

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 203

BY SENATORS MARONEY, ROMANO, LINDSAY, STOLLINGS,

AND MARTIN

[Introduced January 12, 2022; referred
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §47-11E-1, §47-11E-2, §47-11E-3, §47-11E-4, and §47-11E-5 of
2 the Code of West Virginia, 1931, as amended, all relating to covenants not to compete
3 between physicians, physician assistants, or advanced practice registered nurses and
4 employers; defining terms; setting forth prohibition against contract terms; providing for
5 enforceability of other contract terms; providing for exemptions; and setting forth an
6 effective date.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 11E. PHYSICIANS, PHYSICIAN ASSISTANTS, AND ADVANCED
PRACTICE REGISTERED NURSES FREEDOM OF PRACTICE ACT.**

§47-11E-1. Definitions.

1 As used in this article:

2 “Advanced practice registered nurse” means a registered nurse who has acquired
3 advanced clinical knowledge and skills preparing him or her to provide direct and indirect care to
4 patients as a certified nurse practitioner, certified nurse midwife, certified registered nurse
5 anesthetist, or clinical nurse specialist, who has completed a board-approved graduate level
6 education program and who has passed a board-approved national certified examination.

7 “Contract” means a written agreement between a physician, physician’s assistant, or
8 advanced practice registered nurse and an employer.

9 “Covenant not to compete” means any contract that restricts the right of a physician,
10 physician’s assistant, or advanced practice registered nurse to practice medicine within the scope
11 of his or her license in any geographic area of the state for any period of time following the
12 expiration of the ~~physician’s~~ contract with his or her employer, or upon the termination of the
13 ~~physician’s~~ contract by the ~~physician’s~~ employer.

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

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

18 “Physician” means a doctor of allopathic or osteopathic medicine who is fully licensed to
 19 practice medicine and surgery pursuant to the provisions of either ~~article three or fourteen, chapter~~
 20 ~~thirty~~ §30-3-1 et seq. or §30-14-1 et seq. of this code.

21 “Physician assistant” means a person who meets the qualifications set forth in §30-3E-1
 22 et seq. of this code and is licensed to practice medicine under collaboration.

**§47-11E-2. Limitation on contractual provisions in physician, physician’s assistant, or
advanced practice registered nurse employment contract.**

1 (a) Except as provided in subsection (c) of this section, a covenant not to compete
 2 contained in a contract between a physician and an employer shall be limited to not more than:

- 3 (1) One year in duration; and
 4 (2) Thirty road miles from the physician’s primary place of practice with the employer.

5 (b) A covenant not to compete shall be void and unenforceable upon the termination of
 6 the physician’s employment by the employer.

7 (c) A covenant not to compete in a contract for professional services between an employer
 8 and a physician, physician’s assistant, or advanced practice registered nurse shall have no force
 9 or effect in any employment contract entered into, renewed, or extended on or after August 1,
 10 2022.

§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, physician’s assistant, or advanced practice
 4 registered nurse from taking any property, patient lists, or records of the employer with him or her
 5 upon the termination or expiration of the contract;

6 (2) Provisions requiring a physician, physician’s assistant, or advanced practice registered

- 7 nurse to repay an employer all or a portion of:
- 8 (A) A loan;
- 9 (B) Relocation expenses;
- 10 (C) A signing bonus;
- 11 (D) Remuneration to induce the physician, physician's assistant, or advanced practice
- 12 registered nurse to relocate or establish a ~~physician~~ practice in a specific geographic area; or
- 13 (E) Recruiting, education, and training expenses;
- 14 (3) A nondisclosure provision relating to confidential information and trade secrets;
- 15 (4) A nonsolicitation provision with respect to patients and employees of the employer;
- 16 (5) A provision for liquidated damages; or
- 17 (6) Any other provision of a contract that is not in violation of law.

§47-11E-4. Exemptions to limitations.

1 The limitations 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, physician's assistant, or advanced practice registered

4 nurse has sold his or her business or practice in the form of a sale of assets, stock, membership

5 interests, or otherwise to his or her employer; or

6 (2) To contracts between physicians, physician's assistants, or advanced practice

7 registered nurses who are shareholders, owners, partners, members, or directors of a health care

8 practice.

§47-11E-5. Applicability.

1 This article applies to any contract between a physician, physician's assistant, or

2 advanced practice registered nurse and his or her employer entered into, modified, renewed, or

3 extended on or after ~~July 1, 2017~~ August 1, 2022; *Provided*, That the provisions of this article do

4 not otherwise apply to or abrogate any contract in effect on or before ~~June 30, 2017~~ July 31, 2022.

NOTE: The purpose of this bill is to expand the Physicians Freedom of Practice Act and covenants not to compete with employers to physician's assistants and advanced practice registered nurses; defining terms; setting forth prohibition against contract terms; providing for enforceability of other contract terms; providing for exemptions; and setting forth an effective date.

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