# AN ACT related to physician employment contracts.

# WHEREAS, the Centers for Medicare and Medicaid Services find that national health expenditures as a percentage of gross domestic product has reached 17.9% in 2017;

# WHEREAS, one study estimated that health expenditures are expected to increase at an average annual rate of 5.8% between 2014 and 2024;

# WHEREAS, physician employment contracts that contain a covenant not to compete are a restraint of trade;

# WHEREAS, covenants not to compete in the healthcare field restrict competition, disrupt continuity of care and potentially deprive the public of medical services;

# WHEREAS, President Trump in Executive Order 13813, “Promoting Healthcare Choice and Competition Across the United States” directed the administration to facilitate high-quality healthcare at affordable prices by increasing consumer choice and promoting competition;

# WHEREAS, a 2018 joint report by the U.S. Department of Health and Human Services, U.S. Department of the Treasury and the U.S. Department of Labor stated that “[b]y suppressing competition, these clauses may inflate heath care prices, elevating patient and federal spending on healthcare . . .”;

# WHERAS, one study estimated that approximately 45% of physicians are bound by a covenant not to compete;

# WHEREAS, the physician-patient relationship is sacrosanct and entitled to unique protection;

# NOW THEREFORE,

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

# SECTION 1. A NEW SECTION OF KRS 311.530 TO 311.620 IS CREATED TO READ AS FOLLOWS:

## (1) Sections 1 through 6 of this act may be cited as the “Follow My Doctor” Act.

## (2) For the purposes of this section, "covenant not to compete" means any provision of an employment contract or other agreement that creates or establishes a professional relationship with a physician and restricts the ability of a physician to practice medicine in any geographic area of the state for any period of time after the termination or cessation of the partnership, employment, or other professional relationship. The term does not include restrictions on the solicitation of patient relationships within the current patients of the partnership or employer that entered into the covenant not to compete.

## (3) It is the finding of the General Assembly that covenants not to compete are contrary to the public policy of the Commonwealth for the following reasons:

### (a) The American Medical Association's Code of Medical Ethics discourages covenants not to compete and that same code finds that ethical medical practice thrives best under free market conditions when patients can freely choose among competing physicians. The Code of Medical Ethics has been incorporated into the Kentucky Board of Medical Licensure's Medical Practice Act;

### (b) Physicians are increasingly seeking employment with health care systems instead of pursuing solo practice, necessitating more employment contracts;

### (c) The Commonwealth is ranked thirty-sixth (36th) among U.S. states by the Association of American Medical Colleges in terms of active physicians per capita, and rural areas in particular face current and future physician shortages.

### (d) Labor mobility, free market principles, and patient choice all serve as potential cost containment factors in the health care field.

## (4) Any contract or other agreement containing a covenant not to compete shall be void and unenforceable with respect to that restriction as a matter of public policy of the Commonwealth. The remaining provisions of any contract or other agreement that includes a covenant not to compete shall remain in full force and effect.

## (5) Notwithstanding subsection (3) of this section, the prohibition on physician covenants not to compete shall not apply in connection with the purchase and sale of a physician practice, provided the covenant not to compete is for a period of a time of no more than one (1) year or greater than ten (10) miles from any location.

## (6) Notwithstanding subsection (3) of this section, the prohibition on physician covenants not to compete shall not apply to a medical school whose primary location is within the Commonwealth of Kentucky, is accredited by a nationally recognized certification body and confers medical degrees on an annual basis, provided the covenant not to compete is for a period of time of no more than (1) year or greater than ten (10) miles from any location.