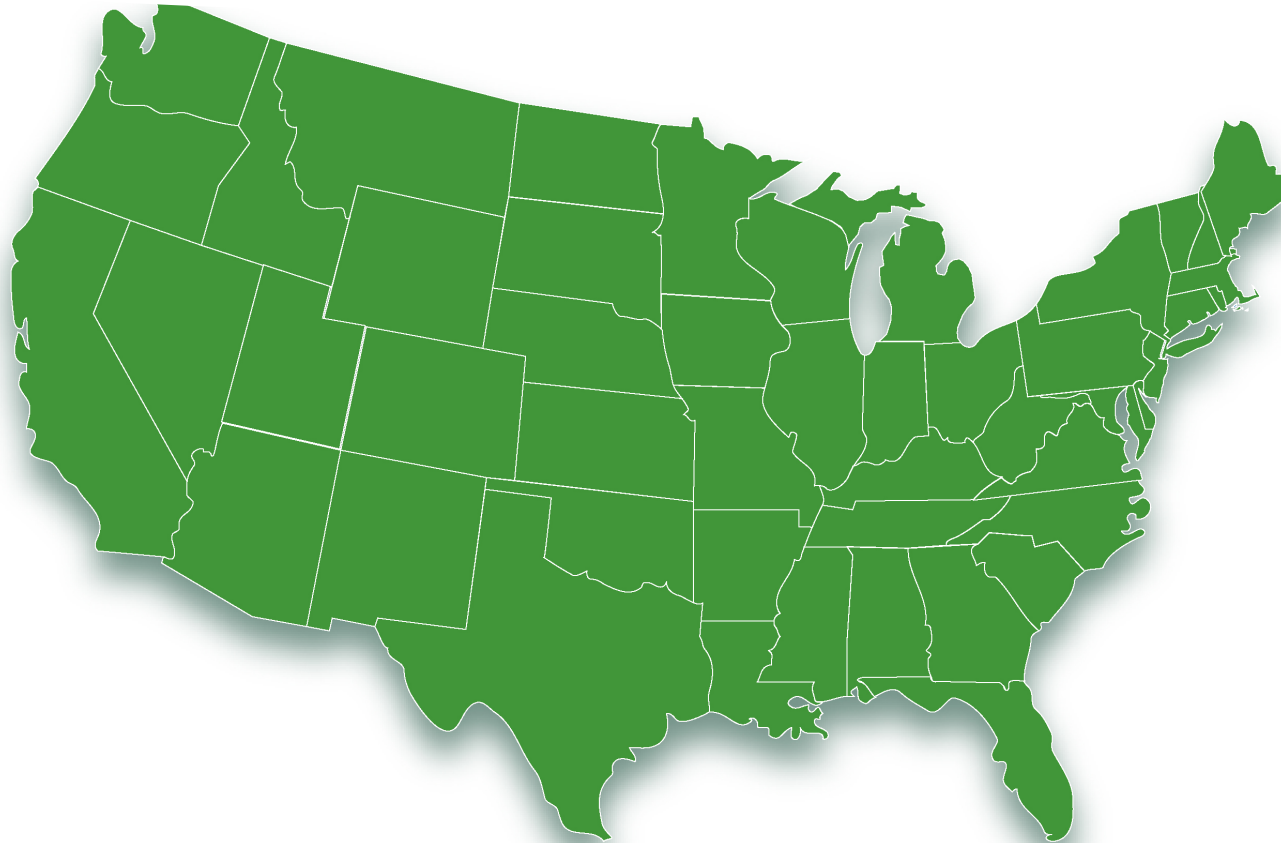




Fox Rothschild LLP  
ATTORNEYS AT LAW

# National Survey on Restrictive Covenants



# National Survey on Restrictive Covenants

This survey has been provided by the Fox Rothschild Labor and Employment and Securities Industry practice groups as a quick reference for in-house counsel and human resource professionals. The law in this area not only varies considerably from state to state and changes frequently, but its application is fact-specific. This outline therefore is not a substitute for, and should not be relied upon as, legal advice concerning any particular restriction or factual situation.

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The firm as a whole ranks among the top 200 law firms nationally, according to The American Lawyer. Our attorneys and staff are supported by sophisticated technologies that link our offices and promote rapid communication and collaboration among our departments and practice groups. Clients have access to the full resources of our attorney network, and to the depth of experience available firmwide. Every matter receives the individualized attention, innovative strategies and cost-effective approaches that are the hallmarks of our firm.

Our practice is an aspect of Fox Rothschild that is not found in many other law firms. We provide not only high-quality and cost-effective legal services, but also a perspective on local government, local politics, the local judiciary and local practices that can be attained only by a law firm intimately involved with the needs and concerns of the communities where its lawyers practice.

Fox Rothschild's goal of becoming the preeminent law firm in the nation has driven our expansion into strategic locations throughout the country. In tandem with our overall expansion, our individual offices have added seasoned attorneys with strong credentials and key regional associations. These attorneys bring a depth and breadth of experience clients can rely upon to service every aspect of their legal needs. As a result, our clients have access to one of the largest and deepest legal practices in the nation.

## NATIONAL SURVEY ON RESTRICTIVE COVENANTS

STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
Alabama	<p>"Every contract by which anyone is restrained from exercising a lawful profession, trade or business of any kind otherwise than is provided by this section is to that extent void." Ala. Code § 8-1-190</p> <p>The Restrictive Covenants Act is codified at Ala. Code § 8-1-190, <i>et seq.</i> (Alabama Laws Act 2015-465, signed by Governor Bentley on June 11, 2015, and referred to as the "Restrictive Covenants Act".) – went into effect 1/1/16</p> <p>Enforceable covenant relates to a protectable interest of the employer; the restriction is reasonably related to that interest; the restriction is reasonable in time and place, and the restriction imposes no undue hardship on the employee.<sup>1</sup></p> <p>Protectable interests include trade information, customer relationships that employee has access to and confidential information.<sup>2</sup></p> <p>Courts may revise overbroad covenant to create enforceable covenant.<sup>3</sup> Parties may also "preauthorize" courts to revise covenants to "save" them.<sup>4</sup></p>	<p>Governed by Ala Code § 8-1-190, <i>et seq.</i></p> <p>"Not every contract which imposes a restraint on trade or competition is void.' The fact that a contract 'may affect a few or several individuals engaged in a like business does not render it void [under §§ 8-1-1, Ala. Code 1975].' Every contract 'to some extent injures other parties; that is, it necessarily prevents others from making the sale or sales consummated by such contract.' (citations omitted)<sup>5</sup></p>	<p>Governed by Ala Code § 8-1-190, <i>et seq.</i></p> <p>Agreements in which competitors or contracting entities agree not to hire each other's employees are enforceable subject to Ala. Code §§ 8-1-1 (2009).<sup>6</sup></p> <p>Also:</p> <p>"[T]he tort of intentional interference with contractual relations in the context of inducing an employee to leave a competitor requires an enforceable contract of employment, an absence of justification for interference in such contract, and evidence of injury."<sup>7</sup></p> <p>In the absence of unlawful conduct, hiring a competitor's former employees does not constitute unfair competition.<sup>8</sup></p>	<p>State has adopted the Uniform Trade Secrets Act, Ala. Code §§ 8-27-1, <i>et seq.</i></p>
Alaska	<p>Factors to weigh in evaluating enforceability: absence of limitations as to time and space; whether the employee is the sole contact with the customer; whether the employee has confidential information or trade secrets; whether the covenant seeks to eliminate more than ordinary competition; whether covenant seeks to stifle skill and experience of employee; whether the benefit to employer is disproportional to the harm to employee; whether the covenant acts as a bar to the employee's sole means of support; whether the employee's talent was developed</p>	<p>A covenant not to contact former customers will be unreasonable if the employee did not have access to confidential information<sup>12</sup></p>	<p>No applicable law</p>	<p>Trade secrets are defined as "information that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who may obtain economic value from its disclosure or use" and is subject to reasonable efforts to maintain its secrecy. Alaska Stat. §§ 45.50.910, <i>et seq.</i></p> <p>Status of customer lists and account information as trade secrets has not been addressed by the courts.</p>

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Alaska	during employment and whether the forbidden employment is incidental to main employment. <sup>9</sup> Overbroad covenants made in bad faith will be struck. <sup>10</sup>  Permits "Reasonable Alteration" of Covenant to make it enforceable. <sup>11</sup>			
Arizona	Covenant must not be any broader than necessary to protect the employer's legitimate business interest. <sup>13</sup> The courts will consider the reasonableness as to the employee and his right to earn a living; reasonableness in geographic scope and term. <sup>14</sup>  Employers have a legitimate interest in protecting customer relationships and guarding against the misappropriation of confidential information and trade secrets. <sup>15</sup>  Permits Blue Penciling. <sup>16</sup>	It is less restrictive on the employee than non-compete; non-solicits are ordinarily not deemed unreasonable or oppressive. <sup>17</sup>	"A competitor is privileged to hire away an employee whose employment is terminable at will." <sup>18</sup>  Anti-piracy agreements will be enforceable if plaintiff can prove a protectable business interest in restricting defendant from soliciting plaintiff's employees. <sup>19</sup>  A manager who encourages or induces her employees to terminate their employment and join a competing company breaches her fiduciary duty. <sup>20</sup>	State has adopted the Uniform Trade Secrets Act. Ariz. Rev. Stat. Ann. §§ 44-401, <i>et seq.</i>  Trade secrets are defined as "information, including a formula, pattern, compilation, program, device, method, technique or process that both derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use" and is subject to reasonable efforts to maintain its secrecy. Ariz. Rev. Stat. Ann. §§ 44-401, <i>et seq.</i>
Arkansas	Only enforceable if they protect a legitimate business interest such as special training, trade secrets, confidential business information and customer lists. <sup>21</sup>  Customer lists are protectable as trade secrets if the identities of the customers are not easily ascertainable and the employer keeps the list confidential. <sup>22</sup>  No Blue Penciling. <sup>23</sup>  Geographic restriction must be limited to be enforceable. <sup>24</sup>		No applicable law, however:  In the absence of a contract, plaintiff must prove intentional interference with its expectation of a continued long-term relationship with its at-will employees and that the defendant did not have a privilege to compete. <sup>25</sup>  Where the defendant former employee solicited coworkers while still employed by plaintiff, defendant will have breached his duty of loyalty to plaintiff. <sup>26</sup>	State has adopted the Uniform Trade Secrets Act, Ark. Code Ann. §§ 4-75-601, <i>et seq.</i>
California	Covenants not to compete are generally void. Cal. Bus. Prof. Code §§ 16600, <i>et seq.</i>  California has also prohibited an employer from naming a non-California jurisdiction as the applicable law to avoid California's prohibition on non-competes. Further, the effect of this measure effectively bans forum selection clauses. Cal. Labor Code §§ 925.	Cal. Bus. Prof. Code §§ 16600, <i>et seq.</i>  Non-solicitation covenants are void as unlawful business restraints except where their enforcement is necessary to protect trade secrets. <sup>29</sup>	Employee raiding in and of itself is not unlawful.  An agreement not to interfere with a former employer's business by interfering with or raiding its employees may be valid. <sup>30</sup>  If a defendant solicits his competitor's	State has adopted the Uniform Trade Secrets Act, Cal. Civ. Code §§ 3426, <i>et seq.</i>  Customer lists and account information may be a trade secret. The test for trade secret status is: (1) whether the information is readily accessible to a reasonably diligent competitor; (2) whether the customer's decision to purchase was influenced primarily by considerations such as

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California	<p>California Supreme Court has rejected a "narrow restraint" exception to the prohibition on covenants not to compete. A provision in an employment agreement restricting an employee from serving customers of or competing with a former employer is invalid under California Business &amp; Professions Code § 16600.<sup>27</sup></p> <p>No Blue Penciling<sup>28</sup> if the agreement is unlawful.</p>		<p>employees or hires away one or more of his competitor's employees who are not under contract he does not commit an actionable wrong as long as the inducement to leave is not accompanied by unlawful action.<sup>31</sup> Nor is there an actionable claim for unfair competition where the former employee does not divulge trade secrets or confidential information to her new employer.<sup>32</sup></p>	<p>price, quality, reliability, delivery and efficient service, as opposed to special needs or susceptibilities that the employee or employer, through some effort, had knowledge; (3) whether in addition to manifesting intent to take business away from employer, the competitor had a purpose to injure the employer's business; and (iv) the employer's expenditure of time, effort and resources in compiling a list of its clientele.<sup>33</sup></p>
Colorado	<p>Covenants not to compete that restrict the rights of any person to receive compensation for performance of skilled or unskilled labor for any employer shall be void except for the protection of trade secrets or the recovery of expenses relating to training and educating an employee who has been employed for less than two years. Colo. Rev. Stat. Ann. §§ 8-2-113, <i>et seq.</i></p> <p>Permits Blue Penciling.<sup>34</sup></p>	<p>The enforceability of a provision prohibiting the solicitation of customers is a form of non-compete agreement that must meet the same test or it too is void.<sup>35</sup></p>	<p>A competitor's hiring of plaintiff's employees in violation of the employees' covenant not to compete falls within the competitor's privilege: One who intentionally causes a third person not to enter into a prospective contractual relation with another who is his competitor or not to continue an existing contract terminable at will does not interfere improperly with the other's relation if: (a) the relation concerns a matter involved in the competition between the actor and the other and; (b) the actor does not employ wrongful means and; (c) his action does not create or continue an unlawful restraint of trade; and (d) his purpose is at least in part to advance his interest in competing with the other.<sup>36</sup></p>	<p>State has adopted the Uniform Trade Secrets Act, Colo. Rev. Stat. Ann. §§ 7-74-101, <i>et seq.</i></p> <p>The factors to be considered in recognizing a trade secret are: (1) the extent the information is known outside of the business; (2) the extent it is known inside the business; (3) the precautions taken to guard the secrecy; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information.<sup>37</sup></p>
Connecticut	<p>Restriction must be partial and restricted in operation as to time or place and is reasonable in scope so as not to offend public policy.<sup>38</sup></p> <p>Restrictive covenant may protect against disclosure of trade secrets, including customer lists, formulas or compilations of information.<sup>39</sup></p> <p>Permits Blue Penciling if the contract provides for severability.<sup>40</sup></p>	<p>Limited to actual customers.<sup>41</sup></p>	<p>No applicable law, however:</p> <p>A plaintiff may state a claim for intentional interference with business relations by establishing: (1) the existence of a beneficial relationship; (2) the defendant's knowledge of that relationship; (3) the defendant's intent to interfere with the relationship; (4) that the interference was tortious; and, (5) a loss suffered by the plaintiff that was caused by the defendant's tortious conduct.<sup>42</sup> Plaintiff must prove at least some improper motive or improper means that is wrongful by some measure beyond the fact of the interference itself.<sup>43</sup></p>	<p>State has adopted the Uniform Trade Secrets Act, Conn. Gen. Stat. §§ 35-51, <i>et seq.</i></p> <p>Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, process drawing, cost data or customer list that: (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. 35-51(d).</p> <p>An employer must show that it invested the time,</p>

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Connecticut				effort and expense in compiling the alleged customer lists developed through contacts with available sources, to merit trade secret protection. <sup>44</sup>
Delaware	<p>Restriction must meet general contract law requirements (mutual assent to the terms by the parties that is supported by adequate consideration) and be reasonable in time, scope and geography, serve a legitimate economic interest of the employer and survive a balance of the equities.<sup>45</sup></p> <p>To be enforceable, the covenant must "advance a legitimate economic interest of the party enforcing" it.<sup>46</sup></p> <p>Rather than invalidating an overbroad non-compete provision, Delaware has adopted the "reasonable alteration" approach permitting a court to either reduce the restrictions of a covenant and then enforce it or choose not to enforce it at all.<sup>47</sup></p>	<p>Non-solicits contained in a restrictive covenant are evaluated by the same standards as a general restrictive covenant. The courts recognize that the employer's customer base can be the market that needs protection and "most judicial opinions regarding reasonableness of the geographic extent of employee non-competition agreements speak in terms of physical distances, the reality is that it is the employer's goodwill in a particular market, which is entitled to protection."<sup>48</sup></p>	<p>A non-competition agreement that includes a clause prohibiting the employee's solicitation of her co-employees may be valid if it is an enforceable contract and protects the employer's legitimate interests.<sup>49</sup></p>	<p>State has adopted the Uniform Trade Secrets Act, 6 Del. Code §§ 2001(4), <i>et seq.</i></p> <p>Customer information may be a trade secret.</p>
District of Columbia	<p>Restriction must be agreed upon by the parties with reasonable limits as to time and area and is necessary for the employer. In determining what is necessary for the employer, the restraint must not be greater than necessary to protect the employers interest and may not be outweighed by the hardship to the employee or the public.<sup>50</sup></p> <p>Permits partial enforcement if covenant entered into in good faith, but no affirmative ruling on issue of Blue Penciling.<sup>51</sup></p>	<p>Non-solicitation agreements will be enforced without any territorial limitations, limited to current, if not past customers.<sup>52</sup></p>	<p>Where a covenant restricts an employee from "hiring or assisting in hiring" any employee for one year following the termination of employment, the agreement has been enforced.<sup>53</sup></p> <p>Where a contract not to solicit plaintiff's employees was rendered invalid by a subsequent contract, defendant's intention to raid plaintiff's employees was not unlawful.<sup>54</sup></p>	<p>D.C. has adopted the Uniform Trade Secrets Act, D.C. Code § 36-401.</p>
Florida	<p>Fla. Stat. Ann. §§ 542.331, <i>et seq.</i> (Covenants executed on or after July 1, 1996)</p> <p>Fla. Stat. Ann. §§ 542.33, <i>et seq.</i> (Covenants executed prior to July 1, 1996)</p> <p>Pursuant to statute, covenants that restrict or prohibit competition when they are limited in time, area and line of business are permissible, but must be in writing and party seeking to</p>	<p>Non-solicitation provisions are governed by statute as well.<sup>59</sup></p>	<p>Governed by Fla. Stat. Ann. §§ 542.335(1)(b)(5), <i>et seq.</i></p> <p>Valid restraints of trade or commerce to protect a legitimate business interest include "extraordinary or specialized training." This has been interpreted to include training salespersons with little or no experience in the particular business and investing considerable money and</p>	<p>State has adopted the Uniform Trade Secrets Act, Fla. Stat. Ann. §§ 688.002, <i>et seq.</i></p> <p>Employer must show reasonable efforts to maintain trade secret's secrecy.<sup>62</sup></p>

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Florida	<p>enforce a covenant must show "legitimate business interest" justifying a restraint.<sup>55</sup> Such legitimate business interests include: (1) trade secrets as defined by statute in § 688.002(4); (2) valuable confidential business or professional information that otherwise does not rise to the level of a trade secret; (3) substantial relationships with specific prospective or existing customers; (4) customer goodwill; and (5) extraordinary training.<sup>56</sup></p> <p>In determining the validity of the covenant, the individualized economic or other hardship that might be caused to the person against whom enforcement is sought is not a factor to consider.<sup>57</sup></p> <p>For post-1996 covenants, a court shall modify the restraint and grant only the relief reasonably necessary to protect such interest if a restraint is overbroad or otherwise unreasonable.<sup>58</sup></p>		<p>time in teaching them the employer's way of conducting sales.<sup>60</sup></p> <p>Employees who seek new employment and encourage their co-workers to do the same have not committed an actionable wrong where the co-workers were at-will employees of plaintiff.<sup>61</sup></p>	
Georgia	<p><i>Non-competes entered into prior to May 11, 2011</i>, are viewed with extreme disfavor. Will be enforced if they are: (1) reasonable (in scope of activity, territorial coverage and duration); (2) founded upon valuable consideration; (3) reasonably necessary to protect the valid interest of the employer; and (4) do not unduly prejudice the public interest.<sup>63</sup></p> <p>Georgia applies a strict level of scrutiny to such covenants, and does not Blue Pencil overbroad non-competes. Further, if a non-compete fails, a non-solicitation in the same agreement will also fail, and vice-versa.</p> <p><i>For non-competes entered into on or after May 11, 2011</i>, Georgia's Restrictive Covenants Act ("Act"), O.C.G.A. §13-8-53 <i>et seq.</i>, applies.</p> <p>Pursuant to the Act, a non-compete is enforceable so long as its restrictions are reasonable in time, geographic area and scope of protected activities. In terms of time, two years or less is presumptively reasonable; more than two years is presumptively unreasonable.</p>	<p><i>As to non-solicitations entered into prior to May 11, 2011</i>, they are generally governed by the same rules as covenants not to compete. A non-solicitation provision need not be restricted by a geographic territory if it is limited only to customers that the employee had a relationship with prior to departure.<sup>64</sup> In the presence of a limited territorial application, the non-solicit may apply to customers that had no contact with former employee during employment.<sup>65</sup></p> <p>Non-solicitations, like non-competes, cannot be blue-penciled.</p> <p><i>As to non-solicitations entered into on or after May 11, 2011</i>, they are enforceable to the extent they apply to customers or active prospective customers with who the employee had material contact. No express reference to geographic area or</p>	<p>These are analyzed separately from non-competes and non-solicitation of customers. Covenant prohibiting employees from hiring former co-workers for another employer will be valid if it is reasonable in scope (territorial restriction) and duration.<sup>66</sup></p> <p>Also:</p> <p>Where a competitor tortiously interferes with plaintiff's workforce, plaintiff's injury will be compensable.<sup>67</sup></p>	<p>As to trade secrets, Georgia has adopted the Uniform Trade Secrets Act, Ga. Code Ann. §§ 10-1-761, <i>et seq.</i></p> <p>Customer information is generally not deemed a trade secret, but a physical list of potential customers may be a trade secret.<sup>68</sup></p> <p>With regard to non-disclosure (confidential information) agreements, prior to implementation of the Act, agreements to protect confidential information that did not contain a time limitation were deemed overbroad and unenforceable. Under the Act, no express time limit is required.</p>



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Georgia	<p>Such agreements are only permitted for employees in the following positions: (a) sales personnel; (b) brokers; (c) management personnel; and (d) "key employees" or "professionals."</p> <p>Unlike the prior law, courts have discretion to blue-pencil overly broad non-competes, so long as the change(s) does not make the covenant more restrictive on the employee.</p>	<p>types of products or services is required. Two years or less is presumptively reasonable.</p> <p>Non-solicitations, like non-competes, can now be blue-penciled, provided that the change(s) does not make the covenant more restrictive on the employee.</p>		
Hawaii	<p>Hawaii Rev. Stat. § 480-4(c) provides: A "covenant or agreement by an employee not to use trade secrets of the employer or principal in competition with the employee's or agent's employer or principal, during the term of agency or thereafter, or after the termination of employment, within such time as may be reasonably necessary for the protection of the employer or principal, without imposing undue hardship on the employee" will be enforced "unless the effect thereof may be substantially to lessen competition or to tend to create a monopoly."</p> <p>Employer's protectable interest includes customer contacts, confidential information and trade secrets.<sup>69</sup></p> <p>The courts may partially enforce through judicial modification a post employment non-competition covenant.<sup>70</sup></p> <p>On June 26, 2015, the Governor of Hawaii signed Act 158, which voids any non-compete clause relating to an "employee of a technology business." It does not affect any non-compete covenants implemented prior to July 1, 2015.</p>	<p>Non-solicitation provisions are enforceable and do not need a separate geographic restriction.<sup>71</sup></p> <p>On June 26, 2015, the Governor of Hawaii signed Act 158, which voids any non-solicitation clause relating to an "employee of a technology business." It does not affect any non-solicitation covenants implemented prior to July 1, 2015.</p>	<p>It is unclear whether competitors may agree not to hire each other's employees.<sup>72</sup></p> <p>However, rule of reason will be applied to the analysis of the agreement.</p>	<p>State has adopted the Uniform Trade Secrets Act, Haw. Rev. Stat. §§ 482B-1, <i>et seq.</i></p>
Idaho	<p>A non-compete will be enforced if it is: (1) reasonable, as applied to the employer, employee and public; (2) not contrary to public policy; and (3) any detriment to the public interest and the possible loss of the services of the employee is more than offset by the public benefit derived from the preservation of the</p>	<p>Non-solicits are enforceable under the same test as non-competes. However, a non-solicit may be enforceable with a geographic restriction.<sup>76</sup></p>	<p>No applicable law.</p>	<p>State has adopted the Uniform Trade Secrets Act, Idaho Code §§ 48-801, <i>et seq.</i></p> <p>Customer lists are not trade secrets if they are available for purchase.<sup>77</sup></p>



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Idaho	<p>freedom of contract.<sup>73</sup> Employer's protectable interests include customer contacts, trade secrets and confidential information.<sup>74</sup></p> <p>The Idaho courts will Blue Pencil to strike a word or phrase but will not rewrite the contract and modify the clause.<sup>75</sup></p>			
Illinois	<p>A restrictive covenant ancillary to a valid employment relationship is reasonable only if the covenant: (1) is no greater than is required for the protection of a legitimate business interest of the employer; (2) does not impose undue hardship on the employee; and (3) is not injurious to the public.<sup>78</sup></p> <p>Whether a legitimate business interest exists is based on the totality of the facts and circumstances of the individual case. Factors to be considered in this analysis include, but are not limited to, the near-permanence of customer relationships, the employee's acquisition of confidential information through his employment, and time and place restrictions. No factor carries any more weight than any other, but rather its importance will depend on the specific facts and circumstances of the individual case.<sup>79</sup></p> <p>Courts in Illinois may modify the terms of the non-compete.<sup>80</sup></p>	<p>Illinois will enforce non-solicitation covenants relating to customers. The courts are "hesitant to enforce prohibitions against employees servicing not only customers they had direct contact with, but also customers they never solicited or had contact with during employment."<sup>81</sup></p>	<p>The Illinois appellate courts have held that the interest in maintaining a stable workforce justifies an anti-employee raiding clause where it is reasonably calculated to protect that interest. However, several federal district courts in Illinois have disagreed with this approach and held that the interest in a stable work force is not a legitimate protectable interest. The Supreme Court of Illinois has not ruled on the issue.<sup>82</sup></p>	<p>Generally, customer lists containing a customer's phone number, purchase history, name, address, key contact person and number of each specific sales representative's current customers have not been held to be confidential.<sup>83</sup></p> <p>In order to protect confidential information, such as pricing structure future bids, marketing plans, key persons information and customer database, the employer must show an attempted use of the information by the former employee.<sup>84</sup></p>
Indiana	<p>Covenants not to compete will be enforced if the restraint is necessary to protect a legitimate interest (such as good will, confidential information, customer lists, investment in special training and actual solicitation of customers) of the employer.<sup>85</sup> But covenants that simply restrict an employee from operating a business that competes with a former employer is overbroad and unreasonable on its face.<sup>86</sup> The factors in considering the reasonableness of a restrictive covenant are: (1) whether it is reasonably necessary to protect the employer's business, (2) the effect of the restraint on the former employee and (3) the effect on the public interest.<sup>87</sup></p>	<p>Non-solicitation agreements will be enforced to protect current customers, but, generally, not past customers.<sup>91</sup> Customers of customers do not fall within the scope of protection as legitimate interests.<sup>92</sup></p>	<p>No applicable law.</p>	<p>State has adopted the Uniform Trade Secrets Act, Ind. Code §§ 24-2-3-2, <i>et seq.</i></p> <p>Even in the absence of a restrictive covenant, the Indiana Uniform Trade Secrets Act "prohibits a former employee from misappropriating and using trade secrets or confidential information acquired during employment for his or a competitor's benefit in a manner that is detrimental to the former employer."</p> <p>Customer lists and information that can be obtained by lawful surveillance will not be protected. However, information on customer requirements, habits and preferences may be confidential and protectable.<sup>93</sup> Former employee</p>

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Indiana	A court may only strike terms and apply the "Blue Pencil" rule if the contract terms are divisible. <sup>88</sup> Terms may not be added to create an enforceable covenant or otherwise rewritten. <sup>89</sup> They may simply strike out invalid provisions and leave the remaining valid provisions. <sup>90</sup>			who had copy of bidding program information that contained direct costs, customer lists, target customer lists, proposals, project lists, generator lists and fee schedules contained confidential information and was in violation of confidentiality provision of employment agreement. <sup>94</sup>
Iowa	Covenants <sup>95</sup> not to compete will only be enforced to the extent necessary to protect the employer's legitimate business interests and must not be any wider than reasonably necessary to protect such interests. <sup>96</sup> Thus, interests in customers within a definitive geographical area will be protected provided it is not prejudicial to the public interest. <sup>97</sup> The three-prong test to enforce any restrictive covenant – non-compete, non-solicit or non-disclosure – is whether the provision: (1) is reasonably necessary to protect the employer's business; (2) unreasonably restricts the employee's rights; and (3) is prejudicial to the public's interest. <sup>98</sup> A covenant lacking any limitation as to duration, geographic or scope of activity is unreasonable. <sup>99</sup>  Iowa courts may engage in judicial modification and/or partial enforcement of the covenant to render it enforceable. <sup>100</sup>	Iowa courts have enforced non-solicitation provisions that prohibit solicitation of customers that the former employee dealt with, but have limited the application of provisions to less significant accounts on the basis that the harms are in favor of the employee not the employer as to de minimis accounts. <sup>101</sup> Restrictions to former sales areas are also enforced. <sup>102</sup>	Anti-raiding provisions are analyzed the same way as restrictive covenants. Covenants not to compete are unreasonably restrictive unless they are tightly limited as to both time and area. <sup>103</sup>	State has adopted the Uniform Trade Secrets Act, Iowa Code §§ 550.1, <i>et seq.</i>  Trade secrets are protected by the statute, common law and by confidentiality agreements. <sup>104</sup>
Kansas	Customer contacts, customer relationships, referral sources, business reputation, special training of employees and trade secrets are all protectable interests. <sup>105</sup>  An employer has no protected interest in preventing "ordinary competition," <sup>106</sup> or maintaining or attaining a larger size or critical mass. <sup>107</sup>  Reasonableness is determined by examining whether the contract is supported by adequate consideration and whether the covenant protects a legitimate business purpose, creates an undue burden on the employee, is injurious to the public interest and contains reasonable time and territorial limitations. <sup>108</sup>	Non-solicitation clauses are evaluated under the same standard of reasonableness as non-competes. <sup>112</sup>	No applicable law.	Kansas follows the Uniform Trade Secrets Act at Kan. Stat. Ann. §§. 60-3320, <i>et seq.</i> Whether customer information qualifies as a trade secret is a fact-intensive question. <sup>113</sup>

STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
Kansas	<p>The reasonableness of time restrictions is measured by assessing the potential injury to the former employer, scope of any geographical restriction and the rate of development of new technologies within the field.<sup>109</sup></p> <p>Courts will modify overly restrictive covenants by modifying their scope,<sup>110</sup> but will not write in territorial restrictions where none exist.<sup>111</sup></p>			
Kentucky	<p>Protectable interests include good will built up in business and customers.<sup>114</sup></p> <p>Reasonableness is determined by the nature of the business, profession or employment, and the scope of the charter, time and geographic restrictions.<sup>115</sup></p> <p>Restrictions will be deemed reasonable if they afford fair protection to the employer's interests and do not interfere with the public interests or impose undue hardship on the employee.<sup>116</sup></p> <p>Agreements with no duration, scope or geographic limit or are limited as to time but not space are void.<sup>117</sup> However, restrictions that are unlimited as to time but limited as to reasonable territory will be enforced.<sup>118</sup></p> <p>Courts will modify overly broad restrictions to their proper scope.<sup>119</sup></p>	<p>Employer has a protectable interest in the time, effort and money it has spent in training its employees where the expense is considerable.<sup>120</sup></p> <p>The same standard of reasonableness that is used for non-compete clauses is used for non-solicitation clauses. <i>Id.</i></p>	No applicable law.	Kentucky follows the Uniform Trade Secrets Act at Ky. R.S. §§ 365.880, <i>et seq.</i>
Louisiana	<p>Louisiana has a very detailed statute, La. Rev. Stat. Ann. §§ 23:921, <i>et seq.</i> addressing agreements containing non-competes and non-solicitation clauses between employers and their employees, independent contractors and shareholders, the choice of law provisions identified therein and unique issues with regard to those working for partnerships and franchises.</p> <p>Under the statute, agreements to restrain anyone "from exercising a lawful profession, trade or business" except as specified are null and void, but contracts that require employees and independent contractors to agree to refrain from "carrying on or engaging in a business similar to that of the employer" for a period of</p>	<p>The courts treat non-compete and non-solicitation clauses the same way.<sup>125</sup></p> <p>La. Rev. Stat. Ann. § 23:921(C) permits employers to require employees and independent contractors to agree to refrain from soliciting customers for a period of two years or less.</p> <p>The courts have interpreted the statute to require the identification of the employer's business and the parishes and/or municipalities in which the former employee is to</p>	No-hire clauses do not prevent anyone from exercising a lawful profession and thus do not violate Louisiana's statute that generally prohibits contracts "by which anyone is restrained from exercising a lawful profession, trade or business of any kind." <sup>127</sup> The clauses will apply conventional restrictive covenant analysis to no-hire clauses. <sup>128</sup>	Louisiana follows the Uniform Trade Secret Act at La. Rev. Stat. Ann. §§ 51:1431, <i>et seq.</i>

STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
Louisiana	<p>two years or less are permissible. La. Rev. Stat. Ann. § 23:921(C). The statute also identifies the remedies available to an employer when an employee breaches such an agreement, such as damages for the loss sustained and the profit of which he has been deprived and injunctive relief. La. Rev. Stat. Ann. § 23:921(G).</p> <p>The courts have interpreted the statute to require non-competes to identify the employer's business and the parishes and/or municipalities in which the former employee is to refrain from competing.<sup>121</sup></p> <p>Courts expect strict compliance with the statute. Accordingly, to be enforceable, a covenant not to compete must comply with the statute. <i>Id.</i> Extensive training, trade secrets, financial information and management techniques are all protectable employer interests.<sup>122</sup></p> <p>The statute was amended in 1989, 1999, 2003 and 2006 so an analysis of former versions of the statute is necessary for agreements executed before 2006.</p> <p>Courts will only delete overly broad restrictions and enforce the covenant to the extent reasonable if the contract contains a severability clause.<sup>123</sup> However, the courts will not add a geographic term if the contract lacks one.<sup>124</sup></p>	refrain from soliciting customers. <sup>126</sup>		Covenants not to use confidential information are not enforceable if the information is not confidential. <sup>129</sup>
Maine	<p>Non-competes are considered to be contrary to public policy and will only be enforced if they are reasonable, do not impose an undue hardship upon the employee and do not extend broader than needed to protect the employer's interest.<sup>130</sup></p> <p>Protectable interests include a business' good will, customer pool<sup>131</sup> and information about the financial holdings and transactions of its customers,<sup>132</sup> when the employee has had substantial contact with the employer's customers and has had access to confidential information, such as customer lists.<sup>133</sup></p>	The reasonableness of non-solicitation clauses are assessed the same way non-compete clauses are assessed. <sup>136</sup>	No applicable law.	<p>Maine follows the Uniform Trade Secret Act at M.R.S.A. Title 10, §§ 1541, <i>et seq.</i></p> <p>However, confidential knowledge or information need not rise to the level of a trade secret to be protected.<sup>137</sup></p>

STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
Maine	<p>Preventing business competition is not a legitimate business interest to be protected.<sup>134</sup> Courts will narrow overly broad non-competes to the extent reasonable.<sup>135</sup></p>			
Maryland	<p>Covenants not to compete are enforced if reasonably necessary to protect the business of the employer. Covenants may be used "as a shield to protect the employer from the unfair competition by the former employee, but . . . [not] as a sword to defeat the efficient competitor."<sup>138</sup></p> <p>Covenants not to compete will be enforced to prevent the misuse of employers' trade secrets, routes, client lists and established customer relationships.<sup>139</sup> To that end, a non-competition agreement is not enforceable against a former employee who had no customer contact and no access to confidential information.<sup>140</sup></p> <p>A covenant not to compete is enforceable if its duration and geographic area are only so broad as is reasonably necessary to protect the employer's business, and if the covenant does not impose undue hardships on the employee or the public.<sup>141</sup></p> <p>While there seems to be little question that a covenant may be judicially reformed under Maryland law, the precise method of doing so is seemingly in dispute (e.g., the extent and method of judicial "Blue Pencil").<sup>142</sup></p>	<p>In recent years, Maryland courts have specifically criticized agreements that restrict former employees from dealing with all of an employer's customers.<sup>143</sup></p>	<p>Anti-raiding covenants will be enforced if reasonable as to time limitations, even if geographically unlimited.<sup>144</sup></p>	<p>State has adopted the Uniform Trade Secrets Act, Md. Code Ann. §§ 11-1201, <i>et seq.</i></p>
Massachusetts	<p>Enforceable if it "is necessary for the protection of the employer, is reasonably limited in time and space, and is consonant with the public interest."<sup>145</sup></p> <p>Trade secrets, confidential data and goodwill are all legitimate business interests of the employer that it may seek to protect a restrictive covenant.<sup>146</sup></p> <p>However, protection from "ordinary competition" is not a legitimate business interest.<sup>147</sup> Nor may an employer prevent an ex-employee from using</p>	<p>While reasonable non-competition agreements may be enforced, such agreements are scrutinized carefully and strictly construed against the employer.<sup>151</sup></p> <p>An employer may successfully seek enforcement of a non-solicitation agreement with a former employee when it demonstrates that the agreement:</p> <ol style="list-style-type: none"> <li>1. is necessary to protect a legitimate business interest of</li> </ol>	<p>Anti-raiding provisions of restrictive covenants will be enforced if the terms are reasonable. In determining whether the time limit is reasonable, this court will consider the nature of the business and the character of the employment involved, as well as the situation of the parties, the necessity of the restriction for the protection of the employer's business and the right of the employee to work and earn a livelihood.<sup>154</sup></p>	<p>Massachusetts has yet to adopt the Uniform Trade Secrets Act.</p> <p>Mass Gen. Laws Ch. 93, §§ 42, <i>et seq.</i> (Misappropriation of Trade Secrets):</p> <p>Whoever embezzles, steals or unlawfully takes, carries away, conceals or copies, or by fraud or by deception obtains, from any person or corporation, with intent to convert to his own use, any trade secret, regardless of value, shall be liable in tort to such person or corporation for all damages resulting therefrom. <u>Whether or not the</u></p>

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Massachusetts	<p>"the general skill or knowledge acquired during the course of the employment."<sup>148</sup></p> <p>The covenant must have consideration flowing to the party agreeing not to compete.<sup>149</sup></p> <p>Rather than invalidating an overbroad non-compete, Massachusetts law vests Courts with the discretion to enforce it "to the extent that it is reasonable."<sup>150</sup></p>	<p>the employer;</p> <ol style="list-style-type: none"> <li>2. is supported by consideration;</li> <li>3. is reasonably limited in all circumstances, including time and space; and</li> <li>4. is otherwise consonant with public policy.<sup>152</sup></li> </ol> <p>The burden of proof for the enforceability of a non-competition agreement is on the employer.<sup>153</sup></p>		<p><u>case is tried by a jury, the court, in its discretion, may increase the damages up to double the amount found.</u></p>
Michigan	<p>For covenants executed <u>on or before March 29, 1985</u>, a now-repealed statute applies that prohibits any contract where any person agrees to refrain from engaging in any employment, trade, profession or business. The statute held that such contracts were void as unlawful restraints on trade. Mich. Comp. Laws Ann. §§ 445.671, <i>et seq.</i> (West 1969).</p> <p>For covenants executed <u>after March 29, 1985</u>: "An employer may obtain from an employee an agreement or covenant which protects an employer's reasonable competitive business interests and expressly prohibits an employee from engaging in employment or a line of business after termination of employment if the agreement or covenant is reasonable as to its duration, geographical area, and the type of employment or line of business. Mich. Comp. Laws §§ 445.774a(1)."</p> <p>By statute, to the extent that any such agreement or covenant is found to be unreasonable in any respect, a court may limit the agreement to render it reasonable in light of the circumstances that it was made and specifically enforce the agreement as limited. <i>Id.</i></p>	<p>Same statutory framework applies.<sup>155</sup></p>	<p>No applicable law.</p>	<p>Michigan Uniform Trade Secrets Act, Mich. Stat. Ann. §§ 445.1901, <i>et seq.</i></p> <p>Michigan adopted the 1985 amended version of the Uniform Trade Secrets Act except for the provision relating to injunctive relief, adopting, instead, the original 1979 Uniform Trade Secret Act text, as follows: "If a court determines that it would be unreasonable to prohibit future use of a trade secret, an injunction may condition future use upon payment of a reasonable royalty."</p> <p>This Act displaces other civil remedies for misappropriation of trade secrets, except:</p> <ul style="list-style-type: none"> <li>• Contract remedies, whether or not based upon misappropriation of a trade secret;</li> <li>• Other civil remedies that are not based upon misappropriation of a trade secret; and</li> <li>• Criminal remedies, whether or not based upon misappropriation of a trade secret.</li> </ul>
Minnesota	<p>Non-compete agreements, though disfavored by Minnesota courts, are enforceable if they serve a legitimate interest and are no broader than necessary to protect this interest.<sup>156</sup></p> <p>To assess whether a non-compete agreement is reasonable, a court considers "the nature and</p>	<p>Non-solicitation provisions must be reasonable and narrowly tailored.<sup>159</sup></p>	<p>No applicable law.</p>	<p>Minnesota Uniform Trade Secrets Act, Minn. Stat. 325C. 01, <i>et seq.</i>, follows the Uniform Trade Secrets Act approach.</p>

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Minnesota	<p>character of the employment, the nature and extent of the business, the time for which the restriction is imposed, the territorial extent of the covenant and other pertinent conditions."<sup>157</sup> In addition, to be enforceable, a non-compete agreement must be ancillary to the initial employment agreement or, if not ancillary to the initial agreement, supported by independent consideration.<sup>158</sup></p> <p>Minnesota has adopted the "Blue Pencil doctrine" that allows a court to modify an unreasonable non-compete agreement and enforce it only to the extent that it is reasonable.</p>			
Mississippi	<p>A covenant not to compete may be enforced if "necessary for the protection of [the employer's] business and goodwill."<sup>160</sup></p> <p>The enforceability of a non-competition provision is largely predicated upon the reasonableness and specificity of its terms, primarily the duration of the restriction and its geographic scope.<sup>161</sup> Three aspects of the non-compete are examined to ascertain the reasonableness of the non-compete:</p> <ol style="list-style-type: none"> <li>1. rights/ hardship of the employer;</li> <li>2. rights/ hardship of the employee; and</li> <li>3. public interest.</li> </ol> <p>Courts are permitted to modify covenants not to compete using the "reasonable alteration" approach that allows the court to make an overbroad covenant more narrow to make it enforceable.</p>	<p>An agreement that bars an ex-employee from accepting business with his former customers may be reasonable and enforceable, but an agreement that requires an employee not to "directly or indirectly perform any act or make any statement that would tend to divert [from the employer] any trade or business with any customer" is too ambiguous to be enforced.<sup>162</sup></p>	<p>A non-hire covenant is an unreasonable restraint where it fails to specify the individuals the hiring of which would be limited by its terms. A covenant cannot be ambiguous as to which employees cannot be raided.<sup>163</sup></p>	<p>Mississippi Uniform Trade Secret Act, Miss. Code Ann. §§ 75-26, <i>et seq.</i></p> <p>Actual or threatened misappropriation may be enjoined where, in exceptional circumstances, the injunction may condition future use upon payment of a reasonable royalty for no longer than the necessary period use would have prohibited. Exceptional circumstances include, but are not limited to, a material or prejudicial change of position prior to acquiring knowledge or reason to know of the misappropriation that renders a prohibitive injunction inequitable.</p>
Missouri	<p>Employers have a legitimate interest in protecting themselves against unfair competition from their former employees and in their trade secrets, customer contacts, customer lists and customer relationships.<sup>164</sup></p> <p>Reasonableness is assessed by focusing on what is necessary to protect the employer's legitimate interest, the surrounding circumstances, the purpose served, the situation of the parties, the limits of the restraint and the</p>	<p>By statute, Mo. Rev. Stat. Ann. § 431.202, reasonable, written employment agreements by which an employee promises not to solicit, recruit, hire or otherwise interfere with the employment of its employer are enforceable if written to protect the employer's trade secret or confidential business information, customer or supplier relationships, goodwill or loyalty.</p>	<p>By statute, Mo. Rev. Stat. Ann. §§ 431.202, a reasonable covenant in writing promising not to solicit, recruit, hire or otherwise interfere with the employment of one or more employees shall be enforceable and not a restraint of trade.</p>	<p>Missouri follows the Uniform Trade Secrets Act at Mo. Stat. §§ 417.450 to 417.467.</p> <p>Covenants will not be enforced to protect knowledge that is merely the product of employment and is known throughout industry.<sup>169</sup></p>



STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
Missouri	<p>specialization of the business venture.<sup>165</sup> Covenants will not be enforced if an employee moves to an entity that is not a meaningful competitor.<sup>166</sup></p> <p>The courts will not modify overly broad restrictions, but will only partially enforce such provisions if the employer has established a protectable interest in some part of the area described.<sup>167</sup> The court will not write in geographic restrictions where they are not provided.<sup>168</sup></p>	<p>The statute also provides that reasonable, written agreements between an employer and employee promising not to solicit, recruit, hire or otherwise interfere with the employment of one or more employees after separation of employment, but that are not written to protect the interests described, shall be enforceable as long as they do not continue for more than one year and do not apply to secretarial or clerical services.</p> <p>Whether a covenant is deemed to be reasonable under the statute is determined based upon the facts and circumstances pertaining to such covenant, but such a covenant shall be conclusively presumed to be reasonable if its post-employment duration is no more than one year.</p>		
Montana	<p>Non-competes in the employment context "are disfavored and will be interpreted strictly and to the advantage of the employee."<sup>170</sup></p> <p>Mont. Code Ann. § 28-2-703 provides that other than contracts executed in connection with sale of a business or dissolution of a partnership "any contract by which anyone is restrained from exercising a lawful profession, trade or business of any kind...is to that extent void."</p> <p>Notwithstanding the statute, courts will uphold a non-compete in the employment context if it is (a) limited in time or place; (b) based on "good consideration;" and (1) is restricted in its operation in respect either to time or place; (2) is based on good consideration; (3) affords only a fair protection to the interests of the employer; and (4) is not "so large in its operation as to interfere with the interests of the public."<sup>171</sup></p>	<p>Clauses barring solicitation of customers will not be upheld against employees who solicit customers when such solicitation does not arise as a result of secret and confidential information from the prior employer's business.<sup>175</sup></p> <p>Montana courts will Blue-Pencil non-solicitation clauses.<sup>176</sup></p>	<p>Non-hire/employment clauses have been found to violate Montana's restraint-of-trade statute that provides, in relevant part: "Any contract by which anyone is restrained from exercising a lawful profession, trade or business of any kind [...] is to that extent void."<sup>177</sup></p>	<p>Montana follows the Uniform Trade Secrets Act at MCA §§ 30-14-403, <i>et seq.</i></p>

STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
Montana	<p>The third and fourth prongs are satisfied if the covenant does not prohibit the employee from engaging in a particular trade or profession or directly restrain employee's behavior.<sup>172</sup></p> <p>Time restrictions will be deemed reasonable if they only deter but do not prohibit competition for a period not to exceed 240 days.<sup>173</sup></p> <p>Montana courts will Blue-Pencil non-competes by restricting the reach of non-compete provisions without voiding them entirely.<sup>174</sup></p>			
Nebraska	<p>Nebraska construes non-compete clauses very narrowly. Under Nebraska law, a non-compete agreement is valid if it is: (1) not injurious to the public; (2) not greater than is reasonably necessary to protect the employer in some legitimate interest; and (3) not unduly harsh and oppressive on the employee.<sup>178</sup> Significantly, Nebraska non-compete clauses are only enforceable as to customers the employee specifically "did business with and had personal contact."<sup>179</sup> An employer has no legitimate business interest in postemployment prevention of an employee's use of some general skill or training acquired while working for the employer, although such on-the-job acquisition of general knowledge, skill or facility may make the employee an effective competitor.</p> <p>Nebraska courts do not permit Blue-Penciling of non-compete clauses, even where there is a severability clause in the agreement containing the non-compete clause.<sup>180</sup> Finally, continued employment is not valid consideration for a non-compete clause.<sup>181</sup></p>	<p>Such agreements will only be enforced to the extent they are limited to customers the employee specifically did business with and had personal contact.</p>	<p>No applicable law directly on point. However, to prevail on a claim of tortious interference with a business relationship or expectancy, a plaintiff must prove: (1) the existence of a valid business relationship or expectancy; (2) knowledge by the interferer of the relationship or expectancy; (3) an unjustified intentional act of interference on the part of the interferer; (4) proof that the interference caused the harm sustained; and (5) damage to the party whose relationship or expectancy was disrupted.<sup>182</sup> Therefore, if an employer interferes with an employee's enforceable non-compete or non-solicitation agreement, an action could lie under Nebraska law for tortious interference, where malice, improper or illegal means are present.</p>	<p>A "trade secret" is defined under the Nebraska Uniform Trade Secrets Act as "information, including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code or process that: (a) derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."<sup>183</sup> The elements necessary to establish a cause of action for misappropriation of a trade secret are: (1) the existence of a trade secret or secret manufacturing process; (2) the value and importance of the trade secret to the employer in the conduct of his business; (3) the employer's right by reason of discovery or ownership to the use and enjoyment of the secret; and (4) the communication of the secret to the employee while he was employed in a position of trust and confidence and under circumstances making it inequitable and unjust for him to disclose it to others or to use it himself to the employer's prejudice.<sup>184</sup> Matters of public knowledge or of general knowledge in an industry cannot be appropriated by one as its secret; a trade secret is something known to only a few and not susceptible of general knowledge.<sup>185</sup> A customer list is the type of information that may, in some industries, be treated as a trade secret. However, courts are reluctant to protect customer lists to the extent that they embody information that is readily ascertainable through public sources.</p>

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Nevada	<p>Nev. Rev. Stat. Ann. § 613.200.</p> <p>People and companies that prevent employees after separation from obtaining employment elsewhere in this state are guilty of a gross misdemeanor. However, the statute provides an exception for people and companies that negotiate, execute and enforce an agreement with an employee that upon termination of employment, bars the employee from "(a) pursuing a similar vocation in competition with or becoming employed by a competitor ... or (b) disclos[ing] any trade secrets, business methods, lists of customers, secret formulas or processes or confidential information learned or obtained during the course of his employment ... if the agreement is supported by valuable consideration and is otherwise reasonable in its scope and duration."</p> <p>In addition to being found guilty of a misdemeanor, violators may be subject to fines by the state and department of labor.</p> <p>To fall within the permissible non-competes allowed in the statute, contracts must be supported by consideration and have reasonable scope and terms.<sup>186</sup> A restraint is deemed to be unreasonable if it is greater than needed to protect the employer or imposes undue hardship upon the employee. <i>Id.</i></p> <p>Customer contacts and good will are protectable interests in the geographic areas where the former employer conducted business.<sup>187</sup></p> <p>Courts will Blue Pencil contracts by excising unenforceable provisions.<sup>188</sup></p>	No applicable law.	No applicable law.	Nevada follows the Uniform Trade Secrets Act at Nev. Rev. Stat. §§ 600A.010, <i>et seq.</i>
New Hampshire	<p>Non-competes are valid "only to the extent they prevent employees from appropriating assets that are legitimately the employer's."<sup>189</sup></p> <p>The reasonableness of covenants will be assessed by looking at whether the restriction: (1) is greater than needed to protect the employer's interests; (2) imposes an undue</p>	Employers' protectable interests include good will of business developed in part by former employee's contact with customers, trade secrets, confidential information other than trade secrets, an employee's "special influence" over customers obtained	No applicable law.	State adopted the Uniform Trade Secret Act, RSA §§ 350-B:8, <i>et seq.</i>

STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
New Hampshire	<p>burden on the employee; and (3) is injurious to the public interest (unreasonably limits the public's right to choose).<sup>190</sup></p> <p>Reasonable time restriction is limited to the time needed for the employee's replacement to demonstrate effectiveness and for the public to disassociate the former employee from the former employer's business.<sup>191</sup></p> <p>Courts do not follow the Blue-Pencil rule, but will partially enforce or reform overly broad restrictions if the employer shows good faith in executing contract.<sup>192</sup></p>	<p>during employment and contacts developed during employment.<sup>193</sup></p> <p>Covenants not to solicit business from employer's entire customer base are too broad and will not be enforced where they cover customers with whom the employee had no contact unless the employee gained significant knowledge or understanding of the employer's customer base during employment.<sup>194</sup> The geographic scope of such covenants should be limited to the area in which the employee had client contact. For salespeople, this covers the territory to which they are assigned.<sup>195</sup></p> <p>Covenants restricting employees from soliciting prospective customers will not be enforced.<sup>196</sup></p>		
New Jersey	<p>In non-compete cases, employers have a protectable interest in confidential customer lists, customer referral databases, customer relationships, trade secrets, investment in the training of an employee and other confidential business information.<sup>197</sup> Separately, the identity of customers is protected when divulged to a key employee even if the customer names are readily ascertainable from trade directories.<sup>198</sup></p> <p>Employers may not prevent an employee from using general industry skills the employee acquired during employment.<sup>199</sup></p> <p>Reasonableness is assessed by examining whether the covenant: (1) protects employer's legitimate interests; (2) imposes no undue hardship on employee; (3) is not injurious to the public; and (4) has an overly broad duration, geographic limit and scope of activities protected.<sup>200</sup></p>	<p>Covenants restricting employees from soliciting prospective customers will not be enforced.<sup>202</sup> Courts assess reasonableness of non-solicitation clauses the same way it assesses non-competes.<sup>203</sup> Courts will modify overly broad non-solicitation clauses to make them reasonable.<sup>204</sup></p>	<p>Where a no-hire agreement is a valid covenant not to compete and reasonable in scope, it does not violate federal antitrust law.<sup>205</sup></p>	<p>Courts rely on the Restatement of Torts § 757 to assess if something is a trade secret.<sup>206</sup></p> <p>The Restatement defines a trade secret as "any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it." Restatement of Torts §§ 757, comment b.</p>

STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
New Jersey	Courts will alter and delete overly broad covenants to make them reasonable. <sup>201</sup>			
New Mexico	<p>Non-competes will be enforced if they have sufficient consideration, contain restrictions no larger and wider than is needed to protect the employer's interest,<sup>207</sup> are not against public policy and any detriment to the public interest and possible loss of services of the employee is more than offset by the public benefit arising out of the preservation of the freedom of contract.<sup>208</sup></p> <p>Courts have not decided whether or not they will Blue Pencil non-competes.</p>	Courts assess the reasonableness of customer non-solicitation clauses the same way they assess non-competes. <sup>209</sup>	No applicable law.	Follows Uniform Trade Secrets Act. NM Stat Ann. §§ 57-3A-1 to -7.
New York	<p>Post-employment covenants not to compete "are disfavored but will be enforced by the courts where the restrictions are reasonably limited geographically and temporally and the enforcement is necessary, inter alia, to protect trade secrets or confidential customer lists."<sup>210</sup></p> <p>Beyond where there is a protectable interest in information, the former employer has been held to have a protectable interest "where the employee's services are 'special, unique or extraordinary' and not merely of 'high value to his employer.'"<sup>211</sup></p> <p>While there is authority to the proposition that a court is permitted to "Blue Pencil" a covenant to make it reasonable, courts are very reluctant to, and, in practice, rarely (if ever) exercise this authority.<sup>212</sup> ("This court declines to exercise its discretion to "Blue Pencil" the provisions at issue in an effort to make them enforceable."). A restrictive covenant will be partially enforced only if the employer can demonstrate "an absence of overreaching, coercive use of dominant bargaining power or other anti-competitive misconduct, but has in good faith sought to protect a legitimate business interest, consistent with reasonable standards of fair dealing ...."<sup>213</sup></p>	For a non-solicitation agreement to be enforceable, the former employee must have "work[ed] closely with the client or customer over a long period of time, especially when his services [we]re a significant part of the total transaction." <sup>214</sup> Courts will not enforce a non-solicit against a former employee that was not an instrumental component of the former employer's relationship with a particular client.	<p>Restrictive covenants limiting the solicitation of former co-workers post-termination may be enforced with appropriate evidentiary support. There must be credible evidence of actual solicitation to prove a former employee breached the agreement.<sup>215</sup></p> <p>A preliminary injunction will be granted to enforce a non-hire provision if former employer will suffer irreparable harm.<sup>216</sup></p>	<p>Courts rely on the Restatement of Torts § 757 to assess if something is a trade secret.<sup>217</sup></p> <p>The Uniform Trade Secrets Act has been introduced as a bill in the state legislature since at least 1999, but, has yet to be adopted.</p>

STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
North Carolina	<p>North Carolina statutorily requires that covenants not to compete be embodied in a writing signed by the person against whom the restriction is to be enforced.<sup>218</sup></p> <p>Courts have long stated that covenants not to compete between an employer and employee are not viewed favorably.<sup>219</sup> Thus, to be enforceable, a covenant not to compete must: (1) be in writing; (2) be made part of the employment contract; (3) be based on valuable consideration; (4) be reasonable as to time and territory; and (5) be designed to protect a legitimate business interest of the employer.</p> <p>North Carolina courts recognize two bases for enforcing restrictive covenants in the employer-employee relationship: (1) if the nature of the employment is such as will bring the employee in personal contact with patrons or customer of the employer; or (2) to enable the employee to acquire valuable information as to the nature and character of the business.<sup>220</sup></p> <p>Where the language of a covenant is overbroad, North Carolina law severely limits the court's options to "Blue Pencil" the offending terms.<sup>221</sup> Unless the overbroad portion is "a distinctly separable part of a covenant," courts cannot rewrite the contract and will simply not enforce it. <i>Id.</i> The burden of proof remains on the party seeking to enforce the covenant.<sup>222</sup></p>	Same showing as required for non-compete agreements.	Under the North Carolina Unfair and Deceptive Trade Practices Act (UDTPA), solicitation of a significant number of key employees at a former employer may constitute an unfair and deceptive trade practice. <sup>223</sup>	<p>North Carolina adopted the "Trade Secrets Protection Act" (TSPA) in 1981. The TSPA provides that the owner of a trade secret "shall have remedy by civil action for misappropriation" of the secret.<sup>224</sup></p> <p>"Trade secret" means business or technical information, including but not limited to, a formula, pattern, program, device, compilation of information, method, technique or process that: (a) derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. N.C. Gen. Stat. §§ 66-152 to 162.</p> <p>"'Misappropriation' means acquisition, disclosure or use of a trade secret of another without express or implied authority or consent, unless such trade secret was arrived at by independent development, reverse engineering or was obtained from another person with a right to disclose the trade secret." N.C. Gen. Stat. § 66-152(1) (2005). The "actual or threatened misappropriation of a trade secret may be preliminarily enjoined during the pendency of the action and shall be permanently enjoined upon judgment finding misappropriation ...." N.C. Gen. Stat. § 66-154(a).</p> <p>To plead misappropriation of trade secrets, "a plaintiff must identify a trade secret with sufficient particularity so as to enable a defendant to delineate that which he is accused of misappropriating and a court to determine whether misappropriation has or is threatened to occur."<sup>225</sup></p>
North Dakota	<p>Covenants not to compete are void as an unlawful restraint on business. See N.D. Cent. Code § 9-08-06.</p> <p>There are, however, two exceptions:</p>	N.D. Cent. Code § 9-08-06 applies to non-compete agreement and non-solicit agreements, alike. <sup>226</sup>	Covenants not to compete between an employer and employee are not enforceable under N.D. Cent. Code. § 9-08-06.	State has adopted Uniform Trade Secrets Act. N.D. Cent. Code, §§ 47-25.1-01 to -08.

STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
North Dakota	<p>1. One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city or a part of either, so long as the buyer or any person deriving title to the goodwill from the buyer carries on a like business therein.</p> <p>2. Partners, upon or in anticipation of a dissolution of the partnership, may agree that all or any number of them will not carry on a similar business within the same city where the partnership business has been transacted or within a specified part thereof.</p> <p>N.D. Cent. Code §§ 9-08-06 (1)-(2), <i>et seq.</i></p>			
Ohio	<p>Despite the fact that Ohio Rev. Code Ann. § 1331.02 addresses contracts in restraint of trade, Ohio courts will enforce a non-compete provision for certain interests. "Generally, the only business interests which have been deemed sufficient to justify enforcement of a non-compete clause against a former employee [under Ohio law] are preventing the disclosure of the former employer's trade secrets or the use of the former employer's proprietary customer information to solicit the former employer's customers."<sup>227</sup></p> <p>The analysis for determining whether a non-compete is valid and enforceable is as follows:</p> <ol style="list-style-type: none"> <li>1. Is there a protectable interest at issue?<sup>228</sup></li> <li>2. Is the agreement not to compete limited in time and space?<sup>229</sup></li> <li>3. Is the restraint reasonably necessary for the protection of the employer's business?<sup>230</sup></li> <li>4. Is the restraint unreasonably restrictive on the employee's rights?<sup>231</sup></li> <li>5. Does the restraint contravene public policy?<sup>232</sup></li> </ol> <p>Courts will uphold a covenant not-to-compete only if it is reasonable.<sup>233</sup></p> <p>A reasonable covenant "is no greater than is required for the protection of the employer, does not impose undue hardship on the employee</p>	<p>Non-compete agreements are treated the same as non-solicitation agreements. They will be enforced if they are reasonable under certain court-made factors.<sup>237</sup></p>	<p>No applicable law.</p>	<p>State has adopted Uniform Trade Secrets Act. Ohio Rev. Code Ann. §§ 1333.61-69, <i>et seq.</i></p>



STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
Ohio	and is not injurious to the public. Courts are empowered to modify or amend employment agreements to achieve such results. <sup>234</sup> The Ohio Supreme Court abandoned "the Blue Pencil test" in favor of a test of reasonableness. <sup>235</sup> The reasonableness test "permits courts to fashion a contract reasonable between the parties, in accord with their intention at the time of contracting and enables them to evaluate all the factors comprising 'reasonableness' in the context of employee covenants." <sup>236</sup>			
Oklahoma	<p>Oklahoma statutorily proscribes contracts "by which anyone is restrained from exercising a lawful profession, trade or business of any kind[.]" 15 Okl. St. Ann. § 217.</p> <p>The exceptions to this general prohibition are:</p> <ol style="list-style-type: none"> <li>1. Where a business is sold as a going concern, a non-competition covenant is enforceable provided the going concern continues on with a like business.</li> <li>2. A non-compete is enforceable in the context of partnership dissolution. 15 Okl. St. Ann. §§ 218–19.</li> </ol>	<p>"A person who makes an agreement with an employer, whether in writing or verbally, not to compete with the employer after the employment relationship has been terminated, shall be permitted to engage in the same business as that conducted by the former employer, as long as the former employee does not directly solicit the sale of goods, services or a combination of goods and services from the established customers of the former employer." See 15 Okl. St. Ann. §219A. Thus, a form of non-solicitation agreements are permitted notwithstanding the fact that non-compete agreements are proscribed.</p>	No applicable law.	State has adopted Uniform Trade Secrets Act. 78 Okl. St. Ann. §§ 85–95.
Oregon	<p>State statute commands that, under many circumstances, non-competes may not be enforced. See <i>generally</i> Or. Rev. Stat. § 653.295.</p> <p>There are, however, some very broad exceptions that permit significant room for non-compete provisions to be enforced, provided that the very specific factual requirements of the statute are satisfied. See Or. Rev. Stat. §§ 653.295(1)(a)-(c).</p> <p>To be valid under Or. Rev. Stat. §§ 653.295, a non-competition agreement must also be partial</p>	<p>Or. Rev. Stat. §§ 653.295(4)(b) states that §§ 653.295(1) &amp; (2) (governing certain of the factual prerequisites triggering an employer's ability to have a non-compete enforced) do not apply to a "covenant not to solicit employees of the employer or solicit or transact business with customers of the employer."</p>	Under Oregon statute Or. Rev. Stat. §§ 653.295, employers can prevent employee raiding/employee solicitation in non-compete agreements. <sup>239</sup>	State has adopted Uniform Trade Secrets Act. Or. Rev. Stat. § 646.461, <i>et seq.</i>

STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
Oregon	<p>or restricted in its operation in respect to time or place, it must be supported by consideration, and it must be reasonable (affording only a fair protection to the interests of the party in whose favor it is made and not be so large in its operation as to interfere with the interests of the public).<sup>238</sup></p> <p>Notwithstanding certain factual prerequisites that must be met for an enforceable non-compete, the employer may enforce the non-compete for up to two years if it makes certain payments to the former employee. Or. Rev. Stat. §§ 653.295(6).</p>			
Pennsylvania	<p>The inquiry to determine whether a covenant is enforceable is if the covenant is reasonably necessary to protect the legitimate business interests of the employer.<sup>240</sup></p> <p>Examples include:</p> <ol style="list-style-type: none"> <li>1. customer good will;</li> <li>2. confidential information;</li> <li>3. trade secrets; and</li> <li>4. unique, extraordinary skills<sup>241</sup></li> </ol> <p>Provisions that seek to "eliminat[e] or repress[] competition . . . so the employer can gain an economic advantage" are not enforceable because they seek to protect an illegitimate interest.</p> <p>It is well-established in Pennsylvania that a court of equity has the authority to reform a non-competition covenant in order to enforce only those provisions that are reasonably necessary for the protection of the employer.<sup>242</sup></p>	<p>Restrictive covenants, including both non-solicitation and non-compete provisions, are enforceable under: (1) related to the employment or ancillary to the taking of employment; (2) supported by adequate consideration; (3) reasonably limited in time and geographic scope; and (4) reasonably designed to safeguard a legitimate interest of the former employer.<sup>243</sup></p>	<p>A preliminary injunction may be entered against an employer for interfering with a contract between an employee and that employee's former employer, if the contract prevents the employee from soliciting employees of the former employer.<sup>244</sup></p>	<p>State has adopted Uniform Trade Secrets Act. 12 Pa.C.S.A. § 5301, <i>et seq.</i></p>
Rhode Island	<p>For a covenant not to compete to be enforceable, there must be "a legitimate interest that the provision is designed to protect."<sup>245</sup> In addition, the employer must establish that the covenant is reasonable, a conclusion that depends on an examination of the specific protectable interest.<sup>246</sup> The employer must also show that the covenant is ancillary to the employment relationship and that adequate</p>	<p>Treated substantially the same way as non-competes.</p>	<p>No applicable law.</p>	<p>State has adopted Uniform Trade Secrets Act. R.I. Gen. Laws §§ 6-41-1 to -11.</p>

STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
Rhode Island	consideration was given for the covenant. <sup>247</sup> Where the time, place, manner of restriction or scope of the covenant is over broad, "the court... [has] a free hand to take a 'Blue Pencil,' if necessary, to draw in any reasonable limitations on such covenants that it concludes are overbroad." <sup>248</sup>			
South Carolina	A covenant not to compete is upheld if it is: <ol style="list-style-type: none"> <li>1. necessary for the protection of a legitimate business interest;</li> <li>2. is ancillary to a lawful contract;</li> <li>3. is reasonably limited with respect to time and place;</li> <li>4. is not unduly harsh and oppressive;</li> <li>5. is reasonable; and</li> <li>6. is supported by valuable consideration.<sup>249</sup></li> </ol> <p>An employer does not, however, have a protectable interest in restraining a former employee from using the general skills, knowledge and expertise acquired in the market for the former employee's services.<sup>250</sup></p> <p>Courts may "Blue Pencil" a covenant only where:</p> <ol style="list-style-type: none"> <li>1. the contract is severable; and</li> <li>2. the severability is apparent from the contract itself – in language and subject matter.<sup>251</sup></li> </ol>	Treated identically as non-competes. <sup>252</sup>	Prohibitions against recruiting existing employees have been interpreted to prohibit only interference with contractual relations, that is only to prohibit malicious interference with contractual relations. <sup>253</sup>	State has adopted Uniform Trade Secrets Act, S.C. C.A. §§ 39-8-10, <i>et seq.</i>
South Dakota	Every contract restraining exercise of a lawful profession, trade or business is void to that extent. . . . S.D. Codified Laws §§ 53-9-8. There are, however, exceptions: <ol style="list-style-type: none"> <li>1. Any person who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city or other specified area, as long as the buyer or person deriving title to the good will from the seller carries on a like business within the specified geographic area. See S.D. Codified Laws §§ 53-9-9.</li> <li>2. Partners may, upon or in anticipation of dissolution of the partnership, agree that none of them will carry on a similar business within the same municipality where the partnership business has been transacted or within a specified part thereof. See S.D.</li> </ol>	An employee may agree with an employer at the time of employment or at any time during his employment ... not to solicit existing customers of the employer within a specified county, city or other specified area for any period not exceeding two years from the date of termination of the agreement, if the employer continues to carry on a like business. See S.D. Codified Laws §§ 53-9-11.	Agreements under which rivals agree not to recruit each other's employees are void under S.D. Codified Laws §§ 53-9-8.	State has adopted Uniform Trade Secrets Act, S.D. Cod. Laws §§ 37-29-1, <i>et seq.</i>

STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
South Dakota	<p>Codified Laws §§ 53-9-10.</p> <p>3. An employee may agree with an employer at the time of employment or at any time during his employment not to engage directly or indirectly in the same business or profession as that of his employer for any period not exceeding two years from the date of termination ..., if the employer continues to carry on a like business. See S.D. Codified Laws §§ 53-9-11.</p> <p>4. An independent contractor who is an insurance producer, defined in §58-1-2(16), and is also a captive agent working exclusively for a single insurance company, may agree to the following:</p> <p>(1) "Not to engage directly or indirectly in the same business or profession as that of the insurer for any period not exceeding two years from the date of termination of the independent contractor's agreement with the insurer; and</p> <p>(2) Not to solicit existing customers of the insurer within a specified county, first or second class municipality or other specified area for any period not exceeding two years from the date of termination of the agreement, if the insurer continues to carry on a like business within the specified area." See S.D. Codified Laws § 53-9-12</p> <p>Where a covenant is overbroad in its application, South Dakota courts have recognized that there is no need to invalidate the entire provision. Instead, they have "adopted a rule of partial enforcement, whereby an overly broad non-compete provision is modified and enforced so as to conform to statutory mandates."<sup>254</sup></p>			
Tennessee	<p>While non-competition covenants are not legally favored in Tennessee, they are enforced if reasonable under the particular circumstances of the case.<sup>255</sup></p> <p>The "rule of reasonableness" governs the enforceability of non-competes in Tennessee. Absent bad faith, courts will enforce such</p>	Rule of reasonableness applies in the non-solicitation setting as well.	Allow no-hire agreements in the context of a sale of business. <sup>258</sup>	State has adopted Uniform Trade Secrets Act, Tenn. Code Ann. §§ 47-25-1701, <i>et. seq.</i>

STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
Tennessee	<p>covenants to the extent necessary to protect the employer's interests without imposing undue hardship on the employee as long as the public interest is not adversely affected.<sup>256</sup></p> <p>Tennessee has expressly abandoned the "Blue Pencil" doctrine, but, instead, courts will modify a covenant based upon a reasonableness standard.<sup>257</sup></p>			
Texas	<p>Texas has a covenant not to compete statute.</p> <p>Generally, "[a] covenant not to compete is enforceable if it is ancillary to or part of an otherwise enforceable agreement at the time the agreement is made to the extent that it contains limitations as to time, geographical area and scope of activity to be restrained that are reasonable and do not impose a greater restraint than is necessary to protect the goodwill or other business interest of the promisee." Tex. Bus. &amp; Com. Code §§ 15.50 (a).</p> <p>Judicial alteration of a non-compete covenant is permitted "[i]f the covenant is found to be ancillary to or part of an otherwise enforceable agreement but contains limitations as to time, geographical area or scope of activity to be restrained that are not reasonable and impose a greater restraint than is necessary to protect the goodwill or other business interest of the promise ...." Tex. Bus. &amp; Com. Code §§ 15.51(c) In such a case, "the court shall reform the covenant to the extent necessary to cause the limitations contained in the covenant as to time, geographical area and scope of activity to be restrained to be reasonable and to impose a restraint that is not greater than necessary to protect the goodwill or other business interest of the promisee and enforce the covenant as reformed[.]" Tex. Bus. &amp; Com. Code §§ 15.51(c)</p>	<p>Same statutory framework applicable as in the case of a non-compete.<sup>259</sup></p>	<p>No-hire agreements are invalid when individual whose commercial activities are being restricted did not enter into the agreement freely.<sup>260</sup></p>	<p>Courts rely on the Restatement of Torts §§ 757, comment 6, to assess if something is a trade secret.<sup>261</sup></p>
Utah	<p>To be enforceable:</p> <ol style="list-style-type: none"> <li>1. the non-compete must be supported by consideration;</li> <li>2. no bad faith may be shown in the negotiation of the contract;</li> </ol>	<p>Treated the same as non-competes.<sup>263</sup></p>	<p>No applicable law.</p>	<p>State has adopted Uniform Trade Secrets Act, Utah Code Ann. §§ 13-24-1, <i>et seq.</i></p>

STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
Utah	<p>3. the covenant must be necessary to protect the goodwill of the business; and</p> <p>4. the covenant must be reasonable in its restrictions in terms of time and geographic area.<sup>262</sup></p> <p>Whether or not a court may alter a covenant by utilizing a judicial "Blue Pencil" or under another standard for that matter, is still an open question in Utah.</p>			
Vermont	<p>Covenants not to compete are enforced "subject to scrutiny for reasonableness and justification."<sup>264</sup></p> <p>The former employer must show the following:</p> <ol style="list-style-type: none"> <li>1. that the covenant is not contrary to public policy;</li> <li>2. that the covenant is necessary for the protection of the employer; and</li> <li>3. that the covenant is not unnecessarily restrictive of the rights of the employee.<sup>265</sup></li> </ol> <p>To that end, non-competes must contain time, geographic and/or industry limitations.<sup>266</sup> Vermont law on the reformation of defective covenants is uncertain. The Vermont Supreme Court has opined, "This Court will construe contracts but it will not make them for the parties .... The courts must enforce contracts as written .... The law presumes that the parties meant, and intended to be bound by, the plain and express language of their undertaking."<sup>267</sup> However, the Second Circuit, for example, has expressed a different opinion.<sup>268</sup> That court determined that the Vermont Supreme Court would follow the reasonableness approach to reform an overbroad covenant.<sup>269</sup></p>	<p>No Vermont authorities reflect that the same test that is applied to non-competes is applied to non-solicitation provisions.</p>	<p>No applicable law.</p>	<p>State has adopted Uniform Trade Secrets Act, 9 Vt. Stat. Ann. §§ 4601, <i>et seq.</i></p>
Virginia	<p>The employer has the burden of proving that the restraint is reasonable and the contract is valid. Because the restraint sought to be imposed restricts the employee in the exercise of a gainful occupation, it is a restraint in trade and it is carefully examined and strictly construed before the covenant will be enforced.<sup>270</sup> Specifically, the employer must show: (1) the</p>	<p>A covenant that bars only customer solicitation by its terms may not operate to bar a former employee from responding to selling to the former employer's customers who he did not solicit but who, instead, solicited him. This same result would not be reached if the former</p>	<p>No-switching agreement is "neither a covenant not to compete nor a restrictive covenant between employer and employee." The court held that the agreement was a contract in restraint of trade and "will be held void as against public policy if it is unreasonable as between the parties or is injurious to the</p>	<p>State has adopted the Virginia Uniform Trade Secrets Act, Va. Code §§ 59.1-336, <i>et seq.</i></p>

STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
Virginia	<p>restraint, from the standpoint of the employer, is reasonable in that it is no greater than necessary to protect some legitimate business interest; (2) the restraint, from the standpoint of the employee, is not unduly harsh and oppressive in curtailing the employee's legitimate efforts to earn a livelihood; and (3) the restraint is reasonable from the standpoint of sound public policy.<sup>271</sup></p> <p>Non-competes are upheld only when employees are prohibited from competing directly with the former employer or through employment with a direct competitor of the former employer. Protectable interests include: trade secrets or other confidential information; protection from detrimental competition; and customer contacts and knowledge of methods of operation.<sup>272</sup></p> <p>Virginia courts do not Blue Pencil overbroad agreements to make them enforceable.<sup>273</sup></p>	<p>employee had signed a non-compete and a non-solicit.<sup>274</sup></p>	<p>public." Contract will be deemed void if unreasonable between the parties or injurious to the public, even if affected employees are unaware of the covenant.<sup>275</sup></p>	
Washington	<p>An employer has a right to protect information or client relationships that pertain to its business. Covenants may be necessary to protect a business from the unfair advantage a former employee may have by reason of personal contact with the employer's customers and information "as to the nature and character of the business and the names and requirements of the customers" during his employment.<sup>276</sup></p> <p>A reasonable covenant will be enforced. Reasonableness is determined by considering: (1) whether the restraint is necessary for the protection of the business or good will of the employer; (2) whether it imposes upon the employee any greater restraint than is reasonably necessary to secure the employer's business or goodwill; and (3) whether the degree of injury to the public is such loss of the service and skill of the employee as to warrant non-enforcement of the covenant.<sup>277</sup></p> <p>If a covenant is overbroad, the courts will partially enforce or re-word the provision, provided that enforcement of the covenant would</p>	<p>Non-solicitation covenants that reasonably protect employer from immediate competition from employee who was given access to customers' internal operations and business relationship are enforceable.<sup>279</sup></p>	<p>No applicable law.</p>	<p>State has adopted the Uniform Trade Secrets Act, Rev. Code Wash. §§ 19.108, <i>et seq.</i></p>



STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
Washington	not otherwise create an injustice to the parties or injure the public. <sup>278</sup>			
West Virginia	<p>To show an enforceable covenant,<sup>280</sup> the employer must prove: (1) consideration, ancillary to a lawful contract; (2) that the covenant is reasonable; and (3) it does not harm the public.<sup>281</sup></p> <p>The covenant must be reasonably necessary for the protection of a legitimate interest of the employer and must not impose an undue hardship on the employee.<sup>282</sup></p> <p>An employer has a protectable interest in: (1) the employer's direct investment in skills the employee acquired in the course of employment; (2) confidential or unique information, i.e., trade secrets and customer lists; and (3) goodwill.<sup>283</sup></p> <p>When the former employer meets its burden of demonstrating that it had a legitimate interest that the covenant at issue was designed to protect, the covenant becomes presumptively enforceable.<sup>284</sup></p> <p>The courts are permitted to "that limited measure of relief within the terms of the non-competitive agreement which is reasonably necessary to protect [its] legitimate interests, will cause no undue hardship on the [employee] and will not impair the public interest."<sup>285</sup></p>	Non-solicitation provisions that are less restrictive and designed to prevent the solicitation of any employer's customers or using employer's confidential information while competing in the same market will be enforced. <sup>286</sup>	No applicable law.	<p>State has adopted the Uniform Trade Secrets Act, W. VA. Code. §§ 47-22-1, <i>et seq.</i></p> <p>Employee who retained and disseminated confidential documents that contained: customer lists, potential customer lists, pricing information, profit margins, costs, personnel records and financial information had misappropriated trade secrets.<sup>287</sup></p>
Wisconsin	<p>"A covenant...within a specified territory and during a specified time is lawful and enforceable only if the restrictions imposed are reasonably necessary for the protection of the employer. Any covenant...imposing an unreasonable restraint is illegal, void and unenforceable even as to so much of the covenant or performance as would be a reasonable restraint." Wis. Stat. Ann. §§ 103.465.</p> <p>The common law rule of reason, and not Wis. Stat. § 804.01(5)(c), apply to covenants not to compete in stock option agreements.<sup>288</sup></p>	Same showing as required for non-compete agreements. A customer restriction may substitute for a territorial limitation. <sup>291</sup>	No-hire agreements are not enforceable in Wisconsin where the employee subject to the agreement was not aware of the restriction at the time he or she was hired OR if the employee did not consent to the restriction. In <i>Heyde Co. v. Dove Healthcare</i> , the Supreme Court of Wisconsin held that such agreements are subject to Wisconsin statute (Wis. Stat. §§ 103.465) ("Restrictive covenants in employment contracts") because they "essentially deal[] with restraint of trade" by having the effect of restricting employment	State has adopted to Uniform Trade Secrets Act, Wis. Stat. Ann. §§ 134.90, <i>et seq.</i>

STATE	NON-COMPETE	NON-SOLICITATION	NON-HIRE/ "RAIDING"	CONFIDENTIAL INFORMATION
Wisconsin	<p>An enforceable covenant will: (1) be necessary for the protection of the employer; (2) provide a reasonable time restriction; (3) provide a reasonable territorial limitation; (4) not be harsh or oppressive to the employee; and (5) not be contrary to public policy.<sup>289</sup></p> <p>Covenants will only be enforced to the extent reasonably necessary to protect a legitimate business interest. Protectable interests include: relationships with customers; trade secrets; and business-related information.</p> <p>Restrictive covenants are prima facie suspect, and, thus, are closely scrutinized.<sup>290</sup></p>		<p>of an organization's employees.<sup>292</sup> Wis. Stat. §§ 103.465 does not protect an employer from others raiding its employees; rather, the statute and corresponding case law encourages the mobility of workers. Therefore, so long as a departing employee takes with him or her no more than his or her experience and intellectual development that has ensued while being trained by another, and no trade secrets or processes are wrongfully appropriated, the law affords no recourse to the employer for losing the employees.<sup>293</sup></p>	
Wyoming	<p>State adopted a rule of reason inquiry from the Restatement of Contracts testing the validity of a non-compete. A restraint is only reasonable if it: (1) is no greater than is required for the protection of the employer; (2) does not impose undue hardship on the employee; and (3) is not injurious to the public.<sup>294</sup></p> <p>A valid covenant not to compete requires a showing that it is: (1) in writing; (2) part of a contract of employment; (3) based on reasonable consideration; (4) reasonable in durational and geographical limitations; and (5) not against public policy.<sup>295</sup></p> <p>Protectable interests include: (1) trade secrets that have been communicated to the employee during the course of employment; (2) confidential information communicated by the employer to the employee; and (3) any special influence obtained by the employee during the course of employment over the employer's customers.<sup>296</sup></p> <p>Wyoming allows "Blue-Penciling."<sup>297</sup></p>	<p>Relief may be granted restricting the use of knowledge of customers where there is special influence.<sup>298</sup></p>	<p>No applicable law.</p>	<p>State adopted the Uniform Trade Secrets Act, Wyo. Stat. Ann. §§ 40-24-101, <i>et seq.</i></p>

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- <sup>1</sup> *Clark v. Liberty National Life Ins., Co.*, 592 So. 2d 564 (Ala. 1992); *Eastis v. Veterans Oil, Inc.* 2010 WL 5130629 (Ala. Civ. App. Dec. 17, 2010).
- <sup>2</sup> *Sheffield v. Stoudenmire*, 553 So.2d 125 (Ala. 1989).
- <sup>3</sup> *Nobles-Hamilton v. Thompson*, 883 So.2d 1247 (Ala. Civ. App. 2003).
- <sup>4</sup> *Westwind Technicians, Inc. v. Jones* 925 So.2d 166 (Ala. 2005).
- <sup>5</sup> *Ex Parte Howell Engineering & Surveying, Inc.*, 981 So. 2d 413 (Ala. 2006) (as partial restraints, non-solicits may not violate statute).
- <sup>6</sup> *Id.* (no-hire provision in question did not prevent employee from practicing her trade or profession, she, thus, continued to have an opportunity for meaningful employment); *White Sands Group, LLC v. PRS II, LLC*, 32 So. 3d 5 (Ala. 2007).
- <sup>7</sup> *Birmingham Television Corp. v. DeRamus*, 502 So. 2d 761, 766 (Ala. Civ. App. 1986).
- <sup>8</sup> *McDonald's Corp. v. Moore*, 243 F. Supp. 255, 258 (S.D. Ala. 1965).
- <sup>9</sup> *Data Management, Inc. v. Greene*, 757 P.2d 62 (Alaska 1988).
- <sup>10</sup> *Id.*
- <sup>11</sup> *Id.*; *Dominic Wenzell, D.M.D. P.C. v. Ingram*, 228 P 3d 103 (Alaska 2010).
- <sup>12</sup> *Metcalfe Investments, Inc v. Garrison*, 919 P.2d 1356 (Alaska 1996).
- <sup>13</sup> *Hilb, Rogal & Hamilton Co. of Arizona, Inc. v. McKinney*, 946 P.2d 464 (Ariz. Ct. App. 1997); *Zep, Inc. v. Brady Chem. Co., Inc.*, 2010 WL 1381896 (D. Ariz. April, 2010).
- <sup>14</sup> *Valley Med. Specialists v. Farber*, 982 P.2d 1277 (Ariz. 1999); *Bryceland v. Northey*, 160 Ariz. 213 (App. 1989); *Highway Technologies, Inc. v. Porter*, 2009 WL 1835114 (D. Ariz. June 26, 2009); *Joshua David Mellberg LLC v. Will*, 96 F. Supp. 3d 953 (D. Ariz. 2015).
- <sup>15</sup> *Bryceland, supra*; *Highway Technologies, supra*.
- <sup>16</sup> *Olliver/Pilcher Ins. v. Daniels*, 148 Ariz. 530 (1986) (adopting the Restatement (Second) of Contracts); *Zep, supra*.
- <sup>17</sup> *Bryceland, supra*; *Highway Technologies, supra*.
- <sup>18</sup> *Motorola v. Fairchild Camera and Instrument Corp.*, 366 F. Supp. 1173, 1180 (D. Ariz. 1973).
- <sup>19</sup> *Nouveau Riche Corp. v. Tree*, 2008 U.S. Dist. LEXIS 105577, at \*23-24 (D. Ariz. 2008) (denying plaintiff's application for temporary restraining order and preliminary injunction because plaintiff failed to prove overly broad anti-piracy agreement was reasonable and enforceable).
- <sup>20</sup> *Sec. Title Agency, Inc. v. Pope*, 200 P.3d 977, 990 (Ariz. Ct. App. 2008); *Taser Intern., Inc. v. Ward*, 231 P 3d 921 (Ariz. Ct. App. 2010).
- <sup>21</sup> *Moore v. Midwest Distribution, Inc.*, 76 Ark. App. 397 (2002); *Owens v. Penn Mutual life Ins., Co.*, 851 F.2d 1053 (8<sup>th</sup> Cir. 1988); *Church Mut. Ins. Co. v. Copenhaver*, 2010 WL 2105623 (E.D. Ark. May 24, 2010).
- <sup>22</sup> *Allen v. Johar, Inc.*, 823 S.W.2d 824 (Ark. 1992).
- <sup>23</sup> *Moore v. Midwest Distribution, Inc.*, 76 Ark. App. 397 (2002).
- <sup>24</sup> *Wright Medical Group, Inc. v. Darr*, 2010 WL 3168259 (E.D. Ark. Aug. 6, 2010).
- <sup>25</sup> *Vigoro Industries, Inc. v. Cleveland Chem. Co. of Ark.*, 866 F. Supp. 1150, 1166 (E.D. Ark. 1994) (finding no improper interference where plaintiff's former employee who was a supervisor left to work for defendant competitor, invited all of plaintiff's at-will employees to join him, and they did), *rev'd on other grounds*, 82 F.3d 785 (8<sup>th</sup> Cir. 1996).
- <sup>26</sup> *Vigoro Industries, Inc. v. Crisp*, 82 F.3d 785 (8<sup>th</sup> Cir. 1996).
- <sup>27</sup> *Edwards v. Arthur Anderson*, 44 Cal. 4<sup>th</sup> 937 (2008); *Dowell v. Bioscience Webster, Inc.*, 179 Cal. App. 4<sup>th</sup> 564 (2007).
- <sup>28</sup> *Kolani v. Gluska*, 64 Cal. App. 4<sup>th</sup> 402 (1998); *Applied Materials, Inc. v. Advanced Micro-Fabrication Equip. Co.*, 630 F. Supp. 2d 1084 (M.D. Cal. 2009).

- <sup>29</sup> *Moss, Adams & Co. v. Shilling*, 179 Cal. App. 3d 124, (1986); *ReadyLink Healthcare v. Cotton*, 126 Cal. App. 4th 1006, 1021-22 (2005) ("if a former employee uses a former employer's trade secrets or otherwise commits unfair competition, California courts recognize a judicially created exception to section 16600 and will enforce a restrictive covenant in such a case."); *Kovesky v. Kovesky*, 2010 WL 3619826 (N.D. Cal. Sep. 13, 2010).
- <sup>30</sup> *Loral Corp. v. Moyes*, 174 Cal. App. 3d 268, 280 (Cal. Ct. App. 1985) (holding that a contract including a noninterference clause was not void on its face); *Thomas Weisel Partners, LLC v. BNP Paribas*, 2010 WL 546497 (N.D. Cal. Feb. 10, 2010) (Provision unenforceable "to the extent that it attempts to restrain a person from hiring his former colleagues after the cessation of employment with their employer.")
- <sup>31</sup> *Diodes, Inc. v. Franzen*, 260 Cal. App. 2d 244, 255 (Cal. Ct. App. 1968) (citing *Buxbom v. Smith*, 23 Cal. 2d 535, 547 (1944)); *Reeves v. Hanlon*, 33 Cal. 4th 1140, 1152-53 (Cal. 2004) (holding that a plaintiff may recover damages for intentional interference with an at-will employment relation by pleading and proving that the defendant engaged in an independently wrongful act that induced an at-will employee to leave the plaintiff).
- <sup>32</sup> *Self Directed Placement Corp. v. Control Data Corp.*, 1992 U.S. App. LEXIS 29992, \*5 (9th Cir. 1992) (finding there was no unfair competition where defendant employed plaintiff's former employee and plaintiff had failed to secure a non-competition agreement from the former employee during her employment).
- <sup>33</sup> *Hollingsworth Solderless Terminal Co. v. Turley*, 622 F.2d 1324 (9th Cir. 1980); *ReadyLink, supra*.
- <sup>34</sup> *National Graphics Co. Dilley*, 681 P.2d 546 (Colo. Ct. App. 1984).
- <sup>35</sup> *Phoenix Capital, Inc. v. Dowell*, 2007 WL 2128330 (Colo. App. July 26, 2007).
- <sup>36</sup> *Occusafe, Inc. v. EG&G Rocky Flats, Inc.*, 54 F.3d 618, 623 (10th Cir. 1995) (citing Restatement (Second) of Torts § 768(1) (1977)); *Harris Group, Inc. v. Robinson*, 209 P. 3d 1188 (Colo. App. 2009).
- <sup>37</sup> *Management Recruiters of Boulder v. Miller*, 762 P.2d 763 (Colo. Ct. App. 1988).
- <sup>38</sup> *Scott v. General Iron & Welding Co.*, 171 Conn. 132 (1976); *Drummond and American LLC v. Share Corp.*, 2009 WL 3838800 (D.Conn. Nov. 12, 2009); *Prezio Health Inc. v. Schenk*, No. 3:13-CV-01463-WWE, 2016 WL 1367726, at \*1 (D. Conn. Apr. 6, 2016).
- <sup>39</sup> *Robert S. Weiss & Assoc. v. Wiederlight*, 208 Conn. 525 (1988); *Drummond and American LLC, supra*.
- <sup>40</sup> *Grayling Assoc. Inc. v. Villota*, 04-CBAR-1972 (Conn. Super. Ct. July 12, 2004).
- <sup>41</sup> *Robert S. Weiss & Assoc., supra*.
- <sup>42</sup> *Webster Financial Corp. v. McDonald*, 2009 Conn. Super. LEXIS 169, \*30-31 (Conn. Super. Ct. 2009) (citing *Rioux v. Barry*, 283 Conn. 338, 351 (2007)).
- <sup>43</sup> *Id.* at 31-32 (striking plaintiff's claim that defendant tortiously interfered with plaintiff's relationship with its employees where plaintiff failed to plead any injury).
- <sup>44</sup> *New England Ins. Agency*, 1991 WL 65766 (Conn. Super. Ct. 1991).
- <sup>45</sup> *Faw, Casson & Co. v. Cranston*, 375 A.2d 463 (Del. Chanc. Ct. 1977); *American Homepatient, Inc. v. Collier*, 2006 WL 1134170 (Del. Chanc. Ct. 2006).
- <sup>46</sup> *American Homepatient, supra*.
- <sup>47</sup> *Knowles-Zeswitz Music, Inc. v. Cara* 260 A. 2d 171 (De. Chanc. Ct. 1969).
- <sup>48</sup> *Research & Trading Corp., v. Pfuhl*, 1992 Del. Ch. LEXIS 234, \*32 (Ct. Chanc. De. 1992).
- <sup>49</sup> *Hough Assoc., Inc. v. Hill*, 2007 Del. Ch. LEXIS 5 (Del. Ch. 2007) (granting preliminary injunction where former employee and supervisor solicited his subordinates to transfer with him to the competitor's employ despite clause in non-competition agreement prohibiting such conduct).
- <sup>50</sup> *National Chemsearch Corp. of N.Y. v. Hanker*, 309 F. Supp. 1278 (D.D.C. 1970); *Ellis v. James V. Hurson Assocs.*, 565 A.2d 615 (D.C. Ct. App. 1989); *Dyer v. Bilaal*, 983 A.2d 349 (D.C. 2009).
- <sup>51</sup> *Ellis, supra*; *Hospitality Staffing Solutions, LLC v. Reyes*, 736 F. Supp. 2d 192 (D.D.C. 2010).
- <sup>52</sup> *Ellis, supra*.
- <sup>53</sup> *Mercer Mgmt. Consulting, Inc. v. Wilde*, 920 F. Supp. 219, 237-38 (D.D.C. 1996) (finding two of three defendants liable for breach of non-competition agreement prohibiting them from hiring employer's employees within one year of the termination of defendants' employment).
- <sup>54</sup> *Ideal Elec. Sec. Co. v. Scientech, Inc.*, 1998 U.S. Dist. LEXIS 10484, \*14 (D.D.C. 1998) (granting defendant's motion for summary judgment on plaintiff's breach of contract claim for soliciting plaintiff's employees).

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<sup>55</sup> Florida Statutes Annotated §542.335.

<sup>56</sup> *Id.* at 542.335(b).

<sup>57</sup> 542.335(1)(g)(1); for pre-1996 case law, see *Carnahan v. Alexander Proudfoot Co.*, 581 So.2d 184, 185 (Fla. 4<sup>th</sup> Dist. Ct. app. 1991).

<sup>58</sup> Fla. Stat. Ann. 542.335(1)(c).

<sup>59</sup> Fla. Stat. Ann. 542.331.

<sup>60</sup> *Balasco v. Gulf Auto Holding, Inc.*, 707 So. 2d 858, 860 (Fla. Dist. Ct. App. 1998) (non-piracy agreement enforced as necessary to protect employer's substantial investment in specialized training for sales staff).

<sup>61</sup> *Sun Life Assurance Co. of Canada v. Coury*, 838 F. Supp. 586, 591 (S.D. Fla. 1993).

<sup>62</sup> *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dunn*, 191 F. Supp. 2d 1346, 1351 (M.D. Fla. 2002) (securities brokerage's client lists were trade secrets where the employer took reasonable efforts to maintain the secrecy of such information.); *Echo Star Satellite v. Viewtech, Inc.*, 2010 WL 2822109 (S.D. Fla. Jul. 16, 2010).

<sup>63</sup> *Sysco Food Servs. Of Atlanta, Inc. v. Shupp*, 225 Ga. App. 584 (1997); *Ceramic & Metal Coatings Corp. v. Hizer*, 242 Ga. App. 391 (2000); *Dent Wizard Int'l Corp. v. Brown*, 272 Ga. App. 553 (2005).

<sup>64</sup> *W.R. Grace & Co. v. Mouyal*, 262 Ga. 464 (1992); *Habif, Arogeti & Wynne, P.C. v. Baggett*, 231 Ga. App. 289 (1998); *H & R Block E. Enters., Inc. v. Morris*, 606 F.3d 1285, 1293 (11<sup>th</sup> Cir. 2010).

<sup>65</sup> *Chaichimansour v. Pets are People Too, No. 2, Inc.*, 226 Ga. App. 69 (1997); *Azzouz v. Prime Pediatrics, P.C.*, 296 Ga. App. 602, 606 (2009).

<sup>66</sup> *Wright v. Power Industry Consultants, Inc.*, 234 Ga. App. 833, 839 (Ga. Ct. App. 1998) *overruled on other grounds by Advance Technology Consultants, Inc. v. Roadtrac, LLC*, 250 Ga. App. 317, 321 (Ga. Ct. App. 2001).

<sup>67</sup> *Architectural Mfg. Co. v. Airotec, Inc.*, 119 Ga. App. 245 (Ga. Ct. App. 1969) (immediately after defendants resigned, they made a concerted attempt to persuade substantially all of plaintiff's sales force to leave plaintiff's employ, defendants were successful as to over 1/3 of the workforce, and it resulted in injury to plaintiff).

<sup>68</sup> 10-1-761(4); *Avnet, Inc. v. Wyle Labs. Inc.*, 263 Ga. 615 (1993); *Paramount Tax & Accounting, LLC v. H & R Block E. Enters., Inc.*, 299 Ga. App. 596, 603-04 (Ga. Ct. App. 2009).

<sup>69</sup> *UARCO, Inc. v. Lam*, 18 F. Supp. 2d 1116 (D. Haw. 1998).

<sup>70</sup> *The 7's Enter., Inc. v. Del Rosario*, 111 Haw. 484 (2006)(modifying a non-compete from the entire state of Hawaii to Honolulu in order to render it enforceable and not fatally overbroad).

<sup>71</sup> *Id.* (case analyzes a non-competition agreement more than non-solicitation agreement, however, case addresses geographic restrictions).

<sup>72</sup> *UARCO Inc. v. Lam*, 18 F. Supp. 2d 1116, 1124-25 (D. Haw. 1998) (concluding that the doctrine of unclean hands did not bar plaintiffs from obtaining a preliminary injunction where it was unclear whether competitors could agree not to hire each other's employees).

<sup>73</sup> *Dick v. Geist*, 107 Idaho 931 (Ct. App. 1985).

<sup>74</sup> *Insurance Assocs. Corp. v. Hansen*, 116 Idaho 948 (1989); *Geist, supra*.

<sup>75</sup> *Freiburger v. J-U-B Engineers, Inc.*, 141 Idaho 415 (2005).

<sup>76</sup> *Freiburger, supra*; *Insurance Ctr., Inc. v. Taylor*, 94 Idaho 896 (1972).

<sup>77</sup> *McCandless v. Carpenter*, 123 Idaho 386 (1993).

<sup>78</sup> *Reliable Fire Equipment Co. v. Arredondo*, 965 N.E.2d 393 (Ill. 2011); *Bankers Life and Cas. Co. v. Miller*, 2015 WL 515965 (N.D. Ill. Feb. 6, 2015).

<sup>79</sup> *Reliable Fire, supra*.

<sup>80</sup> *Gillespie v. Carbondale & Marion Eye Centers*, 251 Ill. App. 3d 625 (5<sup>th</sup> Dist. 1993); *Brown & Brown, Inc. v. Ali*, 592 F. Supp. 2d 1009, 1046 (N.D. Ill. 2009).

<sup>81</sup> *Lawrence & Allen, Inc. v. Cambridge Human Resources Group, Inc.*, 226 Ill. Dec. 331 (Ct App. 2d Dist. 1997); *Montel Aetnastak, Inc. v. Miessen*, 998 F. Supp. 2d 694 (N.D. Ill. 2014).

<sup>82</sup> *Arpac Corp. supra*; *Unisource Worldwide Inc. v. Carrara*, 244 F. Supp. 2d 977, 986 (C.D. Ill. 2003).

<sup>83</sup> *Unisource, supra*.



<sup>84</sup> *Lawrence & Allen, supra.*

<sup>85</sup> *In re: Uniservices*, 517 F.2d 492 (7<sup>th</sup> Cir. 1975); *Norlund v. Faust*, 675 N.E.2d 1142, 1154 (Ind. Ct. App. 1997), *opinion clarified on rehearing* 678 N.E.2d 421 (Ind. Ct. App. 1997); *Hahn v. Drees, Peugini & Co.*, 581 N.E.2d 457, 460 (Ind. Ct. App. 2d Dist. 1991); *Distrib. Serv., Inc. v. Stevenson*, 16 F. Supp. 3d 964, 970 (S.D. Ind. 2014).

<sup>86</sup> *Norlund*, 675 N.E.2d at 1154; *GEI, Inc. v. Weston*, 2004 WL 1662187 (Ind. Sup. Ct. 2004); *Distrib. Serv., Inc. v. Stevenson*, 16 F. Supp. 3d 964, 970 (S.D. Ind. 2014).  
<sup>87</sup> *Norlund, supra.*

<sup>88</sup> *Liocci v. Cardinal Associates, Inc.*, 445 N.E.2d 556, 561 (Ind. 1983); *Bridgestone/Firestone, Inc. v. Lockhart*, 5 F. Supp. 2d 667, 683 (S.D. Ind. 1998); *Clark's Sales & Servs., Inc. vs. Smith*, 4 N.E.3d 772 (Ind. Ct. App. 2014).

<sup>89</sup> *Bridgestone/Firestone, Inc. supra*; *Clark's Sales & Servs., Inc., supra.*

<sup>90</sup> *Liocci, supra*; *Pathfinder Communications Corp. v. Macy*, 795 N.E.2d 1103 (Ind. Ct. App. 2003); *Clark's Sales & Servs., Inc. vs. Smith*, 4 N.E.3d 772 (Ind. Ct. App. 2014).

<sup>91</sup> *Hahn, supra*; *Clark's Sales & Servs., Inc.*, 4 N.E.3d at 782.

<sup>92</sup> *Duneland Emergency Physician's Medical Group, P.C. v. Brunk*, 723 N.E.2d 963 (Ind. 2000) (holding that medical corporation that provided physicians to a hospital (its client) could not prohibit solicitation of hospital's patients by doctor employee of medical corporation).

<sup>93</sup> *McCart v. H & R Block, Inc.* 470 N.E.2d 756 (Ind. Ct. App. 1984).

<sup>94</sup> *McGlothen v. Heritage Environmental, Services, LLC*, 705 N.E.2d 1072 (Ind. Ct. App. 4<sup>th</sup> Dist. 1999).

<sup>95</sup> As to covenants applicable in the franchise context, *see* Iowa Franchise Act, §523H, *et seq.*

<sup>96</sup> *Lamp v. American Prosthetics*, 379 N.W.2d 909, 910 (Iowa 1986); *Dain Bosworth, Inc. v. Brandhorst*, 356 N.W.2d 590, 593 (Iowa Ct. App. 1984); *Neville v. Milliron*, 2013 WL 5758195 (Iowa Ct. App. Oct. 23, 2013).

<sup>97</sup> *Pro Edge v. Gue*, 374 F. Supp. 2d 711, 740 (N.D. Iowa 2005).

<sup>98</sup> *Id.*; *Lamp, supra*; *Neville v. Milliron*, 2013 WL 5758195 (Iowa Ct. App. Oct. 23, 2013).

<sup>99</sup> *Pro Edge, supra* (“Covenants not to compete are unreasonably restrictive unless they are tightly limited as to both time and area.”).

<sup>100</sup> *Ehlers v. Warehouse Co.*, 188 N.W.2d 368, 371 (Iowa 1971) (*adopting New Jersey's Solari Industries, Inc. v. Malady*, 55 N.J. 571 (1970)).

<sup>101</sup> *Moore Bus. Forms, Inc. v. Wilson*, 953 F. Supp. 1056 (N.D. Iowa 1996).

<sup>102</sup> *Dain Bosworth, Inc.*, 356 N.W.2d 590 at 593 (Ct. App. Iowa 1984).

<sup>103</sup> *Pathology Consultants v. Gratton*, 343 N.W.2d 428 (Iowa 1984).

<sup>104</sup> *Uncle B's Bakery, Inc. v. O'Rourke*, 920 F. Supp. 1405 (N.D. Iowa 1996).

<sup>105</sup> *Eastern Distrib. Co. V. Flynn*, 222 Kan. 666, 671 (1977); *Weber v. Tillman*, 913 P.2d 84, 91 (Kan. 1996); *Wichita Clinic, P.A. v. Louis*, 39 Kan. App. 2d 848, 855-56 (Kan. 2008).

<sup>106</sup> *Weber*, 913 P.2d at 89; *Centr. Kan. Med. Ctr. v. Hatesohl*, 366 P.3d 1104 (Kan. 2016).

<sup>107</sup> *Idbeis v. Wichita Surgical Specialists, P.A.*, 279 Kan. 755, 113 P.3d 81 (Kan. 2005).

<sup>108</sup> *Varney Bus. Servs., Inc. v Pottroff*, 59 P. 3d 1003, 1015 (Kan. 2002); *Puritan-Bennett Corp. v. Rider*, 8 Kan. App. 2d 311 (1983); *Chem-Trol, Inc. v. Christensen*, 2009 WL 331625 (D. Kan. Feb. 10, 2009).

<sup>109</sup> *Universal Engraving v. Duarte*, 519 F. Supp. 2d 1140, 1154 (D. Kan. 2007).

<sup>110</sup> *Graham v. Cirocco*, 31 Kan. App. 2d 563, 572 (2003); *see also Puritan Bennett Corp, supra.*

<sup>111</sup> *H & R Block v. Lovelace*, 208 Kan. 538, 546-547 (1972).

<sup>112</sup> *Cirocco, supra.*

<sup>113</sup> *Curtis, 1000 Inc. v. Pierce*, 905 F. Supp. 898, 902 (D. Kan. 1995); *MGP Ingredients, Inc. v. Mars, Inc.*, 2007 WL 3274800, at \*3 (D. Kan. Nov. 6, 2007) (engaging in extensive fact-based analysis to determine whether the misappropriated information constituted trade secrets).

- <sup>114</sup> *Hammons v. Big Sandy Claims Serv.*, 567 S.W. 2d 313 (Ky. Ct. App. 1978).
- <sup>115</sup> *Hal v. Williard & Wollsey, P.S.C.*, 471 S.W. 2d 316, 317-318 (Ky. Ct. App. 1971); *Genesis Med. Imaging, Inc. v. DeMars*, 2008 WL 4180263, at \*7 (E.D. Ky. Sep. 5, 2008).
- <sup>116</sup> *Central Adjustment Bureau v. Ingram Assocs.*, 622 S.W. 2d 681, 686 (Ky. Ct. App. 1981); *ISCO Ind., Inc. v. Shugart*, 2014 WL 2218116 (W.D. Ky. May 28, 2014).
- <sup>117</sup> *Auto Channel, Inc. v. Speedvision Network, LLC*, 144 F. Supp. 2d 784, 791 (W.D. Ky. 2001) (precluding the formations of a contract without these express or implied terms).
- <sup>118</sup> *Calhoun v. Everman*, 242 S.W.2d 100, 102 (Ky. 1951); *Mountain Comprehensive Health Corp. v. Gibson*, 2015 WL 1194508 (Ky. Mar. 13, 2015).
- <sup>119</sup> *Hammons*, 567 S.W. 2d at 315.
- <sup>120</sup> *Borg-Warner Protective Serv., Corp. v. Guardsmark, Inc.*, 946 F. Supp. 495, 501-502 (E.D. Ky 1996); *Gardner Denver Drum LLC v. Goodier*, 2006 WL 1005161, at \*9 (W.D. Ky. April 14, 2006).
- <sup>121</sup> *Cellular One Inc. v. Boyd*, 653 So. 2d 30 (La Ct. App. 1<sup>st</sup> Cir.), writ denied, 660 So., 2d 449 (La. 1995); *Innovative Manpower Solutions, LLC v. Ironman Staffing, LLC*, 929 F. Supp. 2d 597, 616 (W.D. La. 2013).
- <sup>122</sup> *Dixie Parking Serv., Inc. v. Hargrove*, 691 So. 2d 1316, 1319 (LA Ct. App. 4<sup>th</sup> Cir. 1997).
- <sup>123</sup> *CBD Docuource, Inc. v. Franks*, 934 So. 2d 307, 311 (La Ct. App. 5<sup>th</sup> Cir. 2006).
- <sup>124</sup> *Water Processing Techs., Inc. v. Ridegeway*, 618 So. 2d 533, 536 (La Ct. App. 4<sup>th</sup> Cir. 1993).
- <sup>125</sup> *Millet v. Crump*, 687 So. 2d 132, 135 (La Ct. App, 5<sup>th</sup> Cir. 1996); *USA Ins. Servs., LLC v. Tappel*, 28 So. 3d 419, 424 (La. Ct. App. 5<sup>th</sup> Cir. 2009).
- <sup>126</sup> *Monumental Life Ins. Co. v. Laundry*, 846 So. 2d 798, 800-801 (La Ct. App. 3d Cir. 2003).
- <sup>127</sup> *CDI Corp. v. Hough*, 9 So. 3d 282, 2009 La. App. LEXIS 457 (La. App. 1 Cir. 2009).
- <sup>128</sup> *Bell v. Rimkus Consulting Group, Inc.*, 8 So. 3d 64, writ denied, 7 So. 3d 1198 (La. 4/24/09); 2009 La. App. LEXIS 48 (Ct. App. La. Jan. 13, 2009).
- <sup>129</sup> *Millet*, 687 So. 2d at 135; *S. Ind. Contractors, LLC v. W. Builders of Amarillo, Inc.*, 56 So. 3d 307, 311 (La. Ct. App. 2d Cir. 2010).
- <sup>130</sup> *Chapman & Drake v. Harrington*, 545 A. 2d 645, 646-647 (Me. 1988); *Sisters of Charity Health Sys., Inc. v. Farrago*, 21 A.3d 110 (Sup. Jud. Ct. Me. 2011).
- <sup>131</sup> *Brignull v. Albert*, 666 A. 2d 82, 84 (Me. 1995).
- <sup>132</sup> *Merrill Lynch, Pierce, Fenner & Smith v. Bennert*, 980 F. Supp. 73, 75 (D. Me. 1997).
- <sup>133</sup> *Chapman*, 545 A.2d at 647; *Securadyne Sys., LLC v. Green*, 2014 WL 1334184, at \*5 (D. Me. April 2, 2014).
- <sup>134</sup> *Chapman*, 545 A.2d at 647; *OfficeMax Inc. v. Sousa*, 773 F. Supp. 2d 190, 213-14 (D. Me. 2011).
- <sup>135</sup> *Lord v. Lord*, 454 A.2d 830, 834-835 (Me. 1983).
- <sup>136</sup> *Chapman*, 545 A.2d at 647.
- <sup>137</sup> *Bernier v. Merrill Air Eng'rs*, 770 A. 2d 97, 103 (Me. 2001).
- <sup>138</sup> *Holloway v. Faw, Casson & Co.*, 319 Md. App. 324, aff'd in part and rev'd in part, 572 A.2d 510, 511 (Md. 1990).
- <sup>139</sup> *Becker v. Bailey*, 268 Md. 93 (1973).
- <sup>140</sup> *Source Services. Corp. v. Bogdan*, 1995 LEXIS 3352 (4<sup>th</sup> Cir. 1995) (applying Maryland law); *Hearn Insulation & Improvement Co. v. Bonilla*, No. AW-09-990, 2010 U.S. Dist. LEXIS 79032, 2010 WL 3069953 (D.Md. August 5, 2010)
- <sup>141</sup> *Holloway*, 319 Md. App. at 334.
- <sup>142</sup> *Holloway v. Faw, Casson & Co.*, 78 Md. App. 205 (1989); *Deutsche Post Global Mail, Ltd. V. Conrad*, unpublished, No. 03-2504 (4<sup>th</sup> Cir. Nov. 19, 2004).
- <sup>143</sup> *Padco Advisors, Inc. v. Omdahl*, 179 F. Supp. 2d 600, 608 (D.Md. 2002).
- <sup>144</sup> *Intelus Corp. v. Barton*, 7 F.Supp.2d 635 (D.Md. 1998).
- <sup>145</sup> *Novelty Bias Binding Co. v. Shevrin*, 342 Mass. 714, 716 (1961); *Oxford Glob. Res., Inc. v. Guerriero*, No. CIV.A. 03-12078-DPW, 2003 WL 23112398 (D. Mass. Dec. 30, 2003) (enforcing a non-compete upon a finding of a legitimate business interest of the employer).
- <sup>146</sup> *New England Canteen Service, Inc. v. Ashley*, 372 Mass. 671, 674 (1977).

- <sup>147</sup> *Marine Contractors Co., Inc. v. Hurley*, 365 Mass. 280, 287-88 (1974).
- <sup>148</sup> *Junker v. Plummer*, 320 Mass. 76, 79 (1946).
- <sup>149</sup> *Sherman v. Pfefferkorn*, 241 Mass. 468 (1922); *Boulanger v. Dunkin' Donuts Inc.*, 442 Mass. 635 (2004) (finding adequate consideration to enforce non-compete in a franchisee agreement).
- <sup>150</sup> *Ferrofluidics Corp. v. Advanced Vacuum Components, Inc.*, 968 F.2d 1463, 469 (1<sup>st</sup> Cir. 1992).
- <sup>151</sup> *Sentry Insurance v. Firnstein*, 14 Mass. App. Ct. 706, 707 (1982); *Alexander & Alexander, Inc. v. Danahy*, 21 Mass. App. Ct. 488, 496 N.E.2d 22 (1986).
- <sup>152</sup> *Whitinsville Plaza, Inc. v. Kotseas*, 378 Mass. 85, 102-03 (1962).
- <sup>153</sup> *Folsom Funeral Service, Inc. v. Rodgers*, 6 Mass. App. Ct. 843, 843 (1978); *Wordwave, Inc. v. Owens*, 19 Mass. L. Rptr. 37, 2004 WL 3250472
- <sup>154</sup> *Bowne of Boston, Inc. v. Levine*, 1997 Mass. Super. LEXIS 69 (November 25, 1997).
- <sup>155</sup> *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Ran*, 67 F. Supp. 2d 764 (E.D. Mich. 1999) (applying statute in a non-solicitation agreement).
- <sup>156</sup> *Kallok v. Medtronic, Inc.*, 573 N.W.2d 356, 361 (Minn. 1998).
- <sup>157</sup> *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 799 (Minn. Ct. App. 1993).
- <sup>158</sup> *National Recruiters, Inc. v. Cashman*, 323 N.W.2d 736, 740 (Minn. 1982).
- <sup>159</sup> *H&R Block Tax Services, Inc. v. Peshel*, 2005 WL 450398 (D. Minn.) U.S. Dist. LEXIS 2264.
- <sup>160</sup> *Texas Road Boring Co. of Louisiana-Mississippi v. Parker*, 194 So. 2d 885 (Miss. 1967).
- <sup>161</sup> *Redd Pest Control Co. v. Heatherly*, 248 Miss. 34 (1963).
- <sup>162</sup> *Kennedy v. Metropolitan Life Ins. Co.*, 749 So. 2d 362, 367 (Miss. 2000).
- <sup>163</sup> *Cain v. Cain*, 967 So.2d 654 (Miss. Ct. App. 2007).
- <sup>164</sup> *Stargis Equipment Co., Inc. v. Falcon Indus. Sales Co.*, 930 S.W. 2d 14, 17 (Mo. Ct. App. 1996); *Systematic Business Services, Inc. v. Bratten*, 162 S.W. 3d 41, 49 (Mo. Ct. App. 2005).
- <sup>165</sup> *Cape Mobile Home Mart, Inc. v. Mobley*, 780 S.W. 2d 116, 118 (Mo. Ct. App. 1989).
- <sup>166</sup> *Victoria's Secret Stores, Inc. v. May Dept. Stores Co.*, 157 S.W. 3d 256, 261-262 (Mo. Ct. App. 2004).
- <sup>167</sup> *Easy Returns Midwest, Inc. v. Schultz*, 964 S.W. 2d 450, 453 (Mo. Ct. App. 1989).
- <sup>168</sup> *Mid-States Paint & Chemical Co. v. Herr*, 746 S.W.2d 613, 616 (Mo. Ct. App. 1988).
- <sup>169</sup> *Victoria's Secret*, 157 S.W. 3d at 262.
- <sup>170</sup> *Access Organics, Inc. v. Hernandez*, 341 Mont. 73 (2008).
- <sup>171</sup> *Montana Mountain Products v. Curl*, 327 Mont. 7 (2005); *Dobbins, DeGuire & Tucker, P.C. v. Rutherford, McDonald & Olson*, 218 Mont. 392 (1985).
- <sup>172</sup> *J.T. Miller Co. v. Madel*, 176 Mont. 49 (1978); *Dobbins*, 219 Mont. at 392.
- <sup>173</sup> *Daniels v. Thomas, Dean & Hoskins, Inc.*, 246 Mont. 125, 804 P. 2d 359, 370 (1990).
- <sup>174</sup> *Dumont v. Tucker*, 250 Mont. 417, 420 (1991).
- <sup>175</sup> *J. T. Miller Co. v. Madel*, 176 Mont. 49, 55 (1978); *First American Ins. Agency v. Gould*, 203 Mont. 217, 223 (1983).
- <sup>176</sup> *Maxim Techs. v. Grotbo*, 2006 Mont. Dist. LEXIS 76 (2006); *Maxim Techs.*, 2006 Mont. Dist. LEXIS 76 at \*15.; *Dumont v. Tucker*, 250 Mont. 417, 420 (1991).
- <sup>177</sup> Mont. Code Ann. § 28-2-703.
- <sup>178</sup> *Prof'l Bus. Servs. Co. v. Rosno*, 268 Neb. 99 (2004).
- <sup>179</sup> *Id.*
- <sup>180</sup> *H & R Block Tax Serv., Inc. v. Circle A. Enters., Inc.*, 269 Neb. 411 (2005).
- <sup>181</sup> *Softchoice Corp. v. MacKenzie*, 636 F. Supp.2d 927 (D. Neb. 2009).
- <sup>182</sup> *Huff v. Swartz*, 258 Neb. 820 (2000).
- <sup>183</sup> Neb. Rev. Stat. §§ 87-502(4).



- <sup>184</sup> *Selection Research, Inc. v. Murman*, 230 Neb. 786, 433 (1989)
- <sup>185</sup> *Id.*
- <sup>186</sup> *Hansen v. Edwards*, 83 Nev. 189 (1967); *Jones v. Deeter*, 112 Nev. 291, 913 P.2d 1272 (1996) (contract found unenforceable because non-compete was unreasonable and imposed too great of a hardship).
- <sup>187</sup> *Camco, Inc. v. Baker*, 936 P. 2d 829 (Nev. 1997).
- <sup>188</sup> *Ellis v. McDaniel*, 95 Nev. 455, 459-460 (1979).
- <sup>189</sup> *Concord Orthopaedics Professional Ass'n. v. Forbes*, 142 N. H. 440, 443 (1997); *Merrimack Valley Wood Products., Inc. v. Near*, 52 N.H. 192, 200 (2005).
- <sup>190</sup> *Smith, Batchelder & Rugg v. Foster*, 119 N.H. 679, 683 (1979); *Technical Aid Corp v. Allen*, 591 A.D. 2d 262 (1991).
- <sup>191</sup> *Concord*, 142 N. H. at 444.
- <sup>192</sup> *Merrimack Valley Wood Products, Inc. v. Near*, 52 N.H. 192, 200 (2005).
- <sup>193</sup> *ACAS Acquisitions (Precitech) Inc. v. Hobert*, 155 N.H. 381, 389 (2007); *Concord*, 142 N. H. at 444.
- <sup>194</sup> *Syncom Industries, Inc. v. Wood*, 155 N.H. 73, 80 (2007); *ACAS Acquisitions*, 155 N.H. at 393.
- <sup>195</sup> *Technical Aid*, 591 A.D. 2d at 262.
- <sup>196</sup> *Concord*, 142 N. H. at 444.
- <sup>197</sup> *Coskey's Television & Radio Sales & Service, Inc. v. Foti*, 253 N.J. Super. 626, 636–37 (App. Div. 1992); *The Community Hosp. Group, Inc. v. More*, 183 N.J. 36, 58 (2005).
- <sup>198</sup> *United Board & Carton Corp. v Britting*, 63 N.J. Super. 517, 524 (Ch. Div. 1959).
- <sup>199</sup> *Coskey's*, 253 N.J. Super. at 636–637.
- <sup>200</sup> *Solari Industries, Inc. v. Malady*, 55 N.J. 571 (1970); *Pathfinder, LLC. v. Luck*, 2005 WL 1206848, at \*7 (D.N.J. May 20, 2005).
- <sup>201</sup> *The Community Hosp. Group*, 183 N.J. at 60–64; *Platinum Mgt., Inc. v. Dahms*, 285 N.J. Super. 274, 298 (Law Div. 1995).
- <sup>202</sup> *Platinum Mgt.*, 285 N.J. Super. at 298.
- <sup>203</sup> *Solari*, 55 N.J. at 585.
- <sup>204</sup> *Solari*, 55 N.J. at 576.
- <sup>205</sup> *Eichorn v. AT&T Corp.*, 248 F.3d 131, 145 (3d Cir. 2001).
- <sup>206</sup> *Ingersoll-Rand Co. v. Ciavatta*, 110 N.J. 609, 636 (1988).
- <sup>207</sup> *Nichols v. Anderson*, 43 N.M. 296, 299 (1939).
- <sup>208</sup> *Lovelace Clinic v. Murphy*, 76 N.M. 645, 650–51 (1966).
- <sup>209</sup> *Nichols*, 43 N.M. at 299.
- <sup>210</sup> *Geritrex Corp. v. Dermarite Indus., LLC*, 910 F. Supp. 955, 959 (S.D.N.Y. 1996) (internal citations omitted).
- <sup>211</sup> *Ivy Mar Co. v. C.R. Seasons, Ltd.*, 907 F. Supp. 547, 555 n. 7 (E.D.N.Y. 1995) (internal citations omitted).
- <sup>212</sup> *AM Medica Communications Group v. Kilgallen* 261 F. Supp. 2d 258, 263 (S.D.N.Y. 2003) (“However, the Court declines to exercise such discretion because the contract as a whole overreaches.”); *Heartland Secs. Corp. v. Gerstenblatt*, 2000 WL 303274, at \*10 (S.D.N.Y. March 22, 2000).
- <sup>213</sup> *Veramark Technologies, Inc. v. Bouk*, 10 F. Supp. 3d 395, 404 (W.D.N.Y. 2014); *BDO Seidman v. Hirshberg*, 712 N.E.2d 1220, 1226 (N.Y. 1999).
- <sup>214</sup> *Id.* at 1224.
- <sup>215</sup> *FTI Consulting v. Graves*, 2007 WL 2192200, at \*8 (S.D.N.Y. July 31, 2007).
- <sup>216</sup> *Global Telesystems Inc. v. KPNQWEST*, 151 F. Supp. 2d 478, 481 (S.D.N.Y. 2001).
- <sup>217</sup> *Ashland Mgmt. v. Fanién*, 82 N.Y.2d 395, 407 (1993). See generally New Jersey, *supra*.
- <sup>218</sup> N.C. GEN. STAT. §75-4; *New Hanover Rent-A-Car, Inc. v. Martinez*, 136 N.C. App. 642, 644 (2000).

- <sup>219</sup> *VisionAIR, Inc. v. James*, 167 N.C. App. 504, 508 (2004).
- <sup>220</sup> *United Labs v. Kuykendall*, 370 S.E.2d 375, 380 (N.C. 1988) (internal citations omitted).
- <sup>221</sup> *Hartman v. W.H. Odell and Assocs., Inc.*, 117 N.C. App. 307, 317–18 (1994).
- <sup>222</sup> *Id.* at 311.
- <sup>223</sup> *Sunbelt Rentals Inc. v. Head & Engquist Equipment LLC*, 620 S.E.2d 222, 230–31 (NC Ct. App. 2005).
- <sup>224</sup> N.C. GEN. STAT. §§ 66-152 TO 162.
- <sup>225</sup> *Analog Devices, Inc. v. Michalski*, 157 N.C. App. 462, 468 (2003) (internal citations omitted).
- <sup>226</sup> *Warner & Co. v. Solberg*, 634 N.W.2d 65, 71–73 (N.D. 2001).
- <sup>227</sup> *Brentlinger Enters. v. Curran*, 141 Ohio App. 3d 640, 649 (2001) (internal citations omitted). *But see FirstEnergy Solutions Corp v. Flerick*, 521 Fed. Appx. 521, 528 (6th Cir. 2013) (limiting the holding of *Brentlinger* to its facts, and noting that *Brentlinger* merely held that the trial court did not abuse its discretion so it should not be read broadly).
- <sup>228</sup> *EPI of Cleveland v. Basler*, 12 Ohio App. 2d 16, 20 (1967).
- <sup>229</sup> *Briggs v. Butler*, 140 Ohio St. 499, 507 (1942).
- <sup>230</sup> *Id.*
- <sup>231</sup> *Id.*
- <sup>232</sup> *Id.*
- <sup>233</sup> *Raimonde v. Vlerah*, 42 Ohio St. 2d 21, 26 (1975).
- <sup>234</sup> *Id.*
- <sup>235</sup> *Id.*
- <sup>236</sup> *Id.* at 25.
- <sup>237</sup> *Century Business Services, Inc. v. Urban*, 179 Ohio App. 3d 111, 117–18 (Ohio App. 8 Dist. Nov. 6, 2008).
- <sup>238</sup> *Olsten Corp. v. Sommers*, 534 F. Supp. 395, 1982 U.S. Dist. LEXIS 12527 (D. Or. 1982).
- <sup>239</sup> *First AllAmerica Financial Life Ins. Co. v. Sumner*, 212 F. Supp. 2d 1235, 1238 (D. Or. 2002).
- <sup>240</sup> *Wellspan Healthy v. Bayliss*, 869 A.2d 990, 997 (Pa. Super Ct. 2005) (internal citations omitted).
- <sup>241</sup> *Hess v. Gebhard & Co.*, 570 Pa. 148 (2002).
- <sup>242</sup> *Id.* at 162-63, 163 n.7; *Sidco Paper Co. v. Aaron*, 465 Pa. 586, 594-95, 596 n.8 (1976); *Mrozek v. Eiter*, 2002 Pa. Super. 245, 249 (2002), *appeal denied*, 573 Pa. 691 (2003). *See also Hillard v. Medtronic, Inc.*, 910 F. Supp. 173, 176-77 (M.D. Pa. 1995) (concluding that overwhelming Pennsylvania authority supports the principle that a court sitting in equity may reform or "Blue Pencil" or "blue-line" a non-competition covenant).
- <sup>243</sup> *National Business Services Inc. v. Wright*, 2 F. Supp. 2d 701, 707 (E.D. Pa. 1998); *Gagliardi Bros. v. Caputo*, 538 F. Supp. 525, 527 (E.D. Pa. 1982); *Thermo-Guard, Inc. v. Cochran*, 408 Pa. Super. 54 (1991) (superseded by rule on other grounds).
- <sup>244</sup> *Unisys Corp. v. Entex Information Servs. Corp.*, 45 Pa. D. & C. 4th 405 (Ct. Comm. Pl. 2000).
- <sup>245</sup> *In re Givens*, 251 B.R. 11, 14 (Bankr. D. R.I. 2000) (internal citations omitted).
- <sup>246</sup> *Koppers Prods. Co. v. Radio*, 60 R.I. 207, 209 (1938).
- <sup>247</sup> *Duraphin v. American Prods.*, 559 A.2d 1051, 1053 (R.I. 1989).
- <sup>248</sup> *Cranston Print Works Co. v. Pothier*, 848 A.2d 213, 221 (R.I. 2004).
- <sup>249</sup> *Oxman v. Profit*, 126 S.E. 2d 852 (S.C. 1962).
- <sup>250</sup> *Carolina Chem. Equip. Co. v. Muckenfuss*, 471 S.E.2d 721, 723-24 (S.C. Ct. App. 1996). This does not extend to non-disclosure agreements in reference to inventions "derived from ... work for the employer." *Milliken & Co. v. Morin*, 731 S.E.2d 288 (S.C. 2012). The Supreme Court of South Carolina held that a non-

disclosure clause in a research physicist's contract enforceable because the employer has a right to inventions and ideas so related to the work performed for that employer. *Id.* at 32.

<sup>251</sup> *Rockford Mfg. v. Bennet*, 296 F. Supp. 2d 681, 687-88 (D. S.C. 2003) (citing *Eastern Business Forms, Inc. v. Kistler*, 258 S.C. 429, 189 S.E.2d 22, 23-24 (S.C. 1972); *Somerset v. Reyner*, 233 S.C. 324, 104 S.E.2d 344 (S.C. 1958).

<sup>252</sup> *Rockford Mfg. v. Bennet*, 296 F. Supp. 2d 681, 687-88 (D. S.C. 2003).

<sup>253</sup> *Wolf v. Colonial Life and Accident Ins.*, 420 S.E. 2d 217, 221 (S.C. 1992) (citing *Oxman v. Sherman*, 122 S.E. 2d 559 (S.C. 1961)).

<sup>254</sup> *Franklin v. Forever Venture, Inc.*, 696 N.W. 2d 545, 551 (S.D. 2005).

<sup>255</sup> *Hasty v. Rent-A-Driver, Inc.*, 671 S.W.2d 471, 472 (Tenn. 1984).

<sup>256</sup> *Cent. Adjustment Bureau, Inc. v. Ingram*, 678 S.W.2d 28 (Tenn. 1984).

<sup>257</sup> *Id.* at 37.

<sup>258</sup> *Cesnick v. Chrysler Corp.*, 490 F. Supp. 859 (M.D. Tenn. 1980).

<sup>259</sup> *SafeWorks, LLC v. Max Access, Inc.*, No. H-08-2860, 2009 WL 959969 (Tex. Apr. 9, 2009) ("A non-solicitation provision in a contract is also a restraint on trade and must meet the requirements of § 15.50 to be enforceable.").

<sup>260</sup> *Hosp. Consultants v. Potyka*, 531 S.W. 2d 657 (Tex. Civ. App. 1975) (holding no-hire agreements invalid when restrictions on an employee are the result of an agreement between others rather than the employee him or herself entering freely into the agreement). *See also Blasé Indus. Corp. v. Anorad Co.*, 442 F.3d 235 (5<sup>th</sup> Cir. Tex. 2006).

<sup>261</sup> *Chapa v. Garcia*, 848 S.W.2d 667, 671 (Tex. 1992).

<sup>262</sup> *Kasco Servs. Corp. v. Benson*, 831 P.2d 86, 94 (Utah 1992).

<sup>263</sup> *TruGreen Co., LLC v. Mower Brothers*, 199 P.3d 929, 932 (Utah 2008). ("In an employment context, it is not uncommon for an employer to require an employee to sign a contract stating that the employee will not compete with the employer, disclose private information, or solicit the employer's customers. We have held that such covenants are enforceable as long as they are supported by consideration, negotiated in good faith, necessary to protect a company's good will, and reasonably limited in time and geographic area.")

<sup>264</sup> *Roy's Orthopedic v. Lavigne*, 454 A.2d 1242, 1244 (Vt. 1982).

<sup>265</sup> *Vt. Elec. Supply Co. v. Andrus*, 315 A.2d 456, 458 (Vt. 1974).

<sup>266</sup> *Vt. Microsystems, Inc. v. Autodisk, Inc.*, 88 F.3d 142, 149 (2d Cir. 1996).

<sup>267</sup> *Roy's Orthopedic*, 487 A.2d at 175.

<sup>268</sup> *A.N. Deringer, Inc. v. Strough*, 103 F.3d 243 (2nd Cir. 1996).

<sup>269</sup> *Id.* at 248.

<sup>270</sup> *Richardson v. Paxton Co.*, 127 S.E. 2d 113, 117 (Va. 1962).

<sup>271</sup> *New River Media Group, Inc. v. Knighton*, 429 S.E.2d 25, 26 (Va. 1993).

<sup>272</sup> *Omniplex World Serv. Corp. v. U.S. Investigations Services, Inc.*, 618 S.E.2d 340, 342 (Va. 2005); *Paramount Termite Control v. Rector*, 380 S.E. 2d 922 (Va. 1989)

This case was overruled by *Home Paramount Pest Control Companies, Inc. v. Shaffer*, 718 S.E.2d 762 (Va. 2011) (overturning *Paramount Termite* in that non-competition agreements that bar employees from working for any other business in the same industry in any capacity was overbroad and therefore unenforceable. The employer must confine the non-competition provision to the specific activities engaged in by the employee).

<sup>273</sup> *Lanmark Tech., Inc. v. Canales*, 454 F.Supp.2d 524, 529 (E.D.Va. 2006).

<sup>274</sup> *Mona Elec. Group, Inc. v. Truland Serv. Corp.*, 193 F.Supp.2d 874, 876 (E.D.Va. 2002).

<sup>275</sup> *Therapy Serv. Inc. v. Crystal City Nursing Ctr., Inc.* 389 S.E.2d 710, 711 (Va. 1990).

- <sup>276</sup> *Copier Specialists, Inc. v. Gillen*, 887 P.2d 919, 920 (Wash. Ct. App. 1995). See also *Perry v. Moran*, 748 P.2d 224, 230 (Wash. 1987), modified by 766 P.2d 1096 (Wash. 1989); *Copier Specialists, Inc. v. Gillen*, 887 P.2d 919 (Wash. App. 1995).
- <sup>277</sup> *Racine v. Bender*, 252 P. 115 (Wash. 1927); *Alexander & Alexander, Inc. v. Wohlman*, 578 P.2d 530 (Wash. App. 1978); *Knight, Vale & Grgeory v. McDaniel*, 680 P.2d 448 (Wash. Ct. App. 1984).
- <sup>278</sup> *Hometask Handyman Serv. v. Cooper*, No. C07-1282RSL, 2007 WL 3228459 (D. Wash. Oct. 30, 2007); *Sheppard v. Blackstock Lumber Co.*, 540 P.2d 1373 (Wash. Ct. App. 1975).
- <sup>279</sup> *Pacific Aerospace & Elec., Inc. v. Taylor*, 295 F. Supp. 2d 1205, 1216-17 (E.D. Wash. 2003).
- <sup>280</sup> *Torbett v. Wheeling Dollar Sav. & Trust Co.*, 314 S.E.2d 166 (W. Va. 1983) (employment related covenants are not per se violative of the West Virginia antitrust statute.); see W.Va. Code § 47-18-3(a).
- <sup>281</sup> *Reddy v. Cmty. Health Found. of Man*, 298 S.E. 2d 906, 910 (W. Va. 1982); *Gant v. Hyggeia Facilities Found.*, 384 S.E.2d 842, 844 (W. Va. 1989)
- <sup>282</sup> *Gant*, 384 S.E. 2d at 843.
- <sup>283</sup> *Voorhees v. Guyan Mach. Co.*, 446 S.E. 2d 672, 677 (W. Va. 1964) (setting forth test but failing to uphold covenant); *Moore Business Forms v. Foppiano*, 382 S.E.2d 499, 501 (W. Va. 1989).
- <sup>284</sup> *Gant*, 384 S.E.2d at 845.
- <sup>285</sup> *Reddy*, 298 S.E. 2d at 914.
- <sup>286</sup> *Wood v. Acordia of W. Va.*, 618 S.E. 2d 415, 417-18 (W. Va. 2005).
- <sup>287</sup> *Haught v. Louis Berkman LLC*, 417 F. Supp. 2d 777, 784 (N.D. W. Va. 2006).
- <sup>288</sup> *Selmer Co. v. Rinn*, 789 N.W.2d 621, 628 (Wis. Ct. App. 2010).
- <sup>289</sup> *Pollack v. Calimag*, 958 N.W. 2d 591, 598 (Wis. Ct. App. 1999).
- <sup>290</sup> *Gary Van Zeeland Talent, Inc. v. Sandas*, 267 N.W. 2d 242, 250 (Wis. 1978).
- <sup>291</sup> *Farm Credit Serv. of N. Cent. Wis., ACA v. Wysocki*, 627 N.W. 2d 444 (Wis. 2001).
- <sup>292</sup> *Heyde Co. v. Dove Healthcare LLC*, 654 N.W. 2d 830, 834 (Wis. 2004).
- <sup>293</sup> *Mutual Service Casualty. Ins. Co. v. Brass*, 625 N.W. 2d 648, 655 (Wis. Ct. App. 2001), overruled on other grounds by *Star Direct, Inc. v. Dal PRA*, 767 N.W. 2d 898 (Wis. 2009).
- <sup>294</sup> Restatement (Second) of Contracts § 188 (1981).
- <sup>295</sup> *Hopper v. All Pet Animal Clinic, Inc.*, 861 P.2d 531, 540 (Wyo. 1993).
- <sup>296</sup> *Hopper*, 861 P.2d at 546.
- <sup>297</sup> *Id.* at 546.
- <sup>298</sup> *Ridley v. Krout*, 180 P.2d 124, 129 (Wyo. 1947).

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