CLIENT ALERTS & INSIGHTS

The Rapid Revolution of Restrictive Covenant and Trade Secret Law - What We Are Seeing (and Reading) in the First Five Months of 2026

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Key Takeaways

- The landscape for trade secret and restrictive covenant law is shifting fast and remains in a state of flux. Courts (especially in Delaware) and state legislatures are actively reshaping how restrictive covenants are interpreted and enforced-with major developments already emerging this year in Washington, Utah, Tennessee and South Dakota.
- Businesses face increased legal risk and uncertainty as states adopt stricter or more complex rules for noncompete and restrictive covenant agreements. Failure to update agreements in line with new state laws could result in unenforceable contracts, penalties or costly litigation.
- Companies can prepare by conducting state-by-state audits of restrictive covenant agreements, tightening scope and consideration provisions where applicable, and updating templates to reflect new statutory requirements before enforcement issues arise.

As we move from spring to summer, and state and federal legislatures move to their annual summer breaks, now is a good time to recap where things stand after five months of new restrictive covenant and trade secret statutes, case law and verdicts. Although we start with Delaware, businesses should be aware of the trends taking shape in other states as well; many companies will need to revamp/revise their restrictive covenant agreements in order to comply with the changes to state restrictive covenant laws in Washington, Virgina, Utah and Tennessee.

Delaware's Continued Prominence as a Trade Secret and Restrictive Covenant Forum

We often write about Delaware restrictive covenant law so let's take a slight detour and remember Delaware's central role in trade secret litigation. Courts across Delaware-including the Court of Chancery and federal district courts-offer flexible procedural mechanisms and experienced judges capable of handling complex, high-stakes disputes. Thus, it should come as no surprise that the Court of Chancery remains a preferred venue for injunctive relief. It should also come as no surprise that significant trade secret verdicts come out of the Court of Chancery. The most recent/notable verdict occurred in January when Vice Chancellor Laster awarded more than $50 million in damages for trade secret misappropriation to Arxada Holdings NA Inc. Arxada proved that a former owner of an acquired business engaged in systematic misappropriation, including the downloading of thousands of confidential documents and formula sheets, and the Court awarded $900k in lost profits, $24M in disgorgement, and $25M in exemplary damages as a result of the misappropriation. In addition, a Delaware state court jury awarded artificial intelligence software developer C3.ai $23.3M after it found engine manufacturer Cummins developed "its own AI-driven fuel optimization and prognostic tool" by stealing C3.ai's trade secrets.

Turning to restrictive covenants, Delaware courts continue to rigorously analyze restrictive covenants, with an emphasis on overbreadth and proportionality. Consequently, Delaware courts no longer willingly "blue pencil" overly broad provisions and several Vice Chancellors have chosen to invalidate them entirely. Most recently, in *BluSky Restoration Contractors v. Robbins*, the Court of Chancery invalidated a suite of noncompetes that it found to be global in scope and broader than the company's actual geographic footprint.

Yet, there is some good news on the enforceability side. As prior readers know, in *North American Fire Ultimate Holdings LP v. Doorly*, the trial court refused to enforce a noncompete because North American took away all consideration for the noncompete when Doorly engaged in competition with North American. In reaching its decision, the trial court determined that the total forfeiture of Doorly's equity units resulted in a lack of consideration and, because there was no consideration, the restrictive covenants in the grant agreement were null and void. The Delaware Supreme Court reversed the lower court's ruling. In doing so, the Delaware Supreme Court ruled that "validity of consideration" is determined at the time of contract formation, not at the time of enforcement. Consequently, equity units subject to forfeiture are valid consideration for restrictive covenants and the later forfeiture of the equity units does not eliminate the consideration exchanged when the parties entered the contract. Put more succinctly, restrictive covenants are still enforceable, even if all units are forfeited, because the grantee received the consideration at the time of contract formation.

What Are Other States Up To?

In short, a lot.

Although precise nationwide counts fluctuate as bills are introduced, amended or carried over, tracking organizations report dozens of restrictive covenant-related bills introduced across state legislatures in early 2026. For example, the Economic Innovation Group's State Noncompete Law Tracker and contemporaneous legislative surveys indicate over 60 active or newly introduced noncompete bills nationwide since January 1, 2026. If history is a guide (and it should be), most of

these bills will not make it out of committee, much less to a Governor's desk for signature. Still, a few bills have recently become law, including:

Washington: Near-Total Ban on Employment Noncompetes

In March 2026, Washington enacted a statute that renders virtually all noncompete agreements with Washington-based workers (i.e. employees and independent contractors) void and unenforceable with narrow exceptions (such as certain sale-of-business covenants). The ban applies retroactively and goes into effect on **June 30, 2027**. The new statute also prohibits threats or representations of enforceability, and companies must affirmatively notify current and former workers that covered noncompetes are void. The statute also expands the definition of "noncompetition covenant" to include provisions that indirectly prohibit acceptance of business from customers or require forfeiture of compensation upon competition.

Tennessee: Statutory Guardrails Replace Pure Common Law

Tennessee, long viewed as employer-friendly, passed a statute with an expected effective date of July 1, 2026, that provides a statutory framework for restrictive covenants. The framework largely mirrors Tennessee restrictive covenant case law and prohibits noncompete agreements for employees earning less than $70,000 annually. It also establishes a rebuttable presumption of reasonableness for restrictive covenants: two years for employees and independent contractors, three years for certain commercial relationships, and five years (or the payment period) for sale-of-business covenants. Tennessee courts still retain blue-penciling authority, but restraints exceeding statutory benchmarks are presumed unreasonable. In other words, do not be confident that a Tennessee court will blue pencil a restrictive covenant that falls outside of the new benchmarks.

Utah: Healthcare Noncompetes Void as of May 2026

Utah's existing statute limits post-employment noncompete agreements to one (1) year and allows employees to recover attorneys' fees and damages if their former employer attempts to enforce an unenforceable noncompete. On March 24, 2026, Utah enacted a new law banning new noncompete agreements for a broad array of specified healthcare workers, including doctors, advanced practice nurses, dentists, therapists, counselors and others, effective May 6, 2026. The law provides limited exceptions for workers whose jobs do not utilize their healthcare license, noncompete clauses in reasonable severance agreements that were mutually and freely agreed upon in good faith, and noncompetes tied to the sale of a business if the restricted person receives value for the sale.

Virginia: Severance Becomes Part of Enforceability

Effective July 1, 2026, a noncompete will be unenforceable in Virginia if an employee is terminated without cause and does not receive disclosed severance or other monetary compensation. The statute applies broadly to all employees, not just low-wage workers (as was the case previously), and authorizes private civil actions and statutory penalties for violations.

South Dakota: Three-Year Maximum

On March 12, 2026, South Dakota enacted a statute expressly permitting agreements that prevent a selling owner from competing in the same business within the entity's specific geographic area for up to three (3) years after the sale.

Benesch's Trade Secret, Restrictive Covenants and Unfair Competition Practice Group will continue to monitor important activities in, and changes to, the trade secret and restrictive covenant space. The Group will provide periodic updates regarding new statutes, government actions and case opinions that may impact the ability to enforce restrictive covenants or protect trade secrets. The Group is also offering a flat fee review of restrictive covenant agreements to assess whether the agreements comply with the recent changes to restrictive covenant law.

If you would like to hear more about these offerings, please contact Scott Humphrey at 312.624.6420 or shumphrey@beneschlaw.com.