

50 State Desktop Reference

What Businesses Need To Know About Non-Compete
and Trade Secrets Law



Dear Clients and Friends,

We are pleased to provide you with the 2017–2018 edition of our *50 State Desktop Reference: What Businesses Need to Know about Non-Competes and Trade Secrets Law*. It has been an extraordinary year regarding trade secret and non-compete issues. We saw more and more cases filed in federal court asserting claims under the Defend Trade Secrets Act (“DTSA”) and for alleged violations of non-competes. Some states passed legislation further narrowing the use of non-compete agreements, and some media outlets, academics, and regulators have continued their criticism of such agreements. Over the next year, we expect the law to continue to develop regarding the DTSA’s application, definitions, scope, limitations, benefits, and interpretation with regard to the immunity provisions. Our 50 State Desktop Reference is a useful guide to know how the law is currently applied in each state.

As we have said in the past, and continues to hold true today, any company that seeks to use non-competition and non-solicitation agreements to protect its trade secrets, confidential information, client relationships, goodwill or work force needs to stay informed of the varied and ever-evolving standards in each state. This one-stop desk reference surveying many of the questions related to the use of employee covenants and intellectual capital protection in all 50 states provides a starting point for the HR professional, in-house counsel, or company executive to answer your questions about protecting your company’s most valuable and confidential assets. Of course, the information contained in the booklet is understandably condensed and simplified, and thus, while it provides a convenient point of reference, always consult with your attorney before making any decisions as the law is constantly changing.

The breadth of information that we have included in this booklet complements our attorneys’ impressive knowledge when it comes to non-competition, non-solicitation and trade secret issues across the United States and abroad. As leaders in this field, demonstrated by our recent “Top Tier” ranking in the 2017 edition of *The Legal 500* United States, the attorneys of Seyfarth Shaw’s Trade Secrets, Non-Compete, and Computer Fraud practice group provide a variety of client-focused services, ranging from counseling and transactional deal advice to trade secret audits to cost-effective injunctions and litigation.

Remaining abreast of developments is also one of our top priorities. We invite you to visit our award-winning blog at www.tradesecretslaw.com for commentary and analysis on hot new topics in the world of trade secret, non-compete, unfair competition, computer fraud law, privacy and social media, including significant legislative and case updates. Our practice group’s extensive webinar series serves as another source for up-to-date information on a variety of interesting topics. Visit our blog to playback previous podcasts or webinar recordings. We invite you to join in on these webinars (a list of upcoming webinars is listed in the booklet). Seyfarth Shaw is able to offer CLE credit in certain states. We hope this booklet proves a useful and informative tool. Please do not hesitate to contact a Seyfarth Shaw Trade Secrets attorney if you have any questions.



Michael Wexler

A handwritten signature in black ink, appearing to read "Michael Wexler".

Chicago Partner and
Practice Group Chair



Robert Milligan

A handwritten signature in black ink, appearing to read "Robert Milligan".

Los Angeles Partner and
Practice Co-Chair

State	Are employee non-competes allowable?	State statutes governing employee non-competes	Are employee non-solicitation agreements allowable?	Are customer non-solicitation agreements allowable?	Continued employment sufficient consideration?
AL Alabama	Yes	Ala. Code §8-1-190	Yes	Yes	Yes (May not be signed prior to employment)
AK Alaska	Yes	None	Not yet decided	Yes	Not yet decided
AZ Arizona	Yes	None	Yes	Yes	Yes
AR Arkansas	Yes	Ark. Code Ann. §4-75-101	Likely, yes	Yes	Yes
CA California	No (with narrow exceptions)	Cal. Bus. and Prof. Code §16600, 16601, 16602, and 16602.5	Yes	Not typically but there may be a trade secret exception	Likely, yes
CO Colorado	Yes	Colo. Rev. Stat. §8-2-113	Yes	Yes	Yes
CT Connecticut	Yes	Public Law 16095 (limitations on physician non-competes)	Not yet decided	Yes	Likely, yes
DE Delaware	Yes	No	Yes	Yes	Yes
DC District of Columbia	Yes	No	Yes	Yes	Likely, yes
FL Florida	Yes	Fla. Stat. Ann. §542.335	Yes	Yes	Yes
GA Georgia	Yes, but ability to enforce restriction varies based on when the agreement was signed; post-5/10/11 much easier to enforce	O.C.G.A. §13- 8-50 et seq.	Yes	Yes (for all periods)	Yes (for all periods)
HI Hawaii	Yes (but certain exceptions)	Haw. Rev. Stat. §480(c)	Not with employees in a technology business, otherwise unclear	Yes	Not yet decided
ID Idaho	Yes	Idaho Code §§44-2701 to -2704	Not yet decided	Yes	Yes
IL Illinois	Yes	None	Yes	Yes	Yes, may depend on the length of employment (At least 2 years, but questioned by Federal Court)
IN Indiana	Yes	None	Unclear, but likely	Yes	Yes

State	Blue penciling or reformation permissible?	Enforceable against discharged employees?	Adopted the UTSA?	Applicable statute of limitations (UTSA and breach of contract)	Adopted inevitable disclosure doctrine?	Restrictive covenants extended for violation?
AL Alabama	Blue pencil and reformation	Never specifically addressed but likely yes	Ala. Code. §8-27-1	2 years (ATSA) 6 years (breach of contract)	Not yet decided	Yes
AK Alaska	Reformation	Not yet decided	Ala. Stat. §45.50.910	3 years (ATSA) 3 years (breach of contract)	Not yet decided	Not yet decided
AZ Arizona	Blue pencil	Unclear	Ariz. Rev. Stat. Ann. §§44-401 to 44-407	3 years (AUTSA) 6 years (breach of contract)	Not yet decided	Unclear
AR Arkansas	Reformation	Undecided	Ark. Stat. Ann. §4-75-601	3 years (ATSA) 5 years (breach of contract)	Yes	No
CA California	No, in employment context; blue pencil with respect to narrow exceptions	No, with respect to non-competes; yes, with respect to non-solicitation	Cal. Civ. Code §3426	3 years (CUTSA) 4 years (breach of contract)	No	Not yet decided
CO Colorado	Blue pencil	Not yet decided	Col. Rev. Stat. §7-74-101	3 years (CUTSA) 6 years (breach of contract)	Not yet decided	No
CT Connecticut	Blue pencil	Yes	Conn. Genl. Stat. §35-50	3 years (CTSA) 6 years (breach of contract)	Yes, but only when the employee was bound by a non-compete	No
DE Delaware	Reformation	Yes	Del. Code Ann. Title 6 §2001	3 years (DTSA) 3 years (breach of contract)	Yes	Yes
DC District of Columbia	Unclear	No	D.C. Code Ann. §48-501	3 years (DUTSA) 3 years (breach of contract)	Not yet decided	Yes
FL Florida	Reformation	Yes	Fla. Stat Ann. §688.001	3 years (FUTSA) 5 years (breach of contract)	Yes	No
GA Georgia	Varies based on when the agreement was signed (pre-11/3/10, no blue pencil or reformation; post-5/10/11, blue pencil)	Yes	O.C.G.A. §10-1-760 et seq.	5 years (GUTSA) 6 years (breach of contract)	No	No
HI Hawaii	Reformation	Not yet decided	Haw. Rev. Stat. §482B-1	3 years (trade secret act) 6 years (breach of contract)	Not yet decided	Unclear
ID Idaho	Blue pencil	Yes	Idaho Code §48-801	3 years (ITSA) 5 years (breach of contract)	Not yet decided	Unclear
IL Illinois	Reformation	No, if without cause; unclear with cause	765 ILCS 1065	5 years (ITSA) 10 years (breach of contract)	Yes	Generally, no
IN Indiana	Blue pencil	Yes	Ind. Code. Ann. §24-3-1	3 years (IUTSA) 10 years (breach of contract)	Generally, no	Possibly, where contract permits extension

State	Are employee non-competes allowable?	State statutes governing employee non-competes	Are employee non-solicitation agreements allowable?	Are customer non-solicitation agreements allowable?	Continued employment sufficient consideration?
IA Iowa	Yes	None	Undecided	Yes	Yes
KS Kansas	Yes	None	Not yet decided	Yes	Yes
KY Kentucky	Yes	None	Yes	Yes	No
LA Louisiana	Yes	La. Rev. Stat. Ann. §23:921	Yes	Yes	For agreements entered into after 1989, yes. For agreements entered into in or before 1989, unclear.
ME Maine	Yes	None	Not yet decided	Yes	Yes
MD Maryland	Yes	None	Yes	Yes	Yes
MA Massachusetts	Yes	None	Yes	Yes	Yes
MI Michigan	Yes	Mich. Comp. Laws §445.774a	Yes	Yes	Yes
MN Minnesota	Yes	None	Yes	Yes	No
MS Mississippi	Yes	None	Yes	Yes	Yes
MO Missouri	Yes	Mo. Stat. Ann. §431.202	Yes	Yes	Yes, if combined with something else (such as access to confidential information)
MT Montana	Yes	Mont. Code Ann. §§28-2-703 to -705	Yes	Yes	Yes
NE Nebraska	Yes	None	Not yet decided	Yes	Yes
NV Nevada	Yes	Nev. Rev. Stat. §613.200	Yes	Yes	Yes
NH New Hampshire	Yes	NH RSA 275:70 (notice requirement) NH RSA 329:31-a (limitations on physician non-competes)	Not yet decided	Yes	Yes

State	Blue penciling or reformation permissible?	Enforceable against discharged employees?	Adopted the UTSA?	Applicable statute of limitations (UTSA and breach of contract)	Adopted inevitable disclosure doctrine?	Restrictive covenants extended for violation?
IA Iowa	Blue pencil	Yes	Iowa Code §550.1	3 years (IUTSA) 10 years (breach of contract)	Yes	Yes
KS Kansas	Reformation	Yes	Kan. Stat. Ann. §60-3320	3 years (KUTSA) 5 years (breach of contract)	Not yet decided but likely, yes	Yes, where contract permits extension
KY Kentucky	Reformation	Not yet decided, but not likely	K.R.S. §365.880	3 years (KTSA) 10 or 15 years depending on date of execution (breach of contract)	Not yet decided but likely, no	Yes
LA Louisiana	Blue pencil	Yes	La. Rev. Stat. Ann. §51:1431	3 years (LUTSA) 10 or 15 years depending on date of execution (breach of contract)	Not yet decided	No
ME Maine	Reformation	Likely, yes	M.R.S.A. Title 10 §1541 et seq	4 years (trade secret act) 6 years (breach of contract)	Not yet decided	Not yet decided
MD Maryland	Blue pencil	Generally, no	Md. Com. L. Code §11- 1201	3 years (MUTSA) 3 years (breach of contract)	No	No
MA Massachusetts	Reformation	Yes	No	3 years (Mass. Gen. Laws ch. 260 §2A) 6 years (breach of contract)	Yes in federal court; state courts have recognized its existence but have not adopted it	Generally, no
MI Michigan	Reformation	Yes	M.C.L.A. §445.1901 to 445.1910	3 years (MUTSA) 6 years (breach of contract)	No	Yes
MN Minnesota	Blue pencil	Yes	Minn. Stat Ann. §325C.01	3 years (MUTSA) 6 years (breach of contract)	Not explicitly accepted but likely, yes	Very rarely
MS Mississippi	Reformation	Yes	Miss. Code Ann. §75- 26-1	3 years (MUTSA) 3 years (breach of contract)	Not yet decided	Not yet decided
MO Missouri	Reformation	Judicial discretion	Mo. Stat. §417.450 to 417.467	5 years (MUTSA) 5 years (breach of contract)	Unclear	No
MT Montana	Not yet decided in the employment context	Generally, no	Mont. Code Ann. §30-14- 401	3 years (MUTSA) 8 years (breach of contract)	Not yet decided	Not yet decided
NE Nebraska	No	Not yet decided	Neb. Rev. Stat. §87-501	4 years (NTSA) 5 years (breach of contract)	Not yet decided	Not clear
NV Nevada	Blue-pencil	Not yet decided	Nev. Rev. Stat. §600A.010	3 years (trade secret act) 6 years (breach of contract)	Not yet decided	Yes
NH New Hampshire	Reformation	Not yet decided	N.H. R.S.A. §350-B:1	3 years (NHUTSA) 3 years (breach of contract)	Not yet decided	No

State	Are employee non-competes allowable?	State statutes governing employee non-competes	Are employee non-solicitation agreements allowable?	Are customer non-solicitation agreements allowable?	Continued employment sufficient consideration?
NJ New Jersey	Yes	None	Yes	Yes	Yes
NM New Mexico	Yes (but certain exceptions)	None	Not yet decided	Yes	Likely, yes but not yet explicitly addressed
NY New York	Yes	None	Yes	Yes	Yes
NC North Carolina	Yes	N.C. Gen. Stat. §75-4 (requiring contracts limiting right to do business to be in writing)	Yes	Yes	No
ND North Dakota	No	N.D. Cent. Code §9-08-06	Yes	No	No, but yes with respect to non-disclosure agreements
OH Ohio	Yes	None	Yes	Yes	Yes
OK Oklahoma	No	Okla. Stat. tit. 15, §219A	Yes	Yes	Not yet decided
OR Oregon	Yes (some limitations)	Or. Rev. Stat. §653.295 (notice requirement)	Yes	Yes	No
PA Pennsylvania	Yes	No	Yes	Yes	No
RI Rhode Island	Yes	No	Not yet decided	Yes	Yes per Superior Court; undecided by RI Supreme Court
SC South Carolina	Yes	No	Yes	Yes	No
SD South Dakota	Yes	S.D. Codified Laws §53-9-8	No	Yes	Yes
TN Tennessee	Yes	None	Yes	Yes	Likely no
TX Texas	Yes	Tex. Bus. & Com. Code §15.50-.52	Yes	Yes	No
UT Utah	Yes (but certain exceptions)	UT Code Ann. §34-51-101	Not yet decided	Yes	Yes
VT Vermont	Yes	None	Not yet decided	Yes	Yes

State	Blue penciling or reformation permissible?	Enforceable against discharged employees?	Adopted the UTSA?	Applicable statute of limitations (UTSA and breach of contract)	Adopted inevitable disclosure doctrine?	Restrictive covenants extended for violation?
NJ New Jersey	Reformation	Yes	N.J.S.A. 56:15-1, et seq.	3 years (NJUTSA) 6 years (breach of contract)	Yes	No
NM New Mexico	Likely, yes	Undecided	N.M. Stat. Ann. §57-3A-1	3 years (NMUTSA) 6 years (breach of contract)	Not yet decided	No
NY New York	Reformation	Yes, only with cause	No	3 years (tort) 6 years (breach of contract)	More likely to be accepted in federal than state court	Within discretion of the Court
NC North Carolina	Strikethrough, no reformation	Likely, yes	N.C. Gen. Stat. §66-152 et seq.	3 years (NCTSPA) 3 years (breach of contract)	Not yet decided	Yes
ND North Dakota	Not applicable	Not applicable	N.D. Cent. Code §47- 25.1-01	3 years (NDUTSA) 6 years (breach of contract)	Not yet decided	Not applicable
OH Ohio	Reformation	Yes	R.C.Secs. 1333.61	4 years (OUTSA) 8 years (breach of contract)	Considered but not adopted	Yes
OK Oklahoma	Blue Pencil, but cannot add material contract terms not already in the agreement	Undecided	Okla. Stat. tit. 78, §85	3 years (OUTSA) 5 years (breach of contract)	Not yet decided	No
OR Oregon	Reformation	Not yet decided	Or. Rev. Stat. §646.461	3 years (OUTSA) 6 years (breach of contract)	Not yet decided	No
PA Pennsylvania	Reformation	Yes per lower courts; undecided by PA Supreme Court	12 Pa. Cons. Stats §5392	3 years (PUTSA) 4 years (breach of contract)	Not yet decided, but superior courts have treated the idea favorably	No
RI Rhode Island	Blue pencil normally; reformation rarely	Not yet decided	R.I. Gen. Laws §6-41-1	3 years (RIUTSA) 10 years (breach of contract)	Not yet decided	Yes
SC South Carolina	Blue pencil	Generally, yes	S.C.C.A. §39- 8-10 et seq.	3 years (SCUTSA) 3 years (breach of contract)	Not yet decided	No
SD South Dakota	Blue pencil	Yes	S.D. Cod. Laws §37-29-1	3 years (SDUTSA) 6 years (breach of contract)	Not yet decided	Not yet decided
TN Tennessee	Reformation	Generally, yes	Tenn. Code §47-25-1701 et seq.	3 years (trade secret act) 6 years (breach of contract)	Not yet decided	Unclear
TX Texas	Reformation	Yes	Tex. Civ. Prac. & Rem. Code Ann. §§134A.001 et seq.	3 years (TUTSA) 4 years (breach of contract)	Not adopted but not rejected	Rarely
UT Utah	Not yet decided	Yes	Utah Code Ann. §13-24-1	3 years (UUTSA) years (breach of contract)	Yes	Not yet decided
VT Vermont	Unclear	Yes	Ch. 143 §4601	3 years (VTSA) 6 years (breach of contract)	Not yet decided	No

State	Are employee non-competes allowable?	State statutes governing employee non-competes	Are employee non-solicitation agreements allowable?	Are customer non-solicitation agreements allowable?	Continued employment sufficient consideration?
VA Virginia	Yes	None	Yes	Yes	Yes
WA Washington	Yes	None	Not yet decided	Yes	No
WV West Virginia	Yes	None	Not yet decided	Maybe	No
WI Wisconsin	Yes	Wis. Stat. Ann. §103.465	Yes	Yes	No
WY Wyoming	Yes	None	Not yet decided	Yes	No

2017 Webinar Topics

- 2016 National Year in Review: What You Need to Know About the Recent Cases/Developments in Trade Secrets, Non-competes and Computer Fraud Law
- Simple Measures for Protecting Intellectual Property and Trade Secrets
- Protecting Confidential Information and Client Relationships in the Financial Services Industry
- Protecting Your Trade Secrets in the Pharmaceutical Industry
- Trade Secret Protections: What Every Employer Needs to Know
- Social Media and Privacy Legislation Update

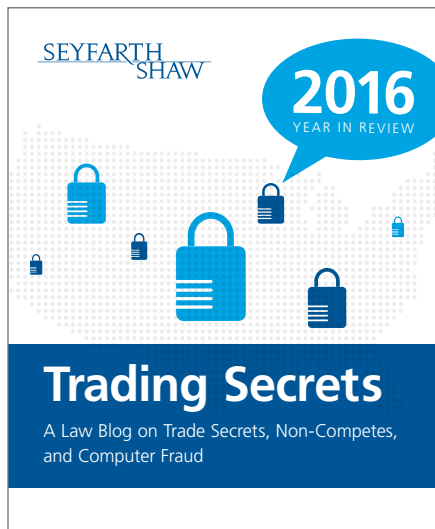
For registration and more upcoming events please visit our events page: www.seyfarth.com/Seyfarth-Events.

As part of our commitment to provide superior and tailored client service, we strive to provide legal updates on matters of interest to our clients' businesses. To this end, we are able to be present to you and your team by webinar or in person a number of custom CLE presentations. Please contact a Seyfarth attorney for further information.

This Desktop Reference should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Additionally, this Desktop Reference is not an offer to perform legal services nor establishes an attorney-client relationship.

State	Blue penciling or reformation permissible?	Enforceable against discharged employees?	Adopted the UTSA?	Applicable statute of limitations (UTSA and breach of contract)	Adopted inevitable disclosure doctrine?	Restrictive covenants extended for violation?
VA Virginia	No	Yes	Va. Code. Ann. §59.1-336	3 years (VUTSA) 5 years (breach of contract)	No	Yes
WA Washington	Reformation	Yes	Wash. Rev. Code §19.108.011 to .940	3 years (WUTSA) 3 years (breach of contract)	Unclear	Unclear
WV West Virginia	Reformation	Not yet decided	W. Va. Code §47-22-1	3 years (WVUTSA) 10 years (breach of contract)	Not yet decided	No
WI Wisconsin	Not likely	Undecided	Wis. Stat. §134.90	3 years (WUTSA) 6 years (breach of contract)	Not yet decided	Not yet decided
WY Wyoming	Reformation	Yes	Wyo. Stat. §§40-24-101 to 110	4 years (WUTSA) 10 years (breach of contract)	Not yet decided	Unclear

Additional Resources



2016 Trading Secrets
Year in Review



Trading Secrets Law Blog
www.tradesecretslaw.com

Stay Connected





Atlanta

Boston

Chicago

Houston

London

Los Angeles

Melbourne

New York

Sacramento

San Francisco

Shanghai

Sydney

Washington, D.C.

"Seyfarth Shaw" refers to Seyfarth Shaw LLP. Our London office operates as Seyfarth Shaw (UK) LLP, an affiliate of Seyfarth Shaw LLP. Seyfarth Shaw (UK) LLP is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with registered number 556927. Legal services provided by our Australian practice are provided by the Australian legal practitioner partners and employees of Seyfarth Shaw Australia, an Australian partnership.