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MEMO

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TO: House Rules - Administrative Oversight Committee
c Representative Keith Frederick

FROM: Daniel Landon
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SUBJECT: Covenants Not to Compete — House Bill 2088 (Representative Frederick)

Representative Keith Frederick's House Committee Substitute for House Bill 2088 is pending before your committee. The bill regulates the use of covenants not to compete in employment and other business contracts. Those contractual agreements are used in a variety of industries and settings. They sometimes are used in employment contracts between hospitals and physicians.

The original bill barred most covenants not to compete. The House Committee Substitute carves out various exemptions, such as for "research physicians." It also allows not-for-profit hospitals some capacity to use covenants not to compete, but bars them for for-profit hospitals.

In 2016, Representative Frederick's House Committee Substitute for House Bill 1660 did exactly the opposite. It barred the use of covenants not to compete by not-for-profit hospitals, but allowed their for-profit hospital counterparts and corporate physician groups to freely use them.

Neither of these contradictory stances makes any sense to the Missouri Hospital Association. State government should not treat players in a market differently without some compelling and rational basis for doing so. MHA did not throw its not-for-profit members under the bus in 2016; it will not do so with its for-profit members in 2018.

These agreements are most commonly used by hospitals when recruiting a physician to a community. They allow the hospital a reasonable period of time to recover the significant investment required to recruit and place the physician and develop the practice. Frequently, the contracts allow the physician to "buy out" the covenant not to compete.

Missouri hospitals near state borders where the adjacent state allows covenants not to compete would be disadvantaged by this type of legislation. Out-of-state organizations will be able to "poach" Missouri physicians and then use their contracts to discourage a return to Missouri.

MHA urges your opposition to the House Committee Substitute for House Bill 2088 on covenants not to compete.

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