

Dear Members of the Health Committee,

I am writing in regards to Senate Bill 126 regarding non-competition provisions for certain health care providers in the State of Ohio.

I am an attorney here in central Ohio and handle a variety of business matters. As the spouse of a physician, many of her friends and colleagues have come to me over the years seeking advice. A common topic of discussion are non-compete provisions and the enforceability of such covenants. Having counseled dozens of physicians on the impact of non-compete provisions and listening to their personal stories, it is my opinion that these restrictive covenants undermine the quality of care available to our Ohio communities and non-compete provisions should only be allowed in very narrow situations. Although anecdotal, I wanted to share with you some of the most egregious and impactful situations I have seen that lead me to this conclusion.

I personally know of six physicians who have left central Ohio or not practiced medicine for extended periods of time due to non-competes. One physician commuted to Cincinnati for over a year until her non-compete expired. A few physicians choose to wait out the non-compete by simply not practicing medicine for a year. I also know of several physicians that left the State of Ohio with the non-compete playing a major factor in the decision not to apply to any other local hospitals or groups. I believe that any contractual provision that incentivizes physicians or health care providers to leave the State of Ohio absolutely undermines the public's best interest.

In another example, a physician sought me out several years ago to relay to me the story of how they were sexually harassed in the workplace by another, more senior surgeon. The harasser would constantly and repeatedly make inappropriate comments and advances on the physician. At the time the physician felt that any attempt to handle the matter through management would, at the least, tarnish the physician's reputation, and at most lead to outright retaliation based on the reputation and connections of the harasser. The best option was for the physician to change jobs, but it was my understanding that, when asked, the employer refused to waive the non-compete provision. Due to a family situation, a move outside of central Ohio would have adversely impacted the physician's children. So the physician was faced with the decision of filing a complaint and risking their reputation, spending a year away from their children while working outside of the restricted area, living with the unwanted advances of a colleague, or trying to challenge the non-compete in court. In this case the physician chose to endure the harassment and advances of the harasser, believing that to be the lesser of these evils. In this case the non-compete provision acted as a prison for this physician preventing them from simply moving to a better working environment.

Another story involved a young physician who had just graduated Ohio State at the top of her class. As a testament to her achievements she was provided several offers at facilities across the country. As she had family in Ohio and in another southern state, the decision came down to those two states. In discussing with her the two employment contracts, the contract from the Ohio group included a non-compete provision whereas the contract from the other state did not. I cannot say that her decision was based entirely on the non-compete, but I can say that the non-compete provision played a major role in her decision making process. Ultimately, the physician elected to leave the State of Ohio and our community lost a highly skilled and sought after health care provider.

I do believe that non-solicitation and non-competition provisions have a place when drafting contracts with physicians. For example, I believe that a non-solicitation provision legitimately protects an employer from a former employee pirating the employer's patient base. I also believe non-compete provisions are justified and reasonable in the context of a former employee's sale, transfer, merger, franchise agreement, retirement plan, or severance package. In each of those cases the employer should be given a chance to protect their business. However, physicians have a skill set and knowledge base that they themselves developed and invested in. Physicians attend and are responsible for the cost of both undergraduate and medical school. Once graduated from medical school they must participate in a residency program and some a fellowship, all of which are compensated well below that of an experienced physician. These physicians have invested in themselves, yet the future employers want to control how and where these physicians can use those skills and abilities.

I firmly believe non-competition agreements chill competition and harm our communities. I hope that the Ohio legislature will approve of legislation that prohibits employers from pushing non-competition provisions onto physicians and other medical professionals in order to protect these valuable members of our communities and improve the medical care for all Ohioans.

Thank you for your time and the opportunity to share my opinion on this matter.

Sincerely,

Robert Simon