

Possible Options for Limiting Non-Compete Agreements

- Apply restriction only to certain professions or industries
- Apply restriction only to employees earning below a certain amount
- Exempt certain professions or industries from prohibition
- Expressly permit:
 - non-solicitation agreements
 - confidentiality agreements for proprietary information
 - agreements protecting employer’s investment in training
- Require garden leave
- Permit agreements only in relation to specific protectable interest

Summary of State Statutes Related to Non-Compete Agreements¹

State	Statutory Provision	Types of Agreements Covered	Limitations	Protectable Interests	Non-Solicitation Agreements
Alabama	Ala. Code § 8-1-190	<ul style="list-style-type: none"> • Employee • Sale of business 	<ul style="list-style-type: none"> • Generally, no more than 2 years • Reasonable geographic area 	<ul style="list-style-type: none"> • Trade Secrets • Confidential information • Commercial relationships • Goodwill • Specialized or unique training that involved a substantial expenditure 	Yes, 18 months or for as long as post-separation consideration is paid
Arkansas	A.C.A. § 4-75-101	<ul style="list-style-type: none"> • Employee • Sale of business 	Statute applies to employment related agreements only. <ul style="list-style-type: none"> • Must be part of an employment agreement or ancillary to employment relationship • Reasonable time and scope not greater than necessary to protect business interest • Generally no more than 2 years • Does not prohibit confidentiality or nondisclosure agreements, or agreements not to solicit/hire the employers’ employees 	<ul style="list-style-type: none"> • Trade secrets • Intellectual Property • Customer lists • Goodwill • Knowledge of business practices • Methods • Profit Margins • Costs • Confidential business information • Training of employer’s employees • Other valuable data that it is reasonable to protect 	
California	Cal. Bus. & Prof. Code §§ 16600-16602.5	<ul style="list-style-type: none"> • Sale of business only 	<ul style="list-style-type: none"> • Employee noncompete agreements prohibited 		
Colorado	C.R.S.A. § 8-2-113	<ul style="list-style-type: none"> • Executive and management personnel and officers and employees who constitute professional staff to 	<ul style="list-style-type: none"> • Noncompete agreements with physicians are void 		<ul style="list-style-type: none"> • Forbidden for physicians treating patients with a rare disorder

¹ Due to time constraints, this table may not include all the related provisions of law in the listed states. This table only includes provisions that are expressly established by statute, and does not include state common law related to agreements not to compete.

State	Statutory Provision	Types of Agreements Covered	Limitations	Protectable Interests	Non-Solicitation Agreements
		<ul style="list-style-type: none"> executive and management personnel • Sale of business • Trade secrets • Recovery of training expenses for individuals employed for less than 2 years 			
Florida	F.S.A. § 542.335	<ul style="list-style-type: none"> • Employee • Sale of Business • Termination of distributor, franchise, and similar relationships 	<ul style="list-style-type: none"> • Reasonable in time, area, and line of business <ul style="list-style-type: none"> ○ Generally, up to 2 years for employee, up to 3 years for former distributor/franchisee/etc, and up to 7 years for sale of business ○ Protection of trade secrets may be for up to 7 years 	<ul style="list-style-type: none"> • Trade secrets • Confidential business information • Existing or prospective customer/patient/client relationships • Goodwill • Extraordinary or specialized training 	
Georgia	G.C.A. § 13-8-53	<ul style="list-style-type: none"> • Employee 	<ul style="list-style-type: none"> • Reasonable in time, area, and scope • Not enforceable against employee who does not: <ul style="list-style-type: none"> ○ Solicit customers/prospective customers; ○ Make sales or obtain orders or contracts for products/services; ○ Perform managerial duties; ○ Perform duties of a key employee or professional 	<ul style="list-style-type: none"> • Trade secrets 	Yes
Hawaii	H.R.S. § 480-4	<ul style="list-style-type: none"> • Employee • Sale of Business 	<ul style="list-style-type: none"> • Reasonable time and area • May not enforce noncompete or nonsolicit agreement against an employee of a technology business 	<ul style="list-style-type: none"> • Trade secrets 	Yes
Idaho	I.C. §§ 44-2701-2704	<ul style="list-style-type: none"> • Employee or independent contractor² 	<ul style="list-style-type: none"> • Reasonable duration, area, scope, and restraint is no greater than necessary to protect employer's legitimate business interests 	<ul style="list-style-type: none"> • Legitimate business interests <ul style="list-style-type: none"> ○ Goodwill ○ Technologies ○ IP ○ Confidential business information ○ Customer information ○ Trade secrets 	
Illinois	820 I.L.C.S. §§ 90/1-90/10	<ul style="list-style-type: none"> • Employee's earning more than \$13/hour 	<ul style="list-style-type: none"> • Prohibited for employee's earning less than \$13/hour 		

² Includes "those employees or independent contractors who, by reason of the employer's investment of time, money, trust, exposure to the public, or exposure to technologies, intellectual property, business plans, business processes and methods of operation, customers, vendors or other business relationships during the course of employment, have gained a high level of inside knowledge, influence, credibility, notoriety, fame, reputation or public persona as a representative or spokesperson of the employer and, as a result, have the ability to harm or threaten an employer's legitimate business interests."

State	Statutory Provision	Types of Agreements Covered	Limitations	Protectable Interests	Non-Solicitation Agreements
Louisiana		<ul style="list-style-type: none"> • Sale of business • Employee • Independent contractor • Franchisees 	<ul style="list-style-type: none"> • Up to 2 years • During the term of a franchise • Not car sales people 	<ul style="list-style-type: none"> • Confidential computer programs 	
Massachusetts	M.G.L.A. 149 § 24L	<ul style="list-style-type: none"> • Employee 	<ul style="list-style-type: none"> • To be enforceable: <ul style="list-style-type: none"> ○ If entered into at beginning of employment: <ul style="list-style-type: none"> ▪ In writing and states employee's right to consult with attorney. ▪ Provided to employee at offer of employment or 10 business days before employment begins ○ If entered into during employment: <ul style="list-style-type: none"> ▪ In writing and states employee's right to consult with attorney. ▪ Must be supported by consideration in addition to continuation of employment ▪ Must be provided to employee 10 days before effective date. ○ Cannot be broader than necessary to protect a legitimate business interest ○ No more than 12 months in duration, except if employee has unlawfully taken property of employer then may be for 24 months ○ Reasonable area and scope ○ Must be supported by garden leave (at least 50% of employee's highest salary in 2 years before termination of employment) or other mutually agreed upon consideration ○ Cannot violate public policy • Unenforceable with respect to: <ul style="list-style-type: none"> ○ Employees subject to FLSA ○ Student interns ○ Employees terminated without cause or laid off ○ Employees 18 years of age or less 	<ul style="list-style-type: none"> • Trade secrets • Confidential business information • Goodwill 	
Michigan	M.C.L.A. § 445.774a	<ul style="list-style-type: none"> • Employee 	<ul style="list-style-type: none"> • Reasonable in duration, area, and scope. 	<ul style="list-style-type: none"> • Reasonable competitive business interests 	
Missouri	V.A.M.S. § 431.202	<ul style="list-style-type: none"> • Employee 	<ul style="list-style-type: none"> • If not related to a listed protected interest, cannot be for more than 1 year 	<ul style="list-style-type: none"> • Confidential business information • Trade secrets 	

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			<ul style="list-style-type: none"> ○ Also cannot be used with secretarial or clerical employees 	<ul style="list-style-type: none"> ● Goodwill 	
Montana	M.C.A. §§ 28-2-703-705	<ul style="list-style-type: none"> ● Sale of business 	<ul style="list-style-type: none"> ● Reasonable area (defined by statute) 	<ul style="list-style-type: none"> ● Goodwill 	
Nevada	N.R.S. § 613.195	<ul style="list-style-type: none"> ● Employee 	<ul style="list-style-type: none"> ● Void unless: <ul style="list-style-type: none"> ○ Supported by valuable consideration ○ No broader than necessary to protect employer's interest ○ Does not impose undue hardship upon employee ○ Restrictions are appropriate in light of consideration ● Cannot restrict former employee from serving former client of employer if: <ul style="list-style-type: none"> ○ Employee did not solicit customer ○ Customer voluntarily chose to do business with former employee ○ Former employee is otherwise complying with the terms of the agreement ● If employee terminated as part of RIF, restructuring, or reorganization of employer, agreement is only enforceable when employer is paying employees salary, benefits, and other compensation incl. severance pay 		
New Hampshire	N.H. R.S.A. § 275:70	<ul style="list-style-type: none"> ● Employee 	<ul style="list-style-type: none"> ● Must provide new employees with a copy of agreement before offer of employment is accepted <ul style="list-style-type: none"> ○ Does not apply to agreements re: <ul style="list-style-type: none"> ▪ Confidentiality ▪ Nondisclosure ▪ Trade secret ▪ Intellectual property assignment 		
New Mexico	N.M.S.A. § 24-11-2	<ul style="list-style-type: none"> ● Health care practitioners 	<ul style="list-style-type: none"> ● Agreements that restrict right of health care practitioner to practice in NM are void, unless practitioner is a shareholder, owner, partner, or director of health care practice. ● May require health care practitioner who worked for employer for less than 3 years to repay <ul style="list-style-type: none"> ○ Loan ○ Moving expenses ○ Signing bonus 	<ul style="list-style-type: none"> ● Confidential information and trade secrets 	Yes, up to one year

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North Dakota	N.D.C.C. § 9-08-06	<ul style="list-style-type: none"> Employee Sale of business 	<ul style="list-style-type: none"> ○ Training costs • Agreement restraining a person from exercising a lawful profession, trade, or business is void unless related to sale of business or dissolution of partnership 	<ul style="list-style-type: none"> • Goodwill 	
Oklahoma	15 O.S.A. § 219A	<ul style="list-style-type: none"> Employee 	<ul style="list-style-type: none"> • Prohibited 		Yes
Oregon	O.R.S. § 653.295	<ul style="list-style-type: none"> Employee 	<p>Agreements enforceable if:</p> <ul style="list-style-type: none"> • Employer: <ul style="list-style-type: none"> ○ Informs employee in written offer of employment at least 2 weeks before employment starts or ○ Enters into agreement upon later advancement of employee • Employer has a protectable interest • Either <ul style="list-style-type: none"> ○ Employee is exempt from OR wage and hour law and employee earns more than median family income for family of 4; or ○ Employer pays employee 50%+ of the greater of annual salary or median family income for family of 4 during period of restriction. • Agreement is for 18 months or less 	<ul style="list-style-type: none"> • Trade secrets • Confidential business information • Employee is on-air broadcasting talent and employer: <ul style="list-style-type: none"> ○ expended resources equal to or exceeding 10 percent of the employee's annual salary to develop, improve, train or publicly promote the employee in past year; and ○ Employer pays employee 50%+ of the greater of annual salary or median family income for family of 4 during period of restriction. 	Yes
South Dakota	S.D.C.L. §§ 53-9-8-12	<ul style="list-style-type: none"> Sale of business Employee Independent contractor insurance agents working exclusively for a single company or group of companies 	<ul style="list-style-type: none"> • Up to 2 years 	<ul style="list-style-type: none"> • Goodwill 	Yes
Texas	V.T.C.A., Bus. & C. § 15.50	<ul style="list-style-type: none"> Employee Physician 	<ul style="list-style-type: none"> • Must be part of an employment agreement or ancillary to employment relationship • Reasonable time and scope not greater than necessary to protect business interest • Agreement with physician enforceable if <ul style="list-style-type: none"> ○ Physician has access to <ul style="list-style-type: none"> ▪ list of patients treated within 1 year of termination ▪ medical records for patients ▪ medical records in mutually agreed format 		

State	Statutory Provision	Types of Agreements Covered	Limitations	Protectable Interests	Non-Solicitation Agreements
			<ul style="list-style-type: none"> ○ Physician can buy out agreement for reasonable price ○ Physician can continue treating patients with acute illness 		
Utah	U.C.A. § 34-51-201	<ul style="list-style-type: none"> • Employee • Sale of Business 	<ul style="list-style-type: none"> • Up to 1 year for employees • If a broad casting employee, must also be part of 4-year+ employment contract and employee must be terminated for cause or breach of employment contract 		
Wisconsin	W.S.A. § 103.465	<ul style="list-style-type: none"> • Employee 	<ul style="list-style-type: none"> • Restrictions imposed must be reasonably necessary for protection of employer 		