  
25 enforceable if:

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1           A. the restraint is greater than is needed to  
2 protect the buyer's legitimate interest;

3           B. the buyer's legitimate interest is outweighed by  
4 the hardship to the seller; or

5           C. enforcement of the covenant not to compete would  
6 unduly interfere with the public interest in Lea, Chaves or  
7 Eddy county.

8           SECTION 4. [NEW MATERIAL] APPLICABILITY.--

9           A. The provisions of Sections 2 and 3 of this act  
10 do not apply to:

11                   (1) a provision in an agreement requiring a  
12 health care practitioner who has worked for an employer for an  
13 initial period of less than two years to repay all or a portion  
14 of:

15                               (a) a loan;

16                               (b) relocation expenses;

17                               (c) a signing bonus or other  
18 remuneration to induce the health care practitioner to relocate  
19 or establish a health care practice in a specified geographic  
20 area; or

21                               (d) recruiting, education and training  
22 expenses;

23                   (2) a nondisclosure covenant relating to  
24 confidential information and trade secrets; and

25                   (3) a nonsolicitation covenant with respect to

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1 employees of the health care practitioner's employer for a  
2 period of one year or less after the last date of employment.

3 B. The provisions of this act apply to agreements,  
4 or renewals or extensions of agreements, executed on or after  
5 July 1, 2015.

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