

[House Bill 1154](#) was introduced during the 2021 legislative session by Representative Fred Deutsch. The bill modifies South Dakota Codified Law (SDCL) [chapter 53-9](#) related to unlawful contracts by prohibiting employment contracts for certain health care providers from containing provisions restricting competitive employment practices.

Effective Date

[House Bill 1154](#) is effective July 1, 2021. The language of the bill applies to contracts that create or establish provisions of employment, including partnership contracts and any other professional relationships for the applicable professions, executed after July 1, 2021.

It is unclear if the restrictions in the bill apply to contracts executed prior to July 1, 2021, or situations where a non-compete agreement is being enforced past July 1, 2021.

Applicable Professions

House Bill 1154 applies to certain healthcare professionals:

- Physicians licensed under [SDCL 36-4](#);
- Physician Assistants licensed under [SDCL 36-4A](#);
- Certified Nurse Practitioners licensed under [SDCL 36-9A](#);
- Certified Nurse Midwives licensed under [SDCL 36-9A](#);
- Certified Registered Nurse Anesthetist licensed under [SDCL 36-9-3.1](#);
- Registered Nurses licensed under [SDCL 36-9-3](#); and
- Licensed Practical Nurse licensed under [SDCL 36-9-4](#).

Healthcare facilities may continue to use non-compete contracts that comply with the provisions of SDCL 53-9-11 for healthcare professionals not specified in the bill.

Restricted Competitive Employment Practices

House Bill 1154 prohibits employment contracts for the applicable healthcare professionals that restricts the right of the provider to:

1. Practice or provide services for which the provider is licensed, in any geographic area and for any period of time, after the termination of the employment, partnership, or other form of professional relationship;
2. Treat, advise, consult with, or establish a provider-patient relationship with any current patient of the employer, or with a patient affiliated with a partnership or other form of professional relationship; or
3. Solicit or seek to establish a provider-patient relationship with any current patient of the employer, or with a patient affiliated with a partnership or other form of professional relationship.

The prohibitions in the bill do not apply to a contract governing the sale and purchase of a healthcare practice.

Potential Impacts and Considerations

SDAHO recommends legal review of healthcare facility’s current enforced non-compete agreements and all contracts related to the provision of services to patients to determine compliance. Healthcare facilities should review contracts with:

- Directly Employed Providers;
- Contract Providers;
- Contract Staffing Agencies Providing Direct Patient Care;
- Locum Tenen Providers;
- Credentialed or Privileged Providers; and
- Licensed professionals acting in an administrative, consulting, or research capacity to ensure that non-compete provisions exclude the restricted competitive employment practices covered under the bill.

Human Resource Practices to Review	Policy Considerations
<ul style="list-style-type: none"> • Employment Contracts • Credentialing/Privileging Policy • Termination Agreements • Provider Recruitment <ul style="list-style-type: none"> ○ Recruitment Pool ○ Recruitment Negotiation ○ Recruitment Incentive Structure • Provider Incentives • Orientation and Training Policy • Moonlighting and Outside Employment Policies 	<ul style="list-style-type: none"> • Liquidated Damages Clause • Forfeiture-For-Competition Clause • Deferred Compensation Arrangements • Protection of Business Intelligence and Proprietary Information • Non-Solicitation of Other Staff • Non-Compete Agreements for Ownership or Operation of a Similar Business • Protection of Protected Health Information (PHI)

Future Statute Changes

SDAHO will aggregate issues related to the implementation of this statute in preparation for future legislation. Please send Sarah Aker examples of the impact on your organization or healthcare facility and recommended changes to the statute.

CONTACT

Sarah Aker | sarah.aker@sdaho.org | 605.789.7527