

- SUBJECT:** Modifying restrictions on covenants not to compete by physicians
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 8 ayes — Kolkhorst, Naishtat, Coleman, J. Davis, Gonzales, Laubenberg, McReynolds, Zerwas
- 0 nays
- 3 absent — Hopson, S. King, Truitt
- WITNESSES:** For — David Hilgers, North Cypress Medical Center; (*Registered, but did not testify*): Dan Finch, Texas Medical Association; Michael Gutierrez; Patrick Reinhart, The San Antonio Orthopedic Group, LLP)
- Against — None
- BACKGROUND:** Covenants not to compete are legally enforceable contracts that restrict the ability of an individual to compete with former employers or business partners. Although generally enforceable in most situations, the 76th Legislature in 1999 enacted HB 3285 by Van de Putte, which prohibited a covenant not to compete from restricting a physician from continuing to provide medical care and treatment to patients whom the physician had seen or treated within one year after the physician's employment or contract terminated. HB 3285 also prohibited a covenant not to compete from restricting a physician's access to the medical records of the physician's patients.
- The purpose of HB 3285 was to ensure that a covenant not to compete would not disrupt the continuity of the physician-patient relationship. However, questions have arisen about whether the provisions in Business and Commerce Code, sec. 15.50 added by HB 3285 limit the applicability of a covenant not to compete to matters not related to the practice of medicine, such as a physician's business ownership interest in a hospital or surgical center.
- DIGEST:** CSHB 3683 would amend Business and Commerce Code, sec. 15.50 to provide that a covenant not to compete would be enforceable against a physician's business ownership interest in a licensed hospital or licensed

ambulatory surgical center. The bill would add language in the current statute specifying that the provisions restricting covenants not to compete apply only to covenants related to the practice of medicine.

The bill would apply only to a covenant not to compete entered into on or after its September 1, 2009 effective date.

**NOTES:**

The committee substitute removes language contained in the original bill that would have required a court to reform an otherwise enforceable agreement that contained a covenant not to compete that did not satisfy the requirements for a covenant not to compete under Business and Commerce Code, sec. 15.50.

The companion bill, SB 1713 by Hegar, passed the Senate by 31-0 on April 30 and has been referred to the House Public Health Committee.