

# Committee Report

**REGULAR CALENDAR**

**March 2, 2021**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Majority of the Committee on Commerce and Consumer Affairs to which was referred HB 165,**

**AN ACT relative to noncompete agreements for certain mental health professionals. Having considered the same, report the same with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.**

**Rep. Jeffrey Greeson**

**FOR THE MAJORITY OF THE COMMITTEE**

**MAJORITY  
COMMITTEE REPORT**

Committee:	<b>Commerce and Consumer Affairs</b>
Bill Number:	<b>HB 165</b>
Title:	<b>relative to noncompete agreements for certain mental health professionals.</b>
Date:	<b>March 2, 2021</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>INEXPEDIENT TO LEGISLATE</b>

**STATEMENT OF INTENT**

The purpose of this bill is to mandate that certain non-compete provisions in employment contracts for pastoral psychotherapists, clinical social workers, clinical mental health counselors, and marriage and family therapists licensed by the board of mental health practice and psychologists licensed by the board of psychologists, are not enforceable.

Majority has determined that this bill is Inexpedient To Legislate because of the testimony provided during the hearing seem to pertained only employees that did not read the agreement before signing and became dissatisfied with the terms after the fact. There was no evidence that this issue needs government intervention in a business contract. The assumption is that the therapist was some how compensated for agreeing to the clause in the contract.

Vote 10-9.

Rep. Jeffrey Greeson  
FOR THE MAJORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Commerce and Consumer Affairs

**HB 165**, relative to noncompete agreements for certain mental health professionals. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Jeffrey Greeson for the **Majority** of Commerce and Consumer Affairs. The purpose of this bill is to mandate that certain non-compete provisions in employment contracts for pastoral psychotherapists, clinical social workers, clinical mental health counselors, and marriage and family therapists licensed by the board of mental health practice and psychologists licensed by the board of psychologists, are not enforceable.

Majority has determined that this bill is Inexpedient To Legislate because of the testimony provided during the hearing seem to pertained only employees that did not read the agreement before signing and became dissatisfied with the terms after the fact. There was no evidence that this issue needs government intervention in a business contract. The assumption is that the therapist was some how compensated for agreeing to the clause in the contract. **Vote 10-9.**

**REGULAR CALENDAR**

**March 2, 2021**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Minority of the Committee on Commerce and Consumer Affairs to which was referred HB 165,**

**AN ACT relative to noncompete agreements for certain mental health professionals. Having considered the same, and being unable to agree with the Majority, report with the recommendation that the bill OUGHT TO PASS.**

**Rep. Anita Burroughs**

**FOR THE MINORITY OF THE COMMITTEE**

## **MINORITY COMMITTEE REPORT**

Committee:	<b>Commerce and Consumer Affairs</b>
Bill Number:	<b>HB 165</b>
Title:	<b>relative to noncompete agreements for certain mental health professionals.</b>
Date:	<b>March 2, 2021</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>OUGHT TO PASS</b>

### **STATEMENT OF INTENT**

The minority believes that the use non-compete agreements only serves to exacerbate the shortage of mental health professionals in New Hampshire. There is currently a severe shortage of such professionals in the state, with some reports estimating that only 45% of the Granite State's need for such professionals is being met (Kaiser Foundation). A non-compete agreement needs to be reasonable to be enforceable. NH has moved towards deeming non compete provisions to be void and unenforceable as they pertain to low earning workers. States across the country are also moving away from accepting non-compete agreements. Additionally, non-compete agreements can be disruptive to community mental health services and may disrupt the therapeutic relationship should a provider leave a mental health practice and be forced to leave the area.

Rep. Anita Burroughs  
FOR THE MINORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Commerce and Consumer Affairs

**HB 165**, relative to noncompete agreements for certain mental health professionals. **OUGHT TO PASS.**

Rep. Anita Burroughs for the **Minority** of Commerce and Consumer Affairs. The minority believes that the use non-compete agreements only serves to exacerbate the shortage of mental health professionals in New Hampshire. There is currently a severe shortage of such professionals in the state, with some reports estimating that only 45% of the Granite State's need for such professionals is being met (Kaiser Foundation). A non-compete agreement needs to be reasonable to be enforceable. NH has moved towards deeming non compete provisions to be void and unenforceable as they pertain to low earning workers. States across the country are also moving away from accepting non-compete agreements. Additionally, non-compete agreements can be disruptive to community mental health services and may disrupt the therapeutic relationship should a provider leave a mental health practice and be forced to leave the area.

Original: House Clerk

Cc: Committee Bill File

Majority Report – HB-165 - relative to non-compete agreements for certain mental health professionals.

The purpose of this bill is to mandate that certain non-compete provisions in employment contracts for pastoral psychotherapists, clinical social workers, clinical mental health counselors, and marriage and family therapists licensed by the board of mental health practice and psychologists licensed by the board of psychologists, are not enforceable.

Majority has determined that this bill is Inexpedient To Legislate because of the testimony provided during the hearing seem to pertained only employees that did not read the agreement before signing and became dissatisfied with the terms after the fact. There was no evidence that this issue needs government intervention in a business contract. The assumption is that the therapist was some how compensated for agreeing to the clause in the contract.



**Archived:** Thursday, April 22, 2021 2:15:54 PM  
**From:** JOHN B HUNT  
**Sent:** Saturday, February 13, 2021 12:14:59 PM  
**To:** [Carrie Morris](#); [Pam Smarling](#)  
**Subject:** Fwd: Minority Report HP 165  
**Importance:** Normal

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Begin forwarded message:

**From:** Anita Burroughs <[Anita.Burroughs@leg.state.nh.us](mailto:Anita.Burroughs@leg.state.nh.us)>  
**Subject:** Minority Report HP 165  
**Date:** February 13, 2021 at 10:32:03 AM EST  
**To:** Carrie Morris <[carrie.morris@leg.state.nh.us](mailto:carrie.morris@leg.state.nh.us)>, John Hunt <[jbhunt@prodigy.net](mailto:jbhunt@prodigy.net)>  
**Cc:** Christy Bartlett <[christydbartlett@gmail.com](mailto:christydbartlett@gmail.com)>

Minority Report, HP 165, Final Vote 10-9, OTP

HB 265, Minority Report

The minority believes that non-compete agreements will only serve to exacerbate the shortage of mental health professionals in New Hampshire. There is currently a severe shortage of such professionals in the state, with some reports estimating that only 45% of the Granite State's need for such professionals is being met (Kaiser Foundation)

Non-compete agreement needs to be reasonable to be enforceable. NH has moved towards deeming non competes to be void and unenforceable as they pertain to low earning workers. States across the country are also moving away from accepting non-compete agreements.

Additionally, non-compete agreements can be disruptive to community mental health services and may disrupt the therapeutic relationship should a provider leave a mental health practice and be forced to leave the area.

Respectfully submitted,  
Rep. Anita Burroughs



**Anita Burroughs**  
New Hampshire State Representative  
Jackson, Bartlett and Hart's Location  
603-986-6216 | [anitadburr@gmail.com](mailto:anitadburr@gmail.com)  
PO Box 487 Glen NH 03838



# Voting Sheets

**HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS**

**EXECUTIVE SESSION on HB 165**

**BILL TITLE:** relative to noncompete agreements for certain mental health professionals.

**DATE:** February 10, 2021

**LOB ROOM:** Remote

**MOTIONS:** **INEXPEDIENT TO LEGISLATE**

Moved by Rep. Greeson

Seconded by Rep. Potucek

Vote: 10-9

**CONSENT CALENDAR: NO**

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep Keith Ammon, Clerk

HOUSE COMMITTEE ON COMMERCE

EXECUTIVE SESSION ON HB HB165

**BILL TITLE:** relative to noncompete agreements for certain mental health professionals

**DATE:** Feb 10, 2021

**LOB ROOM:** ZOOM

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**MOTION: (Please check one box)**

- OTP       ITL       Retain (1<sup>st</sup> year)       Adoption of  
Amendment # \_\_\_\_\_  
 Interim Study (2<sup>nd</sup> year)      (if offered)

Moved by Rep. Greeson      Seconded by Rep. Potucek      Vote: 10-9

**MOTION: (Please check one box)**

- OTP     OTP/A     ITL     Retain (1<sup>st</sup> year)       Adoption of  
Amendment # \_\_\_\_\_  
 Interim Study (2<sup>nd</sup> year)      (if offered)

Moved by Rep. \_\_\_\_\_      Seconded by Rep. \_\_\_\_\_      Vote: \_\_\_\_\_

**MOTION: (Please check one box)**

- OTP     OTP/A     ITL     Retain (1<sup>st</sup> year)       Adoption of  
Amendment # \_\_\_\_\_  
 Interim Study (2<sup>nd</sup> year)      (if offered)

Moved by Rep. \_\_\_\_\_      Seconded by Rep. \_\_\_\_\_      Vote: \_\_\_\_\_

**MOTION: (Please check one box)**

- OTP     OTP/A     ITL     Retain (1<sup>st</sup> year)       Adoption of  
Amendment # \_\_\_\_\_  
 Interim Study (2<sup>nd</sup> year)      (if offered)

Moved by Rep. \_\_\_\_\_      Seconded by Rep. \_\_\_\_\_      Vote: \_\_\_\_\_

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**CONSENT CALENDAR?**             Yes      X   No

**Minority Report?**   X   Yes           No    If yes, author, Rep.:   Boroughs      Motion:   OTP  

Respectfully submitted, Rep.   AMMON  , Clerk



2021 SESSION

Commerce and Consumer Affairs

Bill #: HB165 Motion: ITL AM #: \_\_\_\_\_ Exec Session Date: 2/10/2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Hunt, John B. Chairman	10		
Potucek, John M. Vice Chairman	1		
Osborne, Jason M.	2		
Ammon, Keith M. Clerk	3		
Abramson, Max	4		
Ham, Bonnie D.	5		
Depalma IV, Joseph	6		
Greeson, Jeffrey	7		
Johnson, Dawn M.	8		
Terry, Paul A.	9		
Bartlett, Christy D.		1	
Abel, Richard M.		2	
Herbert, Christopher J.		3	
Van Houten, Constance		4	
Fargo, Kristina M.		5	
Weston, Joyce		6	
Beaulieu, Jane E.		7	
Burroughs, Anita D.		8	
McAleer, Chris R.		9	
<b>TOTAL VOTE:</b>			

# Hearing Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 165

**BILL TITLE:** relative to noncompete agreements for certain mental health professionals.

**DATE:** February 2, 2021

**LOB ROOM:** Remote                      **Time Public Hearing Called to Order:** 11:08 am

**Time Adjourned:** 11:35 am

**Committee Members:** Reps. Hunt, Potucek, Ammon, Osborne, Abramson, Ham, Depalma IV, Greeson, Johnson, Terry, Bartlett, Abel, Herbert, Van Houten, Fargo, Weston, Beaulieu, Burroughs and McAleer

**Bill Sponsors:**  
**Rep. Abrami**

**TESTIMONY**

\* Use asterisk if written testimony and/or amendments are submitted.

**Rep Pat Abrami**

This bill is identical to a bill I filed last term that got tabled in the Senate. Is this an early bill? (Hunt: No) There are five license types that are under this bill. We have done similar things for other health professionals, getting physicians and surgeons out from non-compete clauses. We did the same thing for nurses and podiatrists. The language in this bill is identical to those four professionals. The language has been tested over a number of years now. Why mental health workers now? We're in the midst of a mental health epidemic, the patients are reliant on them. Many current contracts prevent them from leaving a practice.

**Rep Herbert**

Q: Have you noticed non-competes increase of decrease costs?

A: I don't know of any negative or positive impacts.

**Dr. Carrie Chiasson**

Here to tell my personal story. I was directly impacted by a non compete contract. I moved to NH from RI. In order to accept an offer, I was required to sign a noncompete. For 2 years after my employment ends I was not allowed to practice within 30 miles from the main practice. After being there for ten months my schedule was not close to full. I worked hard to increase my case load. I was not permitted to take in-network claims. We did not accept insurance. I was approached to work at UNH on a part-time basis to supplement my income. I told my boss about the opportunity and explained how it would not negatively impact her business. My boss believed it would violate my non-compete. Later she proposed that my boss would contract my services to UNH. UNH and I were very unwilling to do that. I hired a lawyer to see how stuck would I be to try to find a job within 30 miles. The lawyer was not convinced that my boss would not come after me. One more little piece, a few clients of mine wanted to follow me. I'm highly trained in treating OCD. I did my best to help them find other people, no issues of abandonment. I know this bill would not affect me.

**Rep Abramson**

Q: Some businesses need to have non-competes in order to invest in a professional. Can we put in a buyout option, say a few thousand dollars?



A: That would have made my situation better.

**Rep Ammon**

Q: You read the contract and signed the contract, correct?

A: I did.

**Daisy Cassidy**

I talked with therapists who had to commute up to an hour to avoid a non-compete. There were some therapists who would not testify because they had to sign a non-disclosure. We develop years of trust between patients and therapists. Worst case scenario that there's a suicidal client who loses care. Wait lists for mental care are sometimes very long. Therapists are having to turn people away. There's no danger for mental health clinics going out of business.

Rep Hunt. I was shocked with what this bill was about. Would your employer spend time helping you gain clients and then you leave with your client list?

A: I would think I gained clients because of my professional abilities.

**Carrie Chiasson**

There's a separate document, non-solicitation, that doesn't allow you to take patients with you.

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

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**Carrie Chiasson**

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# House Remote Testify

## Commerce and Consumer Affairs Committee Testify List for Bill HB191 on 2021-02-02

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
Zuurbier, Rebecca	rebecca.a.zuurbier@hitchcock.org	703.622.1064	A Member of the Public	Myself	Support	Yes (5m)	1/30/2021 1:28 PM
Brewster, Bill	william_brewster@harvardpilgrim.org	603.534.5481	A Member of the Public	Harvard Pilgrim Health Care	Oppose	Yes (5m)	2/2/2021 8:41 AM
Weston, Maura	mauraweston@comcast.net	603.491.2853	A Lobbyist	Derry Medical Center	Support	Yes (3m)	2/2/2021 8:08 AM
Carano, Nick	ncarano@nhha.org	603.661.9852	A Lobbyist	New Hampshire Hospital Association	Support	Yes (3m)	2/2/2021 7:59 AM
Houde, Matthew	Matthew.S.Houde@hitchcock.org	603.504.2744	A Lobbyist	Dartmouth-Hitchcock	Support	Yes (3m)	1/31/2021 2:32 PM
Padmore, Michael	michael.padmore@nhms.org	603.858.4744	A Lobbyist	NH Medical Society	Support	Yes (3m)	2/1/2021 10:28 AM
Efferson-Bonachea, MD, Nancy	nebonachea@retinavisioncenter.net	603.836.5541	A Member of the Public	Myself	Support	Yes (3m)	2/1/2021 10:51 AM
Wood, Ellen	ellen@seacoastgeneral.com	603.858.4744	A Member of the Public	Myself	Support	Yes (3m)	2/1/2021 11:19 AM
Martin, Cynthia	manager@retinavisioncenter.net	603.836.5541	A Member of the Public	Myself	Support	Yes (2m)	2/1/2021 9:56 AM
Fazelat, Ahad	afazelat@themedidcaleycenter.com	603.668.2020	A Member of the Public	Myself	Support	Yes (2m)	2/1/2021 11:14 AM
Kroll, Heidi	kroll@gcglaw.com	603.496.2345	A Lobbyist	America's Health Insurance Plans (AHIP)	Oppose	Yes (10m)	2/1/2021 4:21 PM
Brannen, Tyler	tyler.j.bannen@ins.nh.gov	2712396	State Agency Staff	Insurance Department	Neutral	Yes (0m)	1/29/2021 2:22 PM
Hutton, David	dhutton77@gmail.com	603.472.8838	A Member of the Public	Myself	Oppose	Yes (0m)	2/1/2021 11:11 AM
Minnehan, Paula	pminnehan@nhha.org	603.496.1047	A Lobbyist	NH Hospital Association	Support	Yes (0m)	1/31/2021 8:11 PM
Marsh, William	wmarshmd@gmail.com	603.569.6382	An Elected Official	Myself Prime Sponsor	Support	Yes (0m)	1/26/2021 4:26 PM
Dunlap, Sabrina	sabrina.dunlap@anthem.com	603.703.8073	A Lobbyist	Anthem	Oppose	Yes (0m)	2/1/2021 8:54 PM
Rathbun, Eric	ericrathbun@gmail.com	860.912.3751	A Member of the Public	Myself	Support	No	2/1/2021 9:29 PM
Mangipudi, Latha	Latha.mangipudi@leg.state.nh.us	603.891.1239	An Elected Official	Hills 35	Support	No	2/2/2021 8:08 AM
Brackett, JB	jbrackett@naminh.org	603.325.3160	A Member of the Public	NAMI New Hampshire	Support	No	2/2/2021 12:26 PM
Kahn, Jay	jay.kahn@leg.state.nh.us	603.271.3092	An Elected Official	Senate District 10	Support	No	1/27/2021 7:45 AM
WOODS, GARY	gwpop054@gmail.com	603.228.3827	An Elected Official	Myself	Support	No	1/27/2021 9:37 AM
Nadeau, Lindsay	lnadeau@orr-reno.com	603.223.9194	A Lobbyist	Cigna	Oppose	No	1/31/2021 1:17 PM
Sherman, Senator Tom	jennifer.horgan@leg.state.nh.us	2717875	An Elected Official	SD 24	Support	No	2/1/2021 8:37 AM
Nichols, Statia	hewittstat@comcast.net	603.540.1872	A Member of the Public	Myself	Support	No	2/1/2021 9:15 AM
Ragen-Coffman,	debrarcoffman@gmail.com	603.717.6256	A Member of the Public	Myself	Support	No	2/1/2021 5:16 PM

2/3/2021

House Remote Testify

Debra


Alexakos, Steven smellia@aol.com

603.493.3029 A Member of the Public Myself

Support No

2/1/2021 3:51 PM

# Testimony

**Archived:** Tuesday, April 13, 2021 1:00:57 PM  
**From:** Pam Smarling  
**Sent:** Tuesday, February 2, 2021 4:25:12 PM  
**To:** ~House Commerce Committee  
**Subject:** background on HB 165 noncompete agreements  
**Importance:** Normal  
**Attachments:**  
[memo HB 165 noncompete agreements.pdf](#) 

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TO: All Members of the House Commerce Committee,

There was some discussion during today's public hearing about whether HB 165 was appropriately referred to the Commerce Committee. A bill identical to HB 165 was referred to the Labor Committee last year. However, two similar bills that both became law, were referred to Commerce in 2016 and 2018. Attached is information on all of these bills.

*Pam*

Pam Smarling, Senior Committee Researcher  
House Committee Research, Room 409, LOB  
33 N. State St., Concord, NH 03301  
(603) 271-3387



**Archived:** Tuesday, April 13, 2021 1:00:57 PM

**From:** [Jim Merrill](#)

**Sent:** Monday, February 1, 2021 5:14:46 PM

**Subject:** Letter from LifeStance Health - opposition to HB 165

**Importance:** Normal

**Attachments:**

[LifeStance Letter - Opposition to HB 165.pdf](#) 

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Dear Chairman Hunt and House Commerce Committee members:

For your consideration, attached please find a letter from Rebecca Sartor, Executive Director for our client LifeStance Health New Hampshire and Maine, concerning HB 165.

Rebecca is a resident of Nashua, and a conflict unfortunately will keep her from testifying by remote tomorrow.

Thank very much.

**Jim Merrill**

**New Hampshire Director  
The Bernstein Shur Group**

603 665-8853 direct

603 540-1394 mobile

603 623-8700 main

[My Bio](#) | [LinkedIn](#) | [Twitter](#)

**BERNSTEIN SHUR**

670 North Commercial Street Suite 108 PO Box 1120 [Manchester, NH 03105-1120](#) | [Portland, ME](#) | [Augusta, ME](#) | [bernsteinshur.com](#)

**Confidentiality notice:** This message is intended only for the person to whom addressed in the text above and may contain privileged or confidential information. If you are not that person, any use of this message is prohibited. We request that you notify us by reply to this message, and then delete all copies of this message including any contained in your reply. Thank you.



**Archived:** Tuesday, April 13, 2021 1:00:57 PM  
**From:** Max Abramson  
**Sent:** Tuesday, February 2, 2021 4:47:05 PM  
**To:** Pam Smarling  
**Cc:** ~House Commerce Committee  
**Subject:** Re: background on HB 165 noncompete agreements  
**Importance:** Normal

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It's really bothersome to me that most medical professionals--but not all--are unable to sign an enforceable non-compete agreement. New people trying to break into an industry find it difficult to find a deal that lets them do so. Shouldn't all medical professionals be given enough leeway to sign a reasonable non-compete, but have some buyout option available just in case the employer tries to wreck someone later with it. Give them a ratchet set, but not a sledgehammer.

Is that OCD?

Rep. Max Abramson  
Free Chad Evans.

"The problem isn't that Johnny can't read. The problem isn't even that Johnny can't think. The problem is that Johnny doesn't know what thinking is; he confuses it with feeling." --Thomas Sowell  
"It is better to take refuge in the Lord than to trust in man." --Psalms 118:8

**Sent:** Tuesday, February 02, 2021 at 4:25 PM  
**From:** "Pam Smarling" <Pam.Smarling@leg.state.nh.us>  
**To:** "~House Commerce Committee" <HouseCommerceCommittee@leg.state.nh.us>  
**Subject:** background on HB 165 noncompete agreements

TO: All Members of the House Commerce Committee,

There was some discussion during today's public hearing about whether HB 165 was appropriately referred to the Commerce Committee. A bill identical to HB 165 was referred to the Labor Committee last year. However, two similar bills that both became law, were referred to Commerce in 2016 and 2018. Attached is information on all of these bills.

*Pam*

Pam Smarling, Senior Committee Researcher

House Committee Research, Room 409, LOB

33 N. State St., Concord, NH 03301

(603) 271-3387





February 1, 2021

**BY EMAIL**

Rep. John Hunt, Chairman and  
Members of the House Commerce and Consumer Affairs Committee  
Office Building, Room 302  
Concord, NH 03301

**RE: Opposition to HB 165 (Non-compete agreements for certain mental health professionals)**

Dear Chairman Hunt and House Commerce and Consumer Affairs Committee members:

I am the Executive Director at LifeStance Health (New Hampshire and Maine region), which is formally known as The Counseling Center of New England. As the largest private behavioral health provider in New Hampshire, and for the reasons further outlined below, I urge you to vote Inexpedient to Legislate on HB 165.

**Who We Are**

LifeStance Health currently has 19 locations in the region with plans to add at least 2 additional locations in 2021. We currently employ over 150 clinicians - including psychiatrists, psychiatric nurse practitioners, neuropsychologists, psychologists, social workers, mental health counselors, and marriage and family therapists.

We provide a broad range of comprehensive care including psychiatric services, individual/group/family therapy, neuropsychological and psychological assessment services, genetic testing, and trans-cranial magnetic stimulation. We provide care to a substantial subset of the New Hampshire population, representing 15,000+ visits monthly.

The New Hampshire practice is part of the larger LifeStance Health network of providers throughout the country, with practices in 27 states employing over 3,400 clinicians. Since its inception in 2017, LifeStance Health has worked diligently to improve the comprehensiveness, quality, and access to behavioral healthcare throughout the nation. We have a strong commitment to continue to invest in adding key clinical staff, addressing unmet needs in the populations we treat, provide prompt appointments, focus on outcome measurements to work towards



value-based care, and utilize state-of-the-art technology to expand access to telehealth as improve the digital experiences for clinicians and clients alike.

### **Concerns About HB 165**

Improving behavioral care to meet the vision outlined above requires a substantial level of investment. Unlike many other sectors of healthcare, behavioral health has not historically benefitted from these types of significant investments, and as a result, has struggled with care that is fragmented, poorly organized, and under sourced.

As a result of this lack of investment, most behavioral health care providers have struggled to provide prompt appointments, provide comprehensive care in one setting, implement and utilize outcome tracking to drive quality, and remain in-network with the broadest variety of payors to reduce the financial burden on clients.

LifeStance has maintained a strong commitment to make these investments and will continue to. However, it will become increasingly difficult to do so if clinicians that we have spent time and resources recruiting, training, and building caseloads for are able to leave the practice at any time and immediately open a practice across the street. Additionally, this can lead to fragmentation of care and clients receiving behavioral health care in multiple, non-integrated, settings.

We support provider flexibility but believe it also needs to be balanced with the pressing need for significant investment in our behavioral healthcare system to ensure that patients can receive timely, comprehensive, first class care. We will not be able to make a meaningful impact on New Hampshire's mental health crisis without these investments. However, making those investments will be more difficult if providers can simply leave and immediately begin competing against the entities who have made the investments in them.

Any change in non-compete laws that would undermine the ability of providers to improve the system must recognize this fundamental trade off. We believe in a balanced approach and in fact have made our current non-compete restrictions more flexible than in the past. We current limit our non-competes to 2 years and a ten-mile radius from a clinicians' particular practice location in our system. This provides clinicians with flexibility while supporting needed investment in behavioral health.



**LifeStance**  
HEALTH

Thank you for taking my statement and our experience into consideration. I appreciate the opportunity to present our concerns regarding the unintended consequences of rendering non-competes unenforceable for psychologists, social workers, mental health counselors, and marriage and family therapists.

Although at face value this issue may seem quite simple, HB 165 if passed could have significant negative consequences to an already fragmented mental health system facing challenge and distress, as well as the network of providers we have retained and the care we provide to thousands of New Hampshire residents.

Respectfully,

Rebecca K. Sartor, LICSW  
Executive Director: LifeStance Health NH & ME  
7 Prospect Street  
Nashua, NH 03060



**HOUSE COMMITTEE RESEARCH OFFICE**  
New Hampshire House of Representatives  
4<sup>th</sup> Floor, Legislative Office Building  
Concord, NH 03301  
(603) 271-3600

*Pam Smarling, Senior Committee Researcher*  
(603) 271-3387; *Pam.Smarling@leg.state.nh.us*

To: Rep. John B. Hunt, Chairman, House Commerce and Consumer Affairs  
Committee

From: Pam Smarling, Senior Committee Researcher  
House Committee Research

Date: February 2, 2021

RE: HB 165, relative to noncompete agreements for certain mental health  
professionals.  
2020 Legislation Identical to HB 165; Laws adopted in 2016 and 2018 for other  
medical professionals

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Testimony on HB 165 referred to legislation filed in 2020 and referred to the  
House Labor, Industrial and Rehabilitative Services Committee. This memorandum  
summarizes the disposition of HB 1106 (2020).

In addition, laws adopting similar language for physicians was adopted in 2016  
and for nurses and podiatrists was adopted in 2018. Both of the bills that led to these  
laws were referred to the House Commerce and Consumer Affairs Committee, in 2018 as  
a second committee. A summary of the disposition and the committee reports filed for  
these bills is included in this memorandum.

### **2020 Legislative Session**

***HB 1106, relative to noncompete agreements for certain mental health professionals.***

Sponsors: Rep. Abrami, Sen. Sherman

### **House Action**

Referred to: House Labor, Industrial and Rehabilitative Services

Hearing: January 29, 2020

Committee Report: Ought to Pass, vote 17-0, Consent Calendar

*Rep. William Bordy for Labor, Industrial and Rehabilitative Services.* The committee supports the expansion of the removal of noncompete agreements to mental health employees as currently provided in law for physicians, podiatrists, and nurses.

House Vote: Passed, voice vote

### Senate Action

Referred to: Senate ED&A Committee

**Final Action** Vacated from committee and Laid on the Table, June 16, 2020

### Current Laws Relative to Physicians, Nurses and Podiatrists

**329:31-a Certain Contract Restrictions Upon Physicians Unenforceable.** – Any contract or agreement which creates or established the terms of a partnership, employment, or any other form of professional relationship with a physician licensed by the board to practice in this state, which includes any restriction to the right of such physician to also practice medicine in any geographic area for any period of time after the termination of such partnership, employment, or professional relationship shall be void and unenforceable with respect to said restriction; provided however, that nothing herein shall render void or unenforceable the remaining provision of any such contract or agreement. The requirements of this section shall apply to new contracts or renewals of contracts entered into on or after the effective date of this section.

**Source.** 2016, 194:1, eff. Aug. 5, 2016.

**326-B:45-a Certain Contract Restrictions Upon Nurses Unenforceable.** – Any contract or agreement which creates or established the terms of a partnership, employment, or any other form of professional relationship with a nurse licensed by the board to practice in this state, which includes any restriction to the right of such nurse to also practice in any geographic area for any period of time after the termination of such partnership, employment, or professional relationship shall be void and unenforceable with respect to said restriction; provided however, that nothing herein shall render void or unenforceable the remaining provision of any such contract or agreement. The requirements of this section shall apply to new contracts or renewals of contracts entered into on or after the effective date of this section.

**Source.** 2018, 322:1, eff. June 25, 2018.

**315:18 Certain Contract Restrictions Upon Podiatrists Unenforceable.** – Any contract or agreement which creates or established the terms of a partnership, employment, or any other form of professional relationship with a podiatrist licensed by the board to practice in this state, which includes any restriction to the right of such podiatrist to also practice podiatry in any geographic area for any period of time after the termination of such partnership, employment, or professional relationship shall be void and unenforceable with respect to said restriction; provided however, that nothing herein shall render void or unenforceable the remaining provision of any such contract or agreement. The requirements of this section shall apply to new contracts or renewals of contracts entered into on or after the effective date of this section.

**Source.** 2018, 322:2, eff. June 25, 2018.

### ***2016 Legislative Session***

*SB 417, relative to employment contract restrictions upon physicians.*

Sponsors: Sen. Sanborn, Sen. Avard, Sen. Reagan, Rep. Ammon, Rep. Sterling,  
Rep. Williams, Rep. H. French, Rep. Eastman

#### **Senate Action**

***Referred to:*** *Senate Health and Human Services*

Committee Report: Ought to Pass with Amendment

Floor Action: Passed with Amendment, 19-5, roll call vote

#### **House Action**

***Referred to:*** *House Health, Human Services and Elderly Affairs*

Committee Report: Ought to Pass, vote 19-0, Consent Calendar

*Rep. Joanne Ward for Health, Human Services and Elderly Affairs.* This bill eliminates non-compete clauses in physician contracts to the hospital. Non-compete clauses limit competition and when a physician leaves a hospital, or practice they have to leave their patients without their doctors. With the MD shortage in the state, more physicians may be enticed to move to New Hampshire if they do not have to commit to a noncompete. Doctors can be an important person to their patients once relationships are formed and this can be devastating to a patient when the doctor is forced to move out of town.

Floor Action: Passed, voice vote

***2<sup>nd</sup> Committee Referred to: Commerce and Consumer Affairs***

Committee Report: Ought to Pass, vote 19-1, Consent Calendar

*Rep. Donald Flanders for Commerce and Consumer Affairs.* This bill was referred for a second hearing to the House Commerce and Consumer Affairs Committee after receiving unanimous support from the Health, Human Services and Elderly Affairs Committee and passage on the Consent Calendar on April 20, 2016. This bill would prohibit the inclusion in an employment contract of any contract term restricting the right of a physician from practicing medicine “in any geographic area for any period of time” after termination of employment or termination of a professional relationship. Geographic restrictions in physician employment contracts significantly diminish the integrity of the patient-provider relationship and undermine physician autonomy. While not all hospital systems utilize these restrictions when contracting with physicians, the committee strongly supports the elimination of these restrictions as such elimination is squarely in the public interest.

Floor Action: Passed, voice vote

**Final Action**                    **Signed by Governor June 6, 2016**  
**Chapter 194, Laws of 2016**

***2018 Legislative Session***

*SB 473, relative to employment contract restrictions upon certain health care providers.*

Sponsors: Sen. Sanborn, Sen. Avard, Sen. French, Sen. Fuller Clark, Sen. Gannon,  
 Sen. Innis, Sen. Reagan, Sen. Ward, Rep. Souza

Summary as introduced: prohibits contract provisions of any health care professional licensed by the Office of Professional Licensing and Certification that limit the ability of such professional to practice their profession in any geographic area after leaving a partnership, employment, or professional relationship

**Senate Action**

***Referred to: Senate Health and Human Services Committee***

Committee Report: Ought to Pass

Floor Action: Passed, voice vote



**House Action**

**Referred to:** *House Commerce and Consumer Affairs Committee*

Committee Report: Ought to Pass with Amendment, vote 13-6, Regular Calendar

Committee Amendment: limited application of noncompete prohibition to

*Rep. Richard Abel for Commerce and Consumer Affairs.* This bill is an extension of a bill we passed two years ago, which prevented future non-compete agreements for physicians, as in most other states, so doctors would not be restricted from practicing their profession within a reasonable geographic area upon leaving current employment. The committee majority felt this was important to maintain adequate medical coverage particularly in rural and underserved areas, and to address the opioid crisis. As referred to the House, this bill expanded this same provision to a very broad list of professions. The committee amendment focused the bill to apply the preclusion from non-compete clauses to nurses, nurse practitioners, and podiatrists, who testified in support of the bill.

Floor Action: Passed with Amendment, voice vote

Committee of Conference: House and Senate conferees agreed to adopt the bill as amended by the House

**Final Action** **Signed by the Governor June 25, 2018**  
**Chapter 322, Laws of 2018**

If I can provide further information on this, please let me know.

Bill as  
Introduced

HB 165 - AS INTRODUCED

2021 SESSION

21-0122

10/11

HOUSE BILL            **165**

AN ACT                relative to noncompete agreements for certain mental health professionals.

SPONSORS:            Rep. Abrami, Rock. 19

COMMITTEE:          Commerce and Consumer Affairs

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ANALYSIS

This bill mandates that certain noncompete provisions in employment contracts for pastoral psychotherapists, clinical social workers, clinical mental health counselors, and marriage and family therapists licensed by the board of mental health practice and psychologists licensed by the board of psychologists, are not enforceable.

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Explanation:        Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struckthrough.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty One*

AN ACT relative to noncompete agreements for certain mental health professionals.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1           1 New Section; Mental Health Practice; Contract Restrictions Unenforceable. Amend RSA 330-  
2 A by inserting after section 22 the following new section:

3           330-A:22-a Certain Contract Restrictions Upon Mental Health Professionals Unenforceable.  
4 Any contract or agreement which creates or established the terms of a partnership, employment, or  
5 any other form of professional relationship with a pastoral psychotherapist, clinical social worker,  
6 clinical mental health counselor, or marriage and family therapist licensed by the board to practice  
7 in this state, which includes any restriction to the right of such licensed mental health professional  
8 to also practice in any geographic area for any period of time after the termination of such  
9 partnership, employment, or professional relationship shall be void and unenforceable with respect  
10 to said restriction; provided however, that nothing herein shall render void or unenforceable the  
11 remaining provision of any such contract or agreement. The requirements of this section shall apply  
12 to new contracts or renewals of contracts entered into on or after the effective date of this section.

13           2 New Section; Psychologists; Contract Restrictions Unenforceable. Amend RSA 329-B by  
14 inserting after section 16 the following new section:

15           329-B:16-a Certain Contract Restrictions Upon Psychologists Unenforceable. Any contract or  
16 agreement which creates or establishes the terms of a partnership, employment, or any other form of  
17 professional relationship with a psychologist licensed by the board to practice in this state, which  
18 includes any restriction to the right of such psychologist to also practice in any geographic area for  
19 any period of time after the termination of such partnership, employment, or professional  
20 relationship shall be void and unenforceable with respect to said restriction; provided however, that  
21 nothing herein shall render void or unenforceable the remaining provision of any such contract or  
22 agreement. The requirements of this section shall apply to new contracts or renewals of contracts  
23 entered into on or after the effective date of this section.

24           3 Effective Date. This act shall take effect January 1, 2022.