

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)

*and*

[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply:  
**Original**     **Amendment**      
**Correction**     **Substitute**   

**Date** Jan. 12, 2015  
**Bill No:** HB 52 - 305

**Sponsor:** Rep. Nora Espinoza  
**Short**    Limit Some Health No  
**Title:**    Compete Provisions

**Agency Code:** Attorney General's Office - 305  
**Person Writing**    Joseph Dworak  
**Phone:** 827-6986    **Email** jdworak@nmag.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

**BILL SUMMARY**

Synopsis: House Bill 52 places certain limits non-compete covenants for a number of different health care practitioners who provide health care services in Lea, Chaves, or Eddy county. Under the proposed bill, a covenant not to compete in an agreement ancillary to the sale of a business is not enforceable under any of the following conditions:

- The restraint is greater than is needed to protect the buyer’s legitimate interest;
- The buyer’s legitimate interest is outweighed by the hardship to the seller; or
- Enforcement of the covenant not to compete would unduly interfere with the public interest in Lea, Chaves, or Eddy county.

The bill also provides that a covenant not to compete not ancillary to the sale of a business, or interest in a business, and would restrict the right of a health care practitioner to provide services in Lea, Chaves, or Eddy county would be void upon termination, renewal, or extension of the original agreement.

The provisions of the bill would not apply to agreements requiring a health care practitioner to repay a loan, relocation expense, signed bonus, recruiting or training expenses. The provisions of the bill would also not apply to nondisclosure covenants related to confidential information or nonsolicitation covenants regarding employees of the employer within one year of employment.

Health care practitioners subject to the bill are:

- Certified nurse-midwives;
- Dentists and dental hygienists;
- Optometrists;
- Osteopathic physicians and osteopathic physician’s assistants;
- Physicians or physician assistants licensed under Chapter 61, Article 6 NMSA 1978;
- Podiatrists;
- Clinical psychologists;
- Advance practice nurses, including certified nurse practitioners, certified registered nurse anesthetists, and clinical nurse specialists; and
- Doctors of oriental medicine.

HB 52 applies to agreements executed on or after July 1, 2015.

## **FISCAL IMPLICATIONS**

N/A

## **SIGNIFICANT ISSUES**

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

N/A

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

At this time there are no related bills found for the 2015 session. However, similar bills were introduced during the 2014 session. See 2014 SB 24 and HB 76.

## **TECHNICAL ISSUES**

Section 3 of HB 52 provides that covenants not to compete are unenforceable under the following conditions:

- A. the restraint is greater than is needed to protect the buyer's legitimate interest;
- B. the buyer's legitimate interest is outweighed by the hardship to the seller; or
- C. enforcement of the covenant not to compete would unduly interfere with the public interest in Lea, Chaves or Eddy county.

These exceptions present some interpretation concern as the language could be considered vague and difficult to measure. If possible, it may be helpful to add some clarifying language to describe how "buyer's legitimate interest" is weighed, or how interference with public interest is measured.

Exceptions to provisions of the proposed law are provided in Section 4.A.1, which includes repayment to an employer for "(d) recruiting, education and training." The terms "education and training" are somewhat broad. If these cost are intended to be limited to only preliminary training, clarifying or limiting language could be added. (ie: would this include internal training as well? Continuing education requirements?)

There are some minor inconsistencies with the wordsmithing in Section 1.B. No substantive issues, but references and citations to the different licensing acts could be reviewed and edited for consistency.

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

## **AMENDMENTS**