

- SUBJECT:** Modifying restrictions on covenants not to compete by physicians
- COMMITTEE:** Public Health — favorable, without amendment
- VOTE:** 7 ayes — Kolkhorst, Naishtat, Coleman, Gonzales, Hopson, S. King, Truitt
4 absent — J. Davis, Laubenberg, McReynolds, Zerwas
- SENATE VOTE:** On final passage, April 30 — 31-0
- WITNESSES:** (*On House companion bill, HB 3623:*)
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.
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:** SB 1713 would amend Business and Commerce Code, sec. 15.50 to provide that a covenant not to compete was enforceable against a physician's business ownership interest in a licensed hospital or licensed

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

SB 1713 would apply only to a covenant not to compete entered into on or after its September 1, 2009, effective date.

NOTES:

The companion bill, HB 3623 by Elkins, passed the House by 146-0 on May 13 and was referred to the Senate Administration Committee.