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Senate Bill 150 Sponsor Testimony
Small Business and Economic Opportunity Committee
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Chairman Rulli, Vice Chair Lang, Ranking Member Sykes, and members of the Senate Small Business and Economic Opportunity Committee, thank you for the opportunity to present sponsor testimony on Senate Bill 150.

Senate Bill 150 would prohibit an employer of physicians from requiring a current or prospective physician to enter into a non-compete agreement—also known as a restrictive covenant—as a condition of employment. Furthermore, the bill allows a current or prospective physician employee to sue an employer that has violated the prohibition for damages, attorney fees, and cost.

Let us be clear: this is a critical workforce issue. Undoubtedly, it will also make Ohio a friendlier place for physicians to provide care for patients, which will aid in both the recruitment and retention of these highly educated and trained individuals. That can only be seen as a very good thing for the great state of Ohio and its citizens.

Over the past few decades, courts across Ohio have upheld some extreme restrictions in non-compete agreements for medical practitioners. For example, the Ohio Sixth District Court of Appeals upheld a three-year limitation in a restrictive covenant in *Wall v. Firelands Radiology, Inc.* (1995).¹

In 1975, the Supreme Court of Ohio established a “reasonableness” test to determine if the restrictions in non-compete agreements were reasonable and therefore enforceable.² Using this test as a standard, it has been argued that:

¹ <https://casetext.com/case/wall-v-firelands-radiology-inc>

² <https://casetext.com/case/raimonde-v-van-vlerah>

Reasonableness of the covenant's geographic market is determined by the market of the employer's customer base or service area, meaning that no geographic region is per se unreasonable. In other words, if the employer's market is the entire Midwest, then prohibiting the employee from competing in the entire Midwest could arguably be found to be reasonable, so long as other factors also favor the employer.³

In other words, under current law, this “reasonableness” test could be used to justify a restrictive covenant that spans a great distance. This, coupled with the lengthy duration of some non-compete agreements, not only creates a hardship on physicians who are contributing positively to their communities, but also can create a shortage of providers and practitioners in the more rural communities in our state. As a result, the healthcare market is continuously hindered by this unnecessary limiting of physicians having the autonomy to move to a new practice wherever and whenever they choose.

Provisions in non-competes agreements for medical professionals prohibit physicians from engaging in competition with their previous employer by working in a particular field, within a specific geographic area, and for a stated period of time. As a result of these restrictions, physicians are forced to uproot their families and relocate many miles away, and possibly without the option to continue working in their field of expertise.

This has been true for a constituent living in my district. The constituent is a medical oncologist (cancer doctor) with expertise in thoracic oncology. When she received a better offer to work at a nearby hospital, her current employer refused to waive the non-compete agreement. As a result, she ended up taking this to court and was unemployed for 7 months, with no option to find employment nearby and continue working in her field of expertise. The financial hardship of legal and court fees also made it extremely difficult for my constituent to provide for her family. After a long, uphill battle, the constituent decided to walk away.

States such as Massachusetts, Delaware, Colorado, Rhode Island, and West Virginia have passed similar legislation that prohibit the use or limits the enforceability of physician non-compete agreements that restrict a physician's ability to work outside their regular practice.⁴

³ https://kb.osu.edu/bitstream/handle/1811/78451/OSBLJ_V8N1_073.pdf

⁴ Massachusetts code: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter112/Section12X>;
Delaware code: <https://delcode.delaware.gov/title6/c027/sc01/index.html>; Colorado statute: [Colo.Rev.Stat. 8-2-113 \(Lexis Advance through all laws passed during the 2020 Regular and First Extraordinary Legislative Sessions](#)

Physician non-compete agreements disrupt the continuity of patient care. This is due in part to provisions in contracts that prohibit health care professionals from taking patients with them if they begin their own practice. Physician non-compete agreements limit patients from choosing their own physician. Research has shown that patients tend to comply with medical recommendations from a physician they have built good rapport with. The purpose of the bill is to eliminate restrictions placed on current and potential physicians and to sustain patient-doctor relationships.

Chairman Rulli and members of the committee, thank you again for giving us the opportunity to testify on Senate Bill 150. We will be happy to answer any questions the committee may have.