

PUBLICATION

Tennessee Legislature Reverses Udom - Passes Bill Authorizing Physician Non-Competes

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In response to the Tennessee Supreme Court's two-year-old decision in Murfreesboro Medical Clinic, P.A. v. Udom, 166 S.W.3d 674 (Tenn. 2005), a decision which broadly rejected the validity of practically all physician non-competition covenants across the state, the Tennessee General Assembly recently passed a bill re-establishing the enforceability of physician non-competition covenants in Tennessee. If signed by Governor Bredesen, the bill will become effective January 1, 2008.

Eliminating any ambiguity created by Udom, the bill distinguishes between restrictive covenants entered into in the employment context and restrictive covenants entered into in conjunction with the sale of a business, and describes the specific circumstances under which such covenants will be enforceable under both scenarios. In the employment context, a restrictive covenant will be deemed reasonable if:

- it is set forth in writing signed by both parties,
- its duration is two years or less, and
- the restricted area is limited to the greater of (a) 10 miles from the physician's primary practice site or (b) the county in which the physician's primary practice site is located.

As an alternative to the geographic restriction described above, the bill also allows employers to restrict a departing physician from practicing at any facility at which the *employer* provided services during the departing physician's employment. However, such facility-specific restrictions will not be enforceable against physicians who have been employed by the same employer for at least six years.

In the context of the sale of a business, the bill confirms the pre-Udom common law that restrictive covenants will be enforceable if both the duration and the restricted geographic area are determined to be reasonable under the circumstances. Of note, however, is the fact that the bill goes one step further and creates a rebuttable presumption that the duration and restricted area agreed by the parties in the relevant definitive agreement are in fact reasonable.

In addition to physicians, the bill also specifically applies to podiatrists, chiropractors, dentists, optometrists and psychologists, but expressly excludes ER physicians and radiologists.