

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 402

BY SENATORS TAKUBO, STOLLINGS AND ROMANO

[Introduced February 22, 2017; Referred
to the Committee on Health and Human Resources;
and then to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §47-11E-1, §47-11E-2, §47-11E-3, §47-11E-4 and §47-11E-5, all relating to
 3 covenants not to compete between physicians and hospitals; defining terms; setting forth
 4 prohibition against contract terms in certain circumstances; providing for enforceability of
 5 other contract terms; providing for exemptions; and setting forth an effective date.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §47-11E-1, §47-11E-2, §47-11E-3, §47-11E-4 and §47-11E-5, all to read as
 3 follows:

ARTICLE 11E. PHYSICIANS FREEDOM OF PRACTICE ACT.

§47-11E-1. Definitions.

1 As used in this article:

2 “Contract” means a written agreement between a physician and an employer.

3 “Covenant not to compete” means any contract that restricts the right of a physician to
 4 practice medicine in any geographic area of the state for any period of time following the expiration
 5 of the physician’s contract with his or her employer, or upon the termination of the physician’s
 6 contract by the physician’s employer.

7 “Employer” means any person employing at least one individual in the state or any agent
 8 of an employer employing at least one individual in the state.

9 “Person” means any individual, proprietorship, partnership, firm, association, corporation,
 10 labor organization, limited liability corporation, or any other legal entity.

11 “Physician” means a doctor of allopathic or osteopathic medicine who is fully licensed to
 12 practice medicine and surgery pursuant to the provisions of either article three or article fourteen
 13 of this chapter.

§47-11E-2. Prohibition on contractual provisions in restraint of free practice by physicians.

1 (a) A covenant not to compete contained in a contract between a physician and an

2 employer is void and unenforceable upon:

3 (1) The expiration of the contract; or

4 (2) The termination of the physician’s employment by the employer.

5 (b) Nothing in this article renders void and unenforceable a covenant not to compete if the
6 physician terminates or otherwise breaches his or her employment contract prior to its expiration.

§47-11E-3. Enforceability of other provisions.

1 Provided that the contract does not state otherwise, nothing in this article limits the
2 enforceability of:

3 (1) Provisions prohibiting a physician from taking any property, patient lists, or records of
4 the employer with him or her upon the termination or expiration of the contract;

5 (2) Provisions requiring a physician to repay an employer all or a portion of:

6 (A) A loan;

7 (B) Relocation expenses;

8 (C) A signing bonus;

9 (D) Remuneration to induce the physician to relocate or establish a physician practice in
10 a specific geographic area; or

11 (E) Recruiting, education and training expenses;

12 (3) A nondisclosure provision relating to confidential information and trade secrets;

13 (4) A nonsolicitation provision with respect to patients and employees of the employer;

14 (5) A provision for liquidated damages; or

15 (6) Any other provision of a contract that is not in violation of law.

§47-11E-4. Exemptions to prohibitions.

1 The prohibitions set forth in this article do not apply to any of the following unless the
2 contract terms provide otherwise:

3 (1) In the case where the physician has sold his or her business or practice in the form of
4 a sale of assets, stock, membership interests, or otherwise to his or her employer; or

5 (2) To contracts between physicians who are shareholders, owners, partners, members,
6 or directors of a “health care practice.”

§47-11E-5. Applicability.

1 This article applies to any contract between a physician and his or her employer entered
2 into, modified, renewed or extended on or after July 1, 2017: *Provided*, That the provisions of this
3 article do not otherwise apply to or abrogate any contract in effect on or before June 30, 2017.

NOTE: The purpose of this bill is to generally prohibit covenants not to compete between physicians and hospitals.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.