

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 385

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY  
Eleanor Chávez

AN ACT

RELATING TO PUBLIC HEALTH; MAKING NONSOLICITATION PROVISIONS IN  
CERTAIN HEALTH CARE PRACTITIONER AGREEMENTS UNENFORCEABLE.

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

SECTION 1. Section 24-1I-2 NMSA 1978 (being Laws 2015,  
Chapter 96, Section 2, as amended) is amended to read:

"24-1I-2. ENFORCEABILITY OF A NON-COMPETE OR  
NONSOLICITATION PROVISION--OTHER PROVISIONS VOID.--

A. A non-compete provision in an agreement, which  
provision restricts the right of a health care practitioner to  
provide clinical health care services in this state, shall be  
unenforceable upon the termination of:

- (1) the agreement;
- (2) a renewal or extension of the agreement;

or

underscored material = new  
[bracketed material] = delete

1 (3) a health care practitioner's employment  
2 with a party seeking to enforce the agreement.

3 B. A provision in an agreement for clinical health  
4 care services to be rendered in this state is void,  
5 unenforceable and against public policy if the provision:

6 (1) makes the agreement subject to the laws of  
7 another state; or

8 (2) requires any litigation arising out of the  
9 agreement to be conducted in another state.

10 C. A nonsolicitation provision in an agreement,  
11 which provision restricts the right of a health care  
12 practitioner to solicit patients or employees of the party  
13 seeking to enforce the agreement, shall be unenforceable upon  
14 the termination of:

15 (1) the agreement;

16 (2) a renewal or extension of the agreement;

17 or

18 (3) a health care practitioner's employment  
19 with a party seeking to enforce the agreement."

20 SECTION 2. Section 24-1I-3 NMSA 1978 (being Laws 2015,  
21 Chapter 96, Section 3) is amended to read:

22 "24-1I-3. ENFORCEABILITY OF OTHER PROVISIONS.--Nothing in  
23 [~~this act~~] Chapter 24, Article 1I NMSA 1978 shall be construed  
24 to limit the enforceability of:

25 A. a provision in an agreement requiring a health

.224944.1

underscored material = new  
[bracketed material] = delete

1 care practitioner who has worked for an employer for an initial  
2 period of less than three years to repay all or a portion of:

- 3 (1) a loan;  
4 (2) relocation expenses;  
5 (3) a signing bonus or other remuneration to  
6 induce the health care practitioner to relocate or establish a  
7 health care practice in a specified geographic area; or  
8 (4) recruiting, education and training  
9 expenses;

10 B. a nondisclosure provision relating to  
11 confidential information and trade secrets; or

12 ~~[C. a nonsolicitation provision with respect to~~  
13 ~~patients and employees of the party seeking to enforce the~~  
14 ~~agreement for a period of one year or less after the last date~~  
15 ~~of employment; or~~

16 ~~D.]~~ C. any other provision of an agreement that is  
17 not in violation of law, including a provision for liquidated  
18 damages."

19 SECTION 3. Section 24-1I-5 NMSA 1978 (being Laws 2015,  
20 Chapter 96, Section 5, as amended) is amended to read:

21 "24-1I-5. APPLICABILITY.--

22 A. Chapter 24, Article 1I NMSA 1978 does not apply  
23 to agreements between health care practitioners who are  
24 shareholders, owners, partners or directors of a health care  
25 practice.

.224944.1

underscoring material = new  
[bracketed material] = delete

1           B. Except as provided by [~~Subsection~~] Subsections C  
2 and D of this section, the provisions of Chapter 24, Article 1I  
3 NMSA 1978 apply to agreements, or renewals or extensions of  
4 agreements, executed on or after July 1, 2015.

5           C. The provisions of Subsection B of Section  
6 24-1I-2 NMSA 1978 apply to agreements, or renewals or  
7 extensions of agreements, executed on or after [~~the effective~~  
8 ~~date of this 2017 act~~] April 6, 2017.

9           D. The provisions of Subsection C of Section  
10 24-1I-2 NMSA 1978 apply to agreements, or renewals or  
11 extensions of agreements, executed on or after the effective  
12 date of this 2023 act."