



LEGISLATIVE
RESEARCH &
GENERAL COUNSEL

Heard in the Business and Labor Interim
Committee meeting on 9/16/26



Employment Non-Competition Clauses

Research and Policy Options

Business and Labor Committee Staff

September 16, 2026



Trade Secret Protections

1979 | Trade Secrets Act

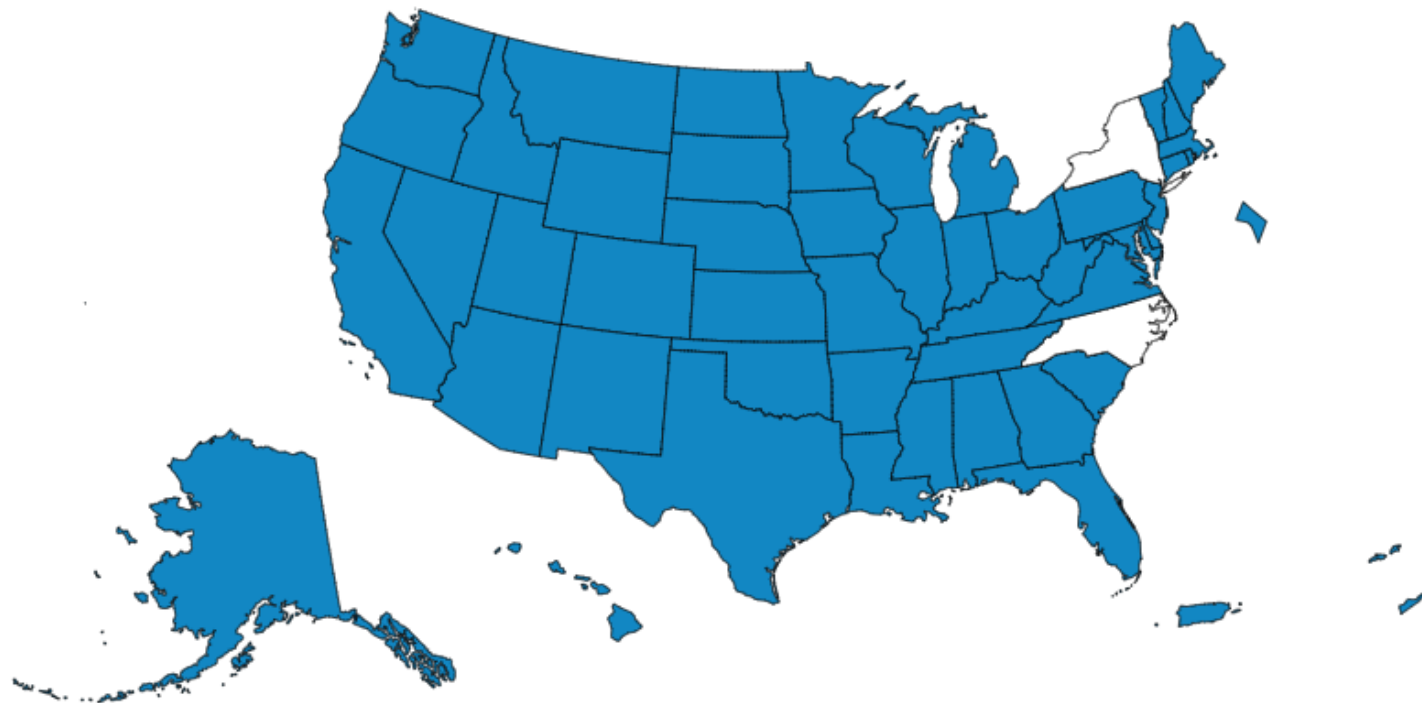
Torts | Business Regulation

Map

Bill List

Summary

Enactment History

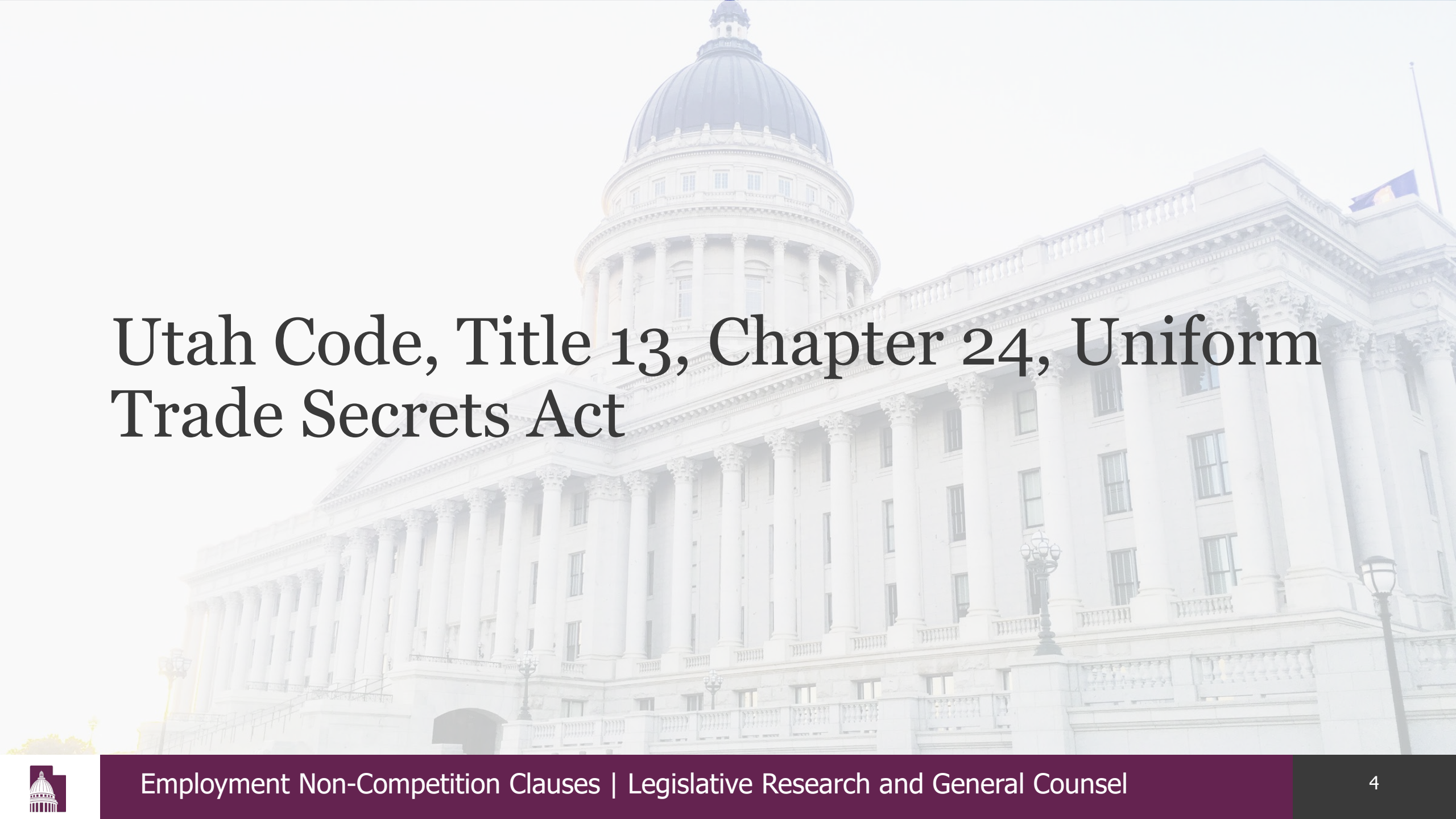


Enactment Map • Enacted

Description

The Uniform Trade Secrets Act (UTSA) provides a legal framework for improved trade secret protection. For further information about UTSA please contact Senior Director for Strategy and Communications Katie Robinson at (312) 450-6616 or krobinson@uniformlaws.org.





Utah Code, Title 13, Chapter 24, Uniform Trade Secrets Act



What Is a Trade Secret?

- Information, including a formula, pattern, compilation, program, device, method, technique, or process.
- Derives independent economic value, actual or potential, from not being generally known or readily ascertainable.
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
- Protection lasts if secrecy is maintained. **A person is not required to register or file a trade secret** (unlike a patent or a trademark).
- Common examples: customer lists, pricing models, source code, manufacturing processes, internal research.



How Misappropriation Happens

- Acquisition by improper means such as theft, bribery, misrepresentation, or espionage.
 - Disclosure or use without express or implied consent, by someone who knew or should have known the trade secret was improperly acquired;
 - Acquired under circumstances giving rise to a duty to maintain secrecy or limit the secret's use; or
 - Derived through or from a person who owed a duty to maintain its secrecy or limit its use.
- Not misappropriation: independent development or lawful reverse engineering.



Remedies

- Actual or threatened misappropriation may be enjoined by a court.
 - Only terminates when trade secret ceases to exist.
- In exceptional circumstances, an injunction may condition future use of the trade secret upon payment of a reasonable royalty.
- Damages can include both the actual loss caused by misappropriation and unjust enrichment caused by the misappropriation.





Policy Research on Non-Competes



Academic Research

- **Research Question #1:** Do non-compete agreements (NCAs) protect businesses in ways that other tools do not?
 - Experimental evidence shows that adding an NCA on top of an existing NDA reduces the likelihood of employees leaving (up to a 50% reduction).
 - Addition of NCA does not impact the likelihood of information sharing across competitors.^{[1](#)}
- **Research Question #2:** Does the use of NCAs affect innovation and competition in markets?
 - Observational data from states that increase NCA enforceability show consistent decreases in patent filings.^{[2](#)}
 - Evidence on investment is mixed, with some reports finding increases in both intangible and capital investment and others finding no effect.^{[34](#)}



Academic Research



- **Research Question #3:** How do NCAs affect employee mobility?
 - Generally, NCAs reduce employment mobility and job openings.⁵
 - Policy differences across states can impact movement of workers, with high-skilled workers likely to cross state lines to less restrictive states.⁶



Data from Utah



- In 2016, the Legislature funded a study conducted by the Cicero Group to understand use and attitudes toward NCAs in Utah.⁷
- Research was conducted following the passage of [H.B. 251](#) in the 2016 General Session, which generally prohibited the enforcement of NCAs lasting longer than one year.





Data from Utah

- Report includes data grouped into multiple categories:
 1. [NCA Usage Statistics](#)
 2. [Business Impacts](#)
 3. [Employee Behavior](#)
 4. [Policy Opinions](#)
 5. [Current Employer Practices](#)
 6. [Use of Other Restrictive Agreements](#)

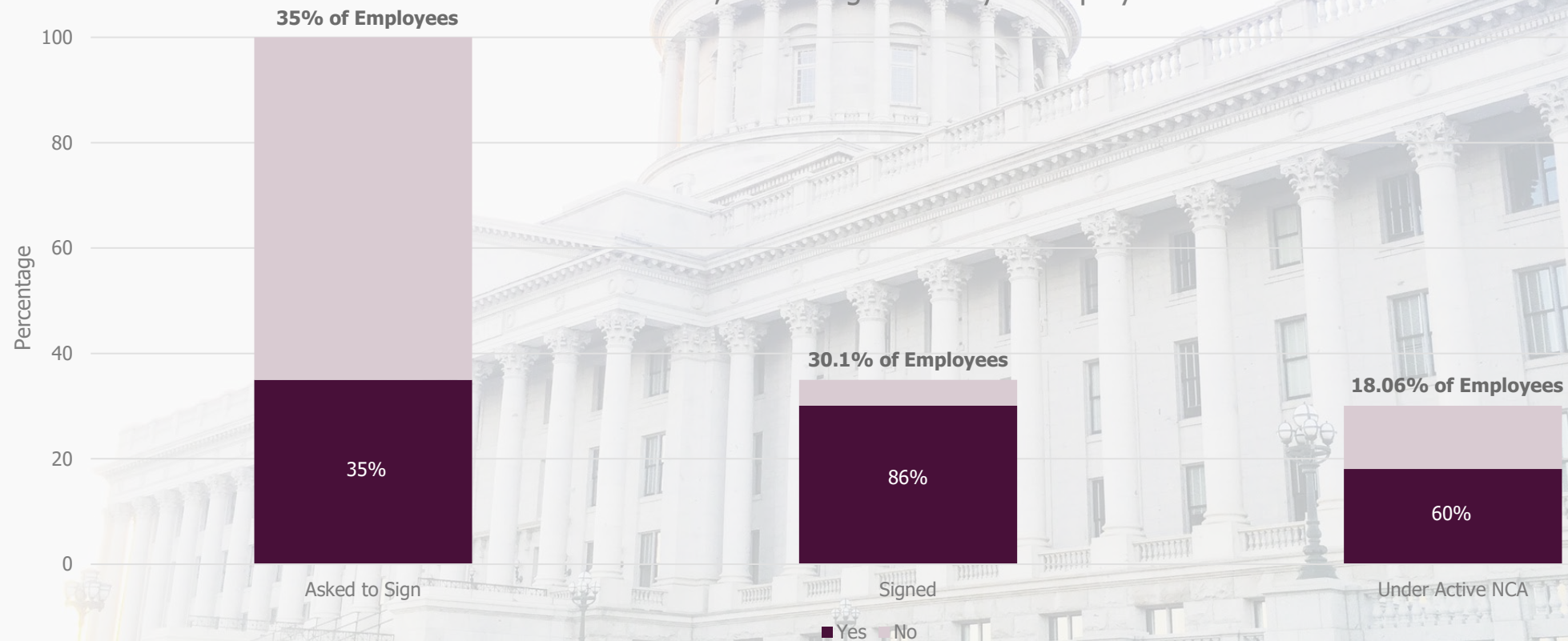


NCA Statistics

Utah
Observational
Studies



Use of NCAs, According to Surveyed Employees



NCA Statistics

Utah
Observational
Studies



**10-20% of
Hourly
Employees
Subject to
NCA**

A donut chart with a dark purple segment representing 10-20% of the total, and the rest of the chart is light gray.



**35% of
Senior
Executives
Subject to
NCA**

A donut chart with a dark purple segment representing 35% of the total, and the rest of the chart is light gray.



NCA Statistics

Utah
Observational
Studies



Employee Awareness and Understanding of NCAs

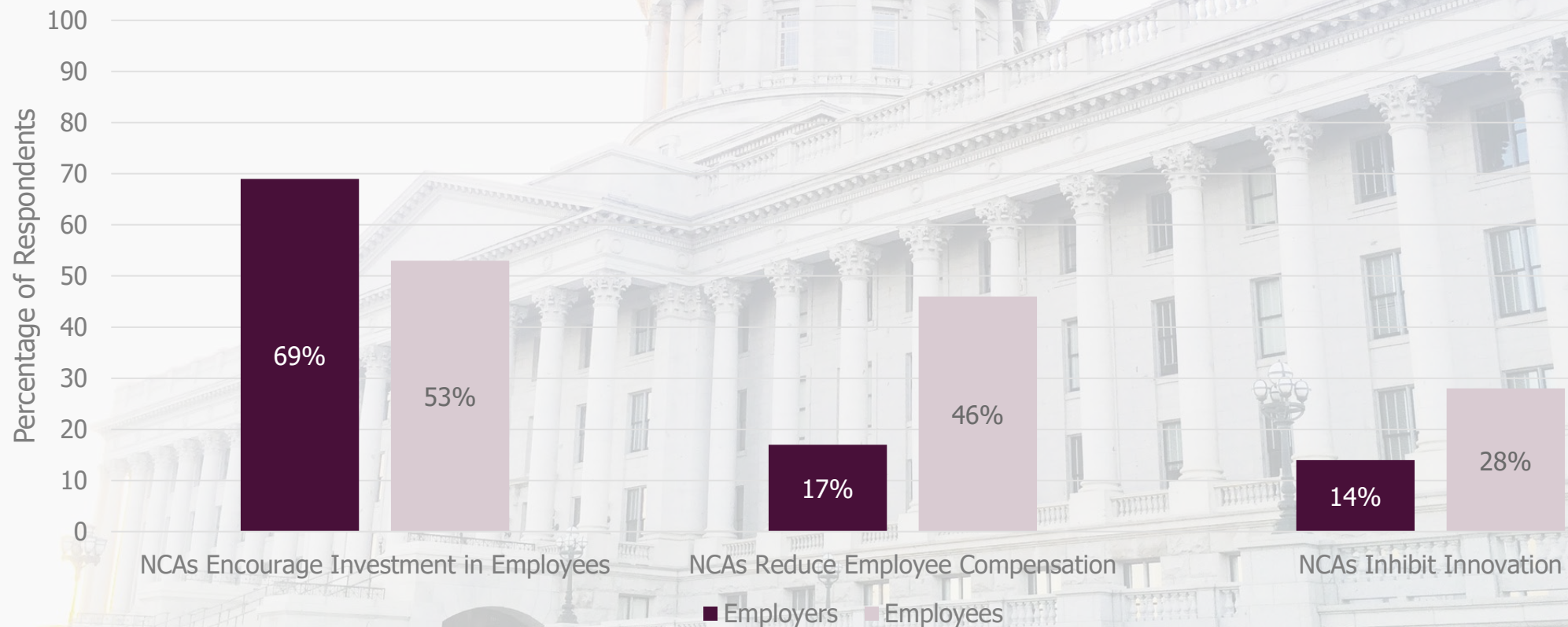


Business Impacts

Utah
Observational
Studies



Employer and Employee Perspectives on Business Impacts of NCAs



Employee Behavior

Utah
Observational
Studies



**13% of
Employees
Report that
NCAs Support
Employer
Training**



**11% of
Employees
Report that
NCAs Made
Them Careful
of Disclosing
Information**

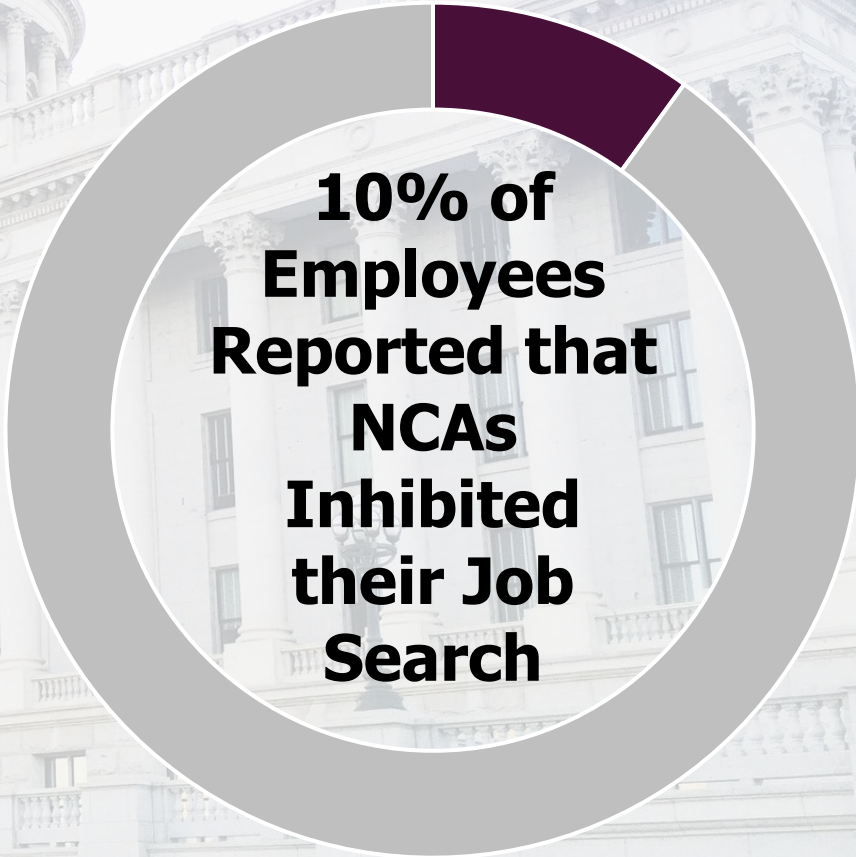


Employee Behavior

Utah
Observational
Studies



**30% of
Employees
Reported No
Impact of
NCA on their
Behavior**



**10% of
Employees
Reported that
NCAs
Inhibited
their Job
Search**

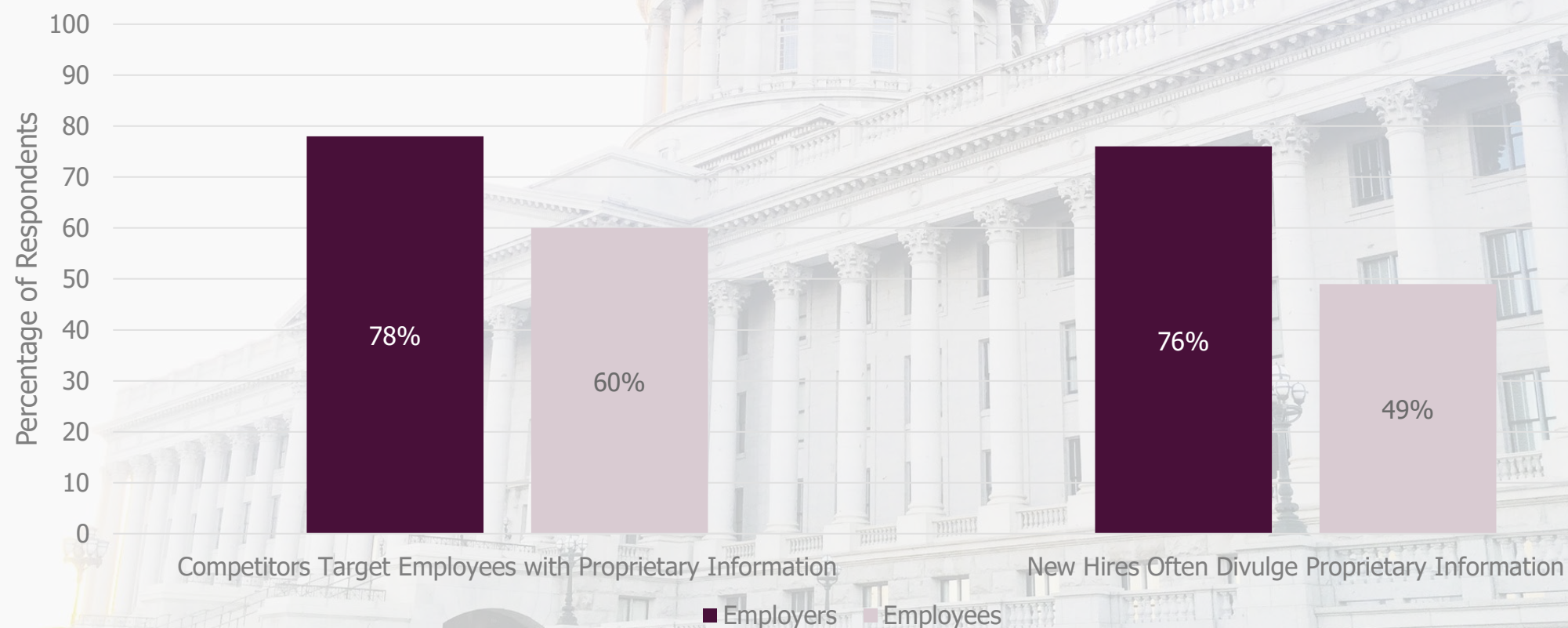


Employee Behavior

Utah
Observational
Studies



Employer and Employee Perspectives on Information Sharing

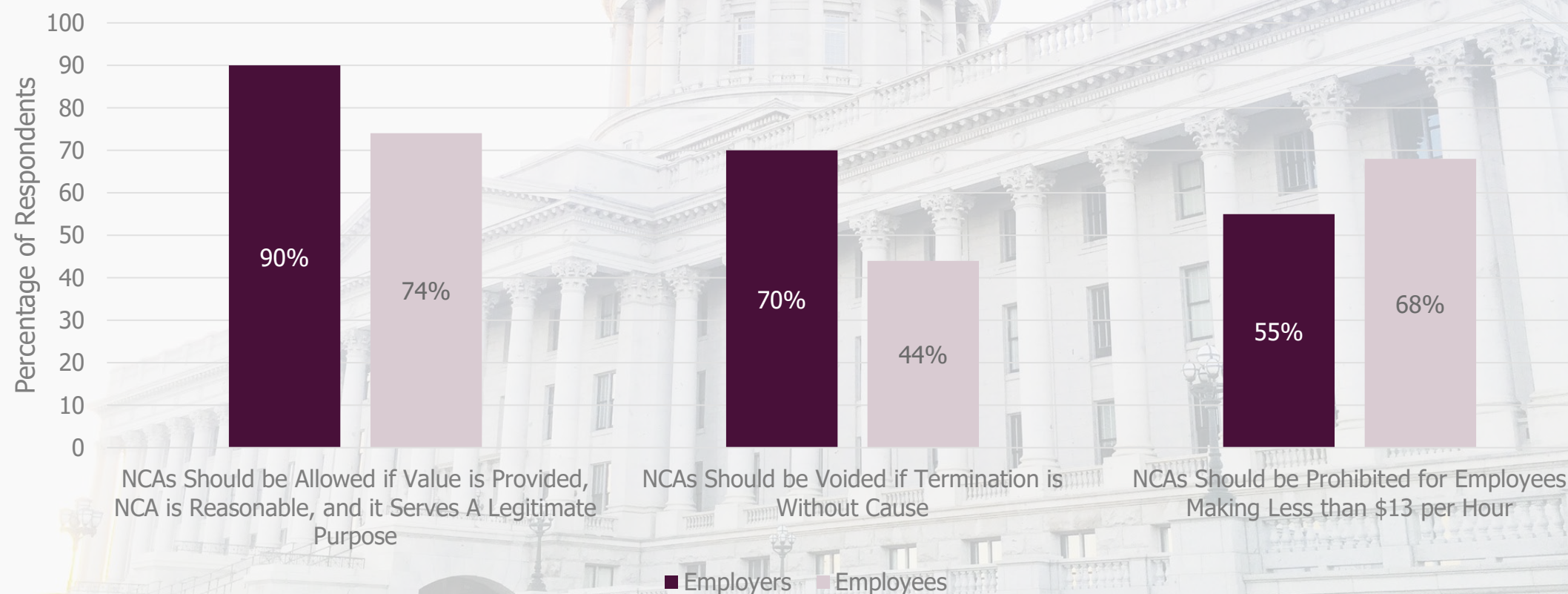


Policy Opinions

Utah
Observational
Studies



Employer and Employee Perspectives on NCA Policies



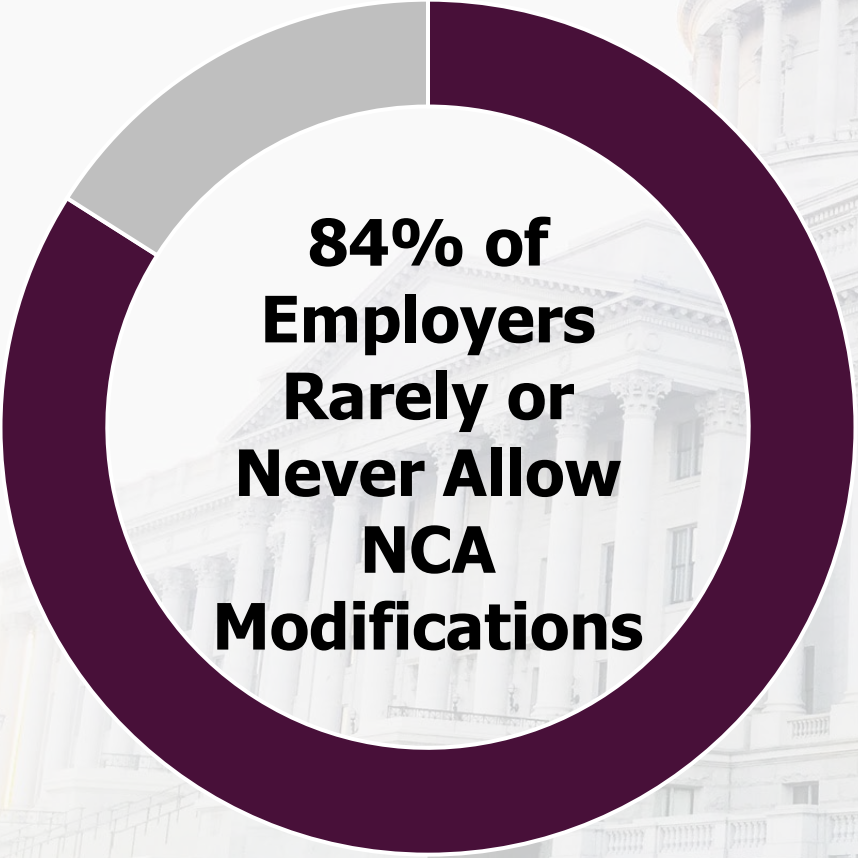
Current Business Practices

Utah
Observational
Studies

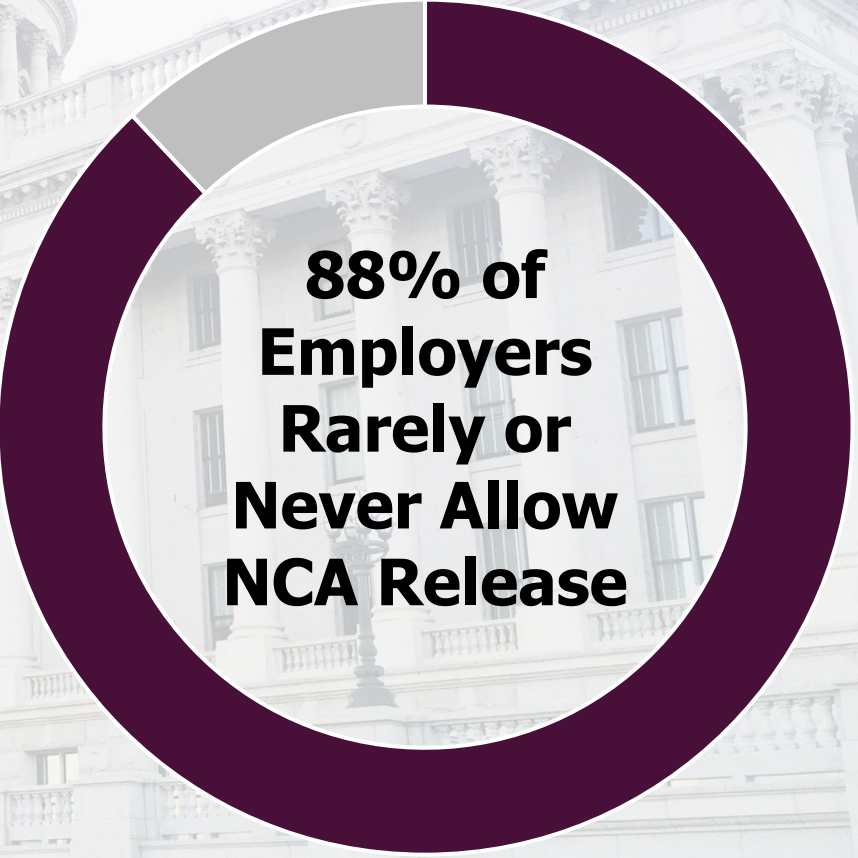




Current Business Practices



**84% of
Employers
Rarely or
Never Allow
NCA
Modifications**



**88% of
Employers
Rarely or
Never Allow
NCA Release**



Use of Other Agreements

Effectiveness of Protection

	Non-Compete	Non-Disclosure	Non-Solicitation
Trade secrets			
Proprietary Information			
Existing Customer Relationships			
Goodwill			
Employee Turnover			
Investment in training/ professional development			

- Employers generally view NDAs as comparable in protection to NCAs.
- Difference arises in the areas of turnover and professional development investment.



Policy Options

Policy Option Groups

- Statutory restrictions on NCA enforceability generally fall into three categories:
 - *Statutory Prohibitions: Where are NCAs strictly prohibited?*
 - *Form Requirements: What parameters must an NCA include?*
 - *Process Requirements: What do businesses have to do to enforce an NCA?*



NCA Policy Options

	Statutory Prohibitions	Form Requirements	Process Requirements
High Impact			
Moderate Impact			
Low Impact			



NCA Policy Options

	Statutory Prohibitions	Form Requirements	Process Requirements
High Impact			
Moderate Impact			
Low Impact	Hourly Employee Bans		



NCA Policy Options

	Statutory Prohibitions	Form Requirements	Process Requirements
High Impact			
Moderate Impact	• Income-Based Bans • Tenure Requirements • Job Type Prohibitions		
Low Impact	• Hourly Employee Bans		



NCA Policy Options

	Statutory Prohibitions	Form Requirements	Process Requirements
High Impact	• Broad NCA Bans		
Moderate Impact	• Income-Based Bans • Tenure Requirements • Job Type Prohibitions		
Low Impact	• Hourly Employee Bans		



NCA Policy Options

	Statutory Prohibitions	Form Requirements	Process Requirements
High Impact	Broad NCA Bans		
Moderate Impact	- Income-Based Bans - Tenure Requirements - Job Type Prohibitions	- NCA Specific Harm Requirements - Mandatory Buyout Clauses	
Low Impact	Hourly Employee Bans		



NCA Policy Options

	Statutory Prohibitions	Form Requirements	Process Requirements
High Impact	• Broad NCA Bans	• Garden Leave/Severance Clauses	
Moderate Impact	• Income-Based Bans • Tenure Requirements • Job Type Prohibitions	• NCA Specific Harm Requirements • Mandatory Buyout Clauses	
Low Impact	• Hourly Employee Bans		



NCA Policy Options

	Statutory Prohibitions	Form Requirements	Process Requirements
High Impact	• Broad NCA Bans	• Garden Leave/Severance Clauses	
Moderate Impact	• Income-Based Bans • Tenure Requirements • Job Type Prohibitions	• NCA Specific Harm Requirements • Mandatory Buyout Clauses	
Low Impact	• Hourly Employee Bans		• Prior Notice Requirements



NCA Policy Options

	Statutory Prohibitions	Form Requirements	Process Requirements
High Impact	• Broad NCA Bans	• Garden Leave/Severance Clauses	
Moderate Impact	• Income-Based Bans • Tenure Requirements • Job Type Prohibitions	• NCA Specific Harm Requirements • Mandatory Buyout Clauses	• Prohibition on NCAs for Without Cause Termination
Low Impact	• Hourly Employee Bans		• Prior Notice Requirements



Thank You



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Endnotes

¹ Cowgill, Bo, Brandon Freiberg, and Evan Starr. "Clause and effect: Theory and field experimental evidence on noncompete clauses." *The Quarterly Journal of Economics* (2026).

² Reinmuth, Kate, and Emma Rockall. "Innovation through inventor mobility: Evidence from non-compete agreements." *Available at SSRN 4459683* (2023).

³ Johnson, Matthew S., Michael Lipsitz, and Alison Pei. *Innovation, inventor mobility, and the enforceability of noncompete agreements*. No. w31487. National Bureau of Economic Research, 2023.

⁴ Jeffers, Jessica S. "The impact of restricting labor mobility on corporate investment and entrepreneurship." *The Review of Financial Studies* 37, no. 1 (2024): 1-44.

⁵ Johnson, Matthew S., Kurt Lavetti, and Michael Lipsitz. "The labor market effects of legal restrictions on worker mobility." *Journal of Political Economy* 133, no. 9 (2025): 2735-2793.

⁶ Marx, Matt, Jasjit Singh, and Lee Fleming. "Regional disadvantage? Employee non-compete agreements and brain drain." *Research Policy* 44, no. 2 (2015): 394-404.

⁷ Berbert, Chad, Michael Jensen, Rong Mo, and Kevin Duncan. 2017. "Utah Non-Compete Agreement Research." Cicero Group.

