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## Summary of SB 25-083: Changes to Non-Compete Agreements in Colorado

Effective August 6, 2025, significant updates will be made to Colorado's statute governing non-compete agreements, C.R.S. § 8-2-113, particularly affecting the exception for sale of business interests and the provision governing healthcare providers.

Currently in Colorado, non-compete and non-solicitation of customer agreements are void unless, among other things, they apply to employees who meet certain salary thresholds, and they are narrowly tailored for the protection of trade secrets. C.R.S. § 8-2-113(2). A covenant for the purchase and sale of a business or the assets of a business currently is enforceable without restrictions. The statute also currently addresses non-compete agreements with physicians separately making them void but allowing the enforcement of liquidated damages provisions tied to termination of employment agreements or for damages related to competition.

### Cap on Restrictions in Connection with the Sale of a Business for Minority Owners

SB 25-083 preserves the existing exception allowing non-compete agreements in connection with the purchase and sale of a business, a direct or indirect ownership share in a business, or all or substantially all the assets in a business. Importantly, however, a cap has been placed on the duration of these non-compete agreements for individuals who own a minority share of the business (less than 50%) and who received their ownership share in the business as equity compensation or otherwise in connection with services rendered. The cap on the duration is calculated as follows:

- Maximum Years of Non-Compete Agreement = Total Consideration from the Sale ÷ Average Annualized Compensation from the Business Received by the Individual
  - o The total consideration from the sale would be the amount of money the individual received from the sale of the business.
  - o The average annualized compensation from the business would include the individual's wages or salary, profit distributions and any other compensation that was tied to the ownership of the business. This would be determined over the past two years or the duration the individual was affiliated with the business, whichever was shorter.

Example: Minority owner worked for a business for 15 years and made \$500,000 from the sale of the business. The past year, the owner made \$200,000 in salary and distributions and the previous year the owner made \$300,000. The average annual compensation would then be \$250,000 over the past two years. Therefore, the non-compete agreement could only be for a maximum of two years (\$500,000 ÷ \$250,000).

## Healthcare Changes

Another major change in SB 25-083 is that there no longer is a separate provision in the statute governing physicians. Non-competes and non-solicitation of customer covenants that restrict the practice of medicine, the practice of advanced practice registered nursing, and the practice of dentistry are void regardless of income level of these providers or if they are alleged to protect trade secrets. Additionally, liquidated damages tied to termination of physician employment agreements or that require the payment of damages related to competition no longer are enforceable.

Finally, the statute now prevents employers from restricting the ability of healthcare providers to inform their patients about their departure. "Healthcare providers" includes a wide range of providers, including individuals licensed to engage in the practice of medicine, registered to engage in the practice of advanced practice registered nursing, licensed to practice as a certified midwife, or licensed to engage in the practice of dentistry. Pre-amendment, healthcare providers could only communicate with patients with rare disorders about their continuing practice of medicine and new professional contact information, but the amendment now allows all healthcare providers to communicate with any patient regarding changes in their employment. This includes sharing information about their new job, their new contact information, and the patient's right to choose their provider.

The changes to C.R.S. § 8-2-113 will apply only to those agreements entered on or after August 6, 2025, and does not invalidate pre-existing agreements. Employers, however, should examine their current agreements to ensure they are compliant in the future.

If you have questions about SB 25-083, please contact your Kutak Rock attorney or a member of the firm's [National Employment Law Group](#).

