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Section 1. Title This [act] may be cited as the Uniform Restrictive Employment Agreement Act.	**Not applicable**	
Section 2. Definitions In this [act]: (1) "Confidentiality agreement" means a restrictive employment agreement that: (A) prohibits a worker from using or disclosing information; and (B) is not a condition of settlement or other resolution of a dispute. (2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. (3) "Employer" means a person that hires or contracts with a worker to work for the person. (4) "No-business agreement" means a restrictive employment agreement that prohibits a worker from working for a client or customer of the employer. (5) "Noncompete agreement" means a restrictive employment agreement that prohibits a worker from	**No statutory definitions**	In current law, there are no statutory definitions applicable to restrictive employment agreements, because there is no comprehensive statute on the subject. G.S. 75-4 (set out below) is the only statute on the subject.

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working other than for the employer. The term does not include a no-business agreement. (6) "Nonsolicitation agreement" means a restrictive employment agreement that prohibits a worker from soliciting a client or customer of the employer. (7) "No-recruit agreement" means a restrictive employment agreement that prohibits a worker from hiring or recruiting another worker of the employer. (8) "Payment-for-competition agreement" means a restrictive employment agreement that imposes an adverse financial consequence on a worker for working other than for the employer but does not expressly prohibit the work. (9) "Person" means an individual, estate, business or nonprofit entity, or other legal entity. The term does not include a public corporation or government or governmental subdivision, agency, or instrumentality. (10) "Record" means information: (A) inscribed on a tangible medium; or (B) stored in an electronic or other medium and retrievable in perceivable form. (11) "Restrictive employment agreement" means an agreement or part of another agreement between an		

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employer and worker that prohibits, limits, or sets a condition on working other than for the employer after the work relationship ends or a sale of a business is consummated. The term includes a confidentiality agreement, no-business agreement, noncompete agreement, nonsolicitation agreement, no-recruit agreement, payment-for-competition agreement, and training-repayment agreement. (12) "Sale of a business" means sale, merger, consolidation, amalgamation, reorganization, or other transaction, however denominated, of: (A) all or part of a business or nonprofit entity or association, or all or part of its assets; or (B) a substantial ownership interest in the entity or association. (13) "Sign" means, with present intent to authenticate or adopt a record: (A) execute or adopt a tangible symbol; or (B) attach to or logically associate with the record an electronic symbol, sound, or process. (14) "Signed agreement" means a restrictive employment agreement signed by the worker and employer. (15) "Special training" means instruction or other		

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education a worker receives from a source other than the employer that: (A) is designed to enhance the ability of the worker to perform the worker's work; (B) is not normally received by other workers; and (C) requires a significant and identifiable expenditure by the employer distinct from ordinary on-the-job training. (16) "Stated rate of pay" means the compensation, calculated on an annualized basis, an employer agrees to pay a worker. The term: (A) includes a wage, salary, professional fee, other compensation for personal service, and the fair market value of all remuneration other than cash; and (B) does not include: (i) a healthcare benefit, severance pay, retirement benefit, or expense reimbursement; (ii) distribution of earnings and profit that is not compensation for personal service; or (iii) anticipated but indeterminable compensation, including a tip, bonus, or		

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commission. (17) "Trade secret" has the meaning in [cite to Uniform Trade Secrets Act Section 1(4)]. (18) "Training-repayment agreement" means a restrictive employment agreement that requires a worker to repay the employer for training costs incurred by the employer. (19) "Work" means providing service. (20) "Worker" means an individual who works for an employer. The term: (A) includes an employee, independent contractor, extern, intern, volunteer, apprentice, sole proprietor who provides service to a client or customer, and an individual who provides service through a business or nonprofit entity or association; (B) does not include an individual, even if the individual performs incidental service for the employer, whose sole relationship with the employer is: (i) as a member of a board of directors or other governing or advisory board; (ii) an individual under whose authority the powers of a business or nonprofit entity or		

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association are exercised; (iii) an investor; or (iv) a vendor of goods.		
Section 3. Scope (a) This [act] applies to a restrictive employment agreement. If a restrictive employment agreement is part of another agreement, this [act] does not affect other parts of the other agreement. (b) This [act] supersedes common law only to the extent that it applies to a restrictive employment agreement but otherwise does not affect principles of law and equity consistent with this [act]. (c) This [act] does not affect [cite to other state law or rule that regulates a restrictive employment agreement not inconsistent with this act]. (d) This [act] does not affect an agreement to take an action solely to transfer, perfect, or enforce a patent, copyright, trade secret, or similar right. (e) This [act] does not affect a noncompetition obligation arising solely as a result of an existing ownership interest in a business entity. (f) This [act] does not affect an agreement that requires a worker to forfeit compensation after the work	**Not applicable**	The Uniform Act supersedes common law only to the extent it applies to a restrictive employment agreement.

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relationship ends, including vacation or retirement benefits, the right to which accrued before the work relationship ends.		
Section 4. Notice Requirements (a) Except as provided in subsection (e), a restrictive employment agreement is prohibited and unenforceable unless: (1) the employer provides a copy of the proposed agreement in a record to: (A) subject to subsection (b), a prospective worker, at least 14 days before the prospective worker accepts work or commences work, whichever is earlier; (B) a current worker who receives a material increase in compensation, at least 14 days before the increase or the worker accepts a change in job status or responsibilities, whichever is earlier; or (C) a departing worker who is given consideration in addition to anything of value to which the worker already is entitled, at least 14 days before the agreement is required to be signed; (2) with the copy of the proposed agreement provided under paragraph (1), the employer provides the worker in a record the separate notice,	**§ 75-4. Contracts to be in writing.** No contract or agreement hereafter made, limiting the rights of any person to do business anywhere in the State of North Carolina shall be enforceable unless such agreement is in writing duly signed by the party who agrees not to enter into any such business within such territory: Provided, nothing herein shall be construed to legalize any contract or agreement not to enter into business in the State of North Carolina, or at any point in the State of North Carolina, which contract is now illegal, or which contract is made illegal by any other section of this Chapter. (1913, c. 41, s. 4; C.S., s. 2562.) *** We note first that a negative covenant restricting employment will not be enforced unless it is supported by a valid consideration. … To be enforceable, a negative covenant restricting other employment must be ancillary to a valid affirmative covenant or contract. Nor will the negative covenant be enforced if it appears to be the main purpose of the contract. *Collier Cobb & Assocs., Inc. v. Leak*, 61 N.C. App. 249, 252-53, 300 S.E.2d 583, 585 (1983) (citations omitted).	The Uniform Act sets out a notice procedure for restrictive employment agreements and requires that a restrictive employment agreement be in a signed record. Current law does not contain the same procedural protections but does require that contracts limiting the rights of a person to do business in the State to be in writing and signed by the person. Current law also requires that a restrictive employment agreement be supported by consideration and be ancillary to another

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in the preferred language of the worker if available, prescribed by the [State Department of Labor] under subsection (d); (3) the proposed agreement and the signed agreement clearly specify the information, type of work activity, or extent of competition that the agreement prohibits, limits, or sets conditions on after the work relationship ends; (4) the agreement is in a record separately signed by the worker and employer and the employer promptly provides the worker a copy of the signed agreement; and (5) subject to subsection (c), the employer provides an additional copy of the agreement to the worker, not later than 14 days after the worker, in a record, requests a copy, unless the employer reasonably and in good faith is unable to provide the copy not later than 14 days after the request and the worker is not prejudiced by the delay. (b) A worker may waive the 14-day requirement of subsection (a)(1)(A) if the worker receives the signed agreement before beginning work. If the worker waives the requirement, the worker may rescind the entire employment agreement not later than 14 days after the worker receives the agreement. (c) An employer is not required under subsection (a)(5) to provide an additional copy of the agreement more		agreement (e.g. employment agreement or sale of business agreement).

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than once during a calendar year. (d) The [State Department of Labor] shall prescribe the notice an employer must provide under subsection (a)(2). The notice must inform the worker, in language an average reader can understand, of the requirements of this [act], including the requirements of subsection (a) and Sections 5 through 14 and state that this [act] establishes penalties against an employer that enters into a prohibited agreement. The [State Department of Labor] shall make the notice available to employers on its publicly accessible website or in other appropriate ways. The [State Department of Labor] may: (1) produce a separate notice for each type of restrictive employment agreement; and (2) translate the notice into languages other than English used by a substantial portion of the state's labor force. (e) This section does not apply to a restrictive employment agreement in connection with the sale of a business of which the worker is a substantial owner and consents to the sale.		
Section 5. Low-Wage Worker A restrictive employment agreement, other than a confidentiality agreement or training-repayment agreement, is:	**No comparable law**	The Uniform Act prohibits a restrictive employment agreement (other than a confidentiality agreement or training-

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(1) prohibited and unenforceable if, when the worker signs the agreement, the worker has a stated rate of pay less than the annual mean wage of employees in this state as determined by the [State Department of Labor] [United States Department of Labor, Bureau of Labor Statistics]; and (2) unenforceable if, at any time during the work relationship, the worker's compensation from the employer, calculated on an annualized basis, is less than the annual mean wage of employees in this state as determined by the [State Department of Labor] [United States Department of Labor, Bureau of Labor Statistics].		repayment agreement) for workers who earn less than the annual mean wage in the state.
Section 6. Effect of Termination of Work A restrictive employment agreement, other than a confidentiality agreement or training-repayment agreement, is unenforceable if: (1) the worker resigns for good cause attributable to the employer; or (2) the employer terminates the worker for a reason other than [substantial] [willful] [gross] misconduct or the completion of the agreed work or the term of the contract.	**No state court case found** *[Staff Note: In* Reynolds & Reynolds Co. v. Tart, *955 F. Supp. 547, 558 (W.D.N.C.), a federal district court held that an assignee of at-will employment agreements and noncompete agreements could summarily terminate two employees and enforce the noncompete agreements against them.]*	The Uniform Act considers the circumstances of a worker's departure from an employer. There doesn't appear to be a state court case on this issue.
Section 7. Reasonableness Requirement A restrictive employment agreement is prohibited and	"[I]n North Carolina, restrictive covenants between an employer and employee are valid and enforceable if they are (1) in writing; (2) made part of a contract of employment; (3)	The Uniform Act's reasonableness requirement is

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unenforceable unless it is reasonable.	based on valuable consideration; (4) reasonable both as to time and territory; and (5) not against public policy." *United Labs., Inc. v. Kuykendall*, 322 N.C. 643, 649-50, 370 S.E.2d 375, 380 (1988).	consistent with current law.
Section 8. Noncompete Agreement A noncompete agreement is prohibited and unenforceable unless: (1) the agreement protects any of the following legitimate business interests: (A) the sale of a business of which the worker is a substantial owner and consents to the sale; (B) the creation of a business in which the worker is a substantial owner; (C) a trade secret; or (D) an ongoing client or customer relationship of the employer; (2) when the worker signs the agreement and through the time of enforcement, the agreement is narrowly tailored in duration, geographical area, and scope of actual competition to protect an interest under paragraph (1), and the interest cannot be protected adequately by another restrictive employment agreement; and	"[I]n North Carolina, restrictive covenants between an employer and employee are valid and enforceable if they are (1) in writing; (2) made part of a contract of employment; (3) based on valuable consideration; (4) reasonable both as to time and territory; and (5) not against public policy." *United Labs., Inc. v. Kuykendall*, 322 N.C. 643, 649-50, 370 S.E.2d 375, 380 (1988). *[Staff Note: In some opinions, "designed to protect a legitimate business interest of the employer" has been substituted for "not against public policy."* See e.g., Hartman v. W.H. Odell & Assocs., Inc., *117 N.C. App. 307, 311, 450 S.E.2d 912, 916 (1994),* disc. review denied, *339 N.C. 612, 454 S.E.2d 251 (1995).]* *<u>Issue 1: Time and territory:</u>* ***Compare the following excerpt . . .*** One of the primary purposes of a covenant not to compete is to protect the relationship between an employer and its customers. *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 408, 302 S.E.2d 754, 763 (1983). Accordingly, to prove that a geographic restriction in a covenant not to compete is reasonable, an employer must first show where its customers are	The Uniform Act enumerates what legitimate business interests can support a noncompete agreement, provides that the agreement must be narrowly tailored, and sets maximum time limits. Current law contains many of the same concepts but has fewer bright-line rules. Current law does not appear to have a maximum time limit for noncompete agreements (or any other restrictive employment agreement). Current law also treats differently the sale of a business and the

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(3) the prohibition on competition lasts not longer than: (A) five years after the work relationship ends when protecting an interest under paragraph (1)(A) or (B); or (B) one year after the work relationship ends when protecting an interest under paragraph (1)(C) or (D) but not an interest under paragraph (1)(A) or (B).	located and that the geographic scope of the covenant is necessary to maintain those customer relationships. A restriction as to territory is reasonable only to the extent it protects the legitimate interests of the employer in *maintaining* [its] customers. *Manpower of Guilford County, Inc. v. Hedgecock*, 42 N.C. App. 515, 523, 257 S.E.2d 109, 115 (1979) (emphasis added). The employer must show that the territory embraced by the covenant is no greater than necessary to secure the protection of its business or good will. *A.E.P.*, 308 N.C. at 408, 302 S.E.2d at 763. If the territory is too broad, "the entire covenant fails since equity will neither enforce nor reform an overreaching and unreasonable covenant." *Beasley*, 90 N.C. App. at 460, 368 S.E.2d at 886. In deciding what is "reasonable," the court in *Clyde Rudd & Associates, Inc. v. Taylor*, 29 N.C. App. 679, 684, 225 S.E.2d 602, 605 (1976), *cert. denied*, 290 N.C. 659, 228 S.E.2d 451 (1976), listed six factors relevant to determining whether the geographic scope of a covenant not to compete is reasonable: (1) the area, or scope, of the restriction; (2) the area assigned to the employee; (3) the area where the employee actually worked or was subject to work; (4) the area in which the employer operated; (5) the nature of the business involved; and (6) the nature of the employee's duty and his knowledge of the employer's business operation.	legal and medical professions.

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	Where the alleged primary concern is the employee's knowledge of the customers, "the territory should only be limited to areas in which the employee made contacts during the period of his employment." *Manpower*, 42 N.C. App. at 522, 257 S.E.2d at 114-115. … The North Carolina Supreme Court has stated that only "extreme conditions" will support a five-year covenant: "It may be held that in some instances and *under extreme conditions* five years would be held to not be unreasonable." *Engineering Associates, Inc. v. Pankow*, 268 N.C. 137, 139, 150 S.E.2d 56, 58 (1966) (emphasis added). *Hartman v. W.H. Odell & Assocs., Inc.*, 117 N.C. App. 307, 312-15, 450 S.E.2d 912, 917-18 (1994), *disc. review denied*, 339 N.C. 612, 454 S.E.2d 251 (1995). ***. . . with the following excerpt:*** Our Supreme Court has upheld the validity of a covenant restricting competition for seven years within Durham and Orange Counties, finding the covenant reasonable as a matter of law. *Bicycle Transit Authority, Inc. v. Bell*, 314 N.C. 219, 226, 333 S.E.2d 299, 303-04 (1985) (citing *Jewel Box Stores v. Morrow*, 272 N.C. 659-663, 158 S.E.2d 840, 843 (1968) (upheld agreement not to compete with jewelry business for ten years within ten miles); *Sineath v. Katzis*, 218 N.C. 740, 12 S.E.2d 671 (1941) (upheld agreement not to compete with dry cleaning plant for	

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	fifteen years within county); *Sea Food Co. v. Way*, 169 N.C. 679, 86 S.E. 603 (1915) (agreement not to compete with fish dealership within one hundred miles of city for ten years)). Moreover, " '[a] longer period of time is acceptable where the geographic restriction is relatively small, and vice versa.' " *Precision Walls, Inc. v. Servie*, 152 N.C. App. 630, 637-38, 568 S.E.2d 267, 273 (2002) (citation omitted) (upholding restrictive covenant covering two states, but lasting only one year). The restrictive covenant at issue covers only a fifteen mile radius and restricts Carroll only from opening a competing practice within that radius for three years following his departure from plaintiff's practice. This covenant is significantly less restrictive than that upheld by *Bicycle Transit* and case law cited therein. Moreover, even though Carroll continued to be employed by plaintiff for five years after the date of the agreement, such that the covenant remained effective for a total of some eight years, the covenant restricted only a very small geographic area; thus, the balance of the time and place restrictions was wholly reasonable, and plaintiff has accordingly shown a likelihood of success on the merits of the covenant's enforceability. *Kennedy v. Kennedy*, 160 N.C. App. 1, 9-10, 584 S.E.2d 328, 334, *writ dismissed sub nom. Jeffrey R. Kennedy, D.D.S. v. Kennedy*, 357 N.C. 658, 590 S.E.2d 268 (2003).	

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	Issue 2: Sale of a business (excerpt from Beverage Systems *opinion):* This Court will enforce a covenant not to compete made in connection with the sale of a business "(1) if it is reasonably necessary to protect the legitimate interest of the purchaser; (2) if it is reasonable with respect to both time and territory; and (3) if it does not interfere with the interest of the public." *Jewel Box Stores Corp. v. Morrow*, 272 N.C. 659, 662-63, 158 S.E.2d 840, 843 (1968) (citations omitted). Ordinarily, a covenant's geographic scope will be found reasonable if it encompasses the area served by the business that the covenant protects, *Thompson v. Turner*, 245 N.C. 478, 481–82, 96 S.E.2d 263, 266 (1957), or, more specifically, if the protected business had clientele in the area covered by the covenant, *Noe v. McDevitt*, 228 N.C. 242, 245, 45 S.E.2d 121, 123 (1947) (citations omitted) (finding the territorial limitation of North and South Carolina unreasonable when the business's services were confined to eastern North Carolina); *Manpower of Guilford Cty., Inc. v. Hedgecock*, 42 N.C. App. 515, 523, 257 S.E.2d 109, 115 (1979) ("A restriction as to territory is reasonable only to the extent it protects the legitimate interests of the employer in maintaining his customers."). *Beverage Sys. of the Carolinas, LLC v. Associated Beverage Repair, LLC*, 368 N.C. 693, 698, 784 S.E.2d 457, 461 (2016). *Issue 3: Application to lawyers:*	

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	NC State Bar Rule of Professional Conduct 5.6 (Restrictions on Right to Practice): A lawyer shall not participate in offering or making: (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties. **Comment** [1] An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm. [2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client. [3] This Rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.	

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	Issue 4: Application to physicians (excerpt from Zaldivar *opinion):* North Carolina courts have considered several cases involving non-compete agreements involving physicians, and depending upon the specialization of the physician and the territory of the restriction, several cases have recognized the potential for harm to the public health from denial of needed medical care to the public: If ordering the covenantor to honor his contractual obligation would create a substantial question of potential harm to the public health, then the public interests outweigh the contract interests of the covenantee, and the court will refuse to enforce the covenant. But if ordering the covenantor to honor his agreement will merely inconvenience the public without causing substantial harm, then the covenantee is entitled to have his contract enforced. *Iredell Digestive Disease Clinic v. Petrozza*, 92 N.C. App. 21, 27-28, 373 S.E.2d 449, 453 (1988) (citations omitted), *aff'd*, 324 N.C. 327, 377 S.E.2d 750 (1989). This Court considers the following factors in determining the risk of substantial harm to the public: the shortage of specialists in the field in the restricted area, the impact of establishing a monopoly in the area, including the impact on fees in the future and the availability of a doctor at all times for emergencies, and the public	

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	interest in having a choice in the selection of a physician. *Calhoun v. WHA Med. Clinic, PLLC*, 178 N.C. App. 585, 599-600, 632 S.E.2d 563, 572 (2006) (quotation marks and ellipsis omitted). *Aesthetic Facial & Ocular Plastic Surgery Ctr., P.A. v. Zaldivar*, 264 N.C. App. 260, 264, 826 S.E.2d 723, 726-27, *disc. review denied*, 373 N.C. 173, 833 S.E.2d 625 (2019).	
Section 9. Confidentiality Agreement A confidentiality agreement is prohibited and unenforceable unless the worker may use and disclose information that: (1) arises from the worker's general training, knowledge, skill, or experience, whether gained on the job or otherwise; (2) is readily ascertainable to the relevant public; or (3) is irrelevant to the employer's business.	The North Carolina Court of Appeals has held that "an agreement is not in restraint of trade . . . if it does not seek to prevent a party from engaging in a similar business in competition with the promisee, but instead seeks to prevent the disclosure or use of confidential information." *Chemimetals Processing, Inc. v. McEneny*, 124 N.C. App. 194, 197, 476 S.E.2d 374, 376 (1996). Such an agreement is enforceable "even though the agreement is unlimited as to time and area, upon a showing that it protects a legitimate business interest of the promisee." *Id.* at 197, 476 S.E.2d at 376-77 (citation omitted). *Wells Fargo Ins. Servs. USA, Inc. v. Link*, 372 N.C. 260, 276-77, 827 S.E.2d 458, 472 (2019).	Both the Uniform Act and current law apply fewer requirements to confidentiality agreements than to noncompete agreements.
Section 10. No-Business Agreement A no-business agreement is prohibited and unenforceable unless the agreement: (1) applies only to a prospective or ongoing client or	**No case found**	Staff did not find a case discussing a no-business agreement; however, staff did find a case discussing a nonsolicitation

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customer of the employer with which the worker had worked personally; and (2) lasts not longer than six months after the work relationship between the employer and worker ends.		agreement, which is a similar type of agreement. (Please see next row.)
Section 11. Nonsolicitation Agreement A nonsolicitation agreement is prohibited and unenforceable unless the agreement: (1) applies only to a prospective or ongoing client or customer of the employer with which the worker had worked personally; and (2) lasts not longer than one year after the work relationship between the employer and worker ends.	*Excerpt from* Zaldivar*:* In North Carolina, the protection of customer relations against misappropriation by a departing employee is well recognized as a legitimate interest of an employer. A restrictive covenant may "be directed at protecting a legitimate business interest. But . . . where the Agreement reaches not only clients, but potential clients, and extends to areas where Plaintiff had no connections or personal knowledge of customers, the Agreement is unreasonable." *Hejl v. Hood, Hargett & Assocs.*, 196 N.C. App. 299, 307, 674 S.E.2d 425, 430 (2009). *Aesthetic Facial & Ocular Plastic Surgery Ctr., P.A. v. Zaldivar*, 264 N.C. App. 260, 272-73, 826 S.E.2d 723, 731-32 (citations and quotation marks omitted) (discussing a nonsolicitation agreement), *disc. review denied*, 373 N.C. 173, 833 S.E.2d 625 (2019). *Excerpt from* Barber*:* At bar, the covenant restricts defendant, for two years, from soliciting any customers having an active account with plaintiff at the time of his termination or prospective customer whom defendant himself had	The Uniform Act allows only for a nonsolicitation agreement that applies only to prospective or ongoing clients with which the worker had worked personally and sets the maximum time limit at one year. A nonsolicitation agreement under current law can prohibit a worker from soliciting any of the employer's clients. Current law also does not set a maximum time limit.

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	solicited within the six months immediately preceding his termination. Our Supreme Court has recognized the validity of similar time and territory restrictions. *See Triangle Leasing*, 327 N.C. 224, 393 S.E.2d 854 (employment contract does not restrict all competition throughout the State of North Carolina but rather only prohibits the direct or indirect solicitation of Triangle's customers and accounts for the specified two year period). . . . Plaintiff has shown a likelihood that the covenant is reasonable and enforceable. *Wade S. Dunbar Ins. Agency, Inc. v. Barber*, 147 N.C. App. 463, 469, 556 S.E.2d 331, 335-36 (2001).	
Section 12. No-Recruit Agreement A no-recruit agreement is prohibited and unenforceable unless the agreement prohibits hiring or recruiting only: (1) another worker currently working for the employer with whom the worker had worked personally; and (2) lasts not longer than six months after the work relationship between the employer and worker ends.	**No case found**	Staff did not find a case discussing a no-recruit agreement.

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Section 13. Payment-for-Competition Agreement A payment-for-competition agreement is prohibited and unenforceable unless the agreement: (1) imposes a financial consequence that is not greater than the actual competitive harm to the employer; and (2) lasts not longer than one year after the work relationship between the employer and worker ends.	A forfeiture, unlike a restraint included in an employment contract, is not a prohibition on the employee's engaging in competitive work. A restriction in the contract which does not preclude the employee from engaging in competitive activity, but simply provides for the loss of rights or privileges if he does so is not in restraint of trade. . . . The "Cost Sharing" provision at issue here is designed to protect plaintiff against competition by defendant within the three counties described. The defendant only forfeits the "Cost Share" amount upon choosing to engage in competition with plaintiff. The Contract does not prohibit defendant from engaging in the practice of her profession, but only provides that if she does so within the described three county area, she will pay a certain sum for making this choice. Accordingly, we hold that the "Cost Sharing" provision is not a covenant not to compete and we do not subject it to the strict scrutiny as to reasonableness and public policy required with a covenant not to compete. *E. Carolina Internal Med., P.A. v. Faidas*, 149 N.C. App. 940, 944-45, 564 S.E.2d 53, 55-56, *aff'd per curiam* (citations, quotation marks, and ellipses omitted), 356 N.C. 607, 572 S.E.2d 780 (2002).	The Uniform Act prohibits a payment-for-competition agreement unless the payment is not greater than the actual competitive harm and sets a maximum time limit of one year. Current law applies less scrutiny to a payment-for-competition agreement than to a noncompete agreement.
Section 14. Training-Repayment Agreement A training-repayment agreement is prohibited and unenforceable unless the agreement:	**No case found**	Staff did not find a case discussing a training-repayment agreement.

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(1) requires repayment only of the cost of special training; (2) lasts not longer than two years after the special training is completed; and (3) prorates the repayment for work done during the post-training period.		
Section 15. Nonwaivability Except as provided in Section 4(b) or in the context of resolving an issue in litigation or other dispute resolution, a party to a restrictive employment agreement may not waive a requirement of this [act] or stipulate to a fact to avoid a requirement of this [act].	**Not applicable**	The Uniform Act generally prohibits a party from waiving a requirement of the Act. Common law rules in current caselaw also cannot waived by contract.
Section 16. Enforcement and Remedy **Alternative A** (a) The court may not modify a restrictive employment agreement to make the agreement enforceable. **Alternative B** (a) The court may not modify a restrictive employment agreement that restricts a worker beyond a period	[W]hen an agreement not to compete is found to be unreasonable, we have held that the court is powerless unilaterally to amend the terms of the contract. . . . As discussed above, blue-penciling is the process by which a court of equity will take notice of the divisions the parties themselves have made [in a covenant not to compete], and enforce the restrictions in the territorial divisions deemed reasonable and refuse to enforce them in the divisions deemed unreasonable. That doctrine is unavailable here. The Agreement's territorial limits cannot be blue-penciled unless the	Current law adopts the "strict blue-pencil" approach discussed in the Official Comment to Section 16 of the Uniform Act. This approach allows a court to modify a contract only by deleting words; it can never change or add

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imposed under this [act] to make the agreement enforceable. The court may modify an agreement that otherwise violates this [act] only on a finding that the employer reasonably and in good faith believed the agreement was enforceable under this [act] and only to the extent necessary to protect the employer's interest and render the agreement enforceable. **End of Alternatives** (b) A worker who is a party to a restrictive employment agreement or a subsequent employer that has hired or is considering hiring the worker may seek a declaratory judgment that the agreement is unenforceable. (c) In addition to other judicial remedies, a court may award statutory damages under subsection (e) and in a private action reasonable attorney's fees to a party that successfully challenges or defends against enforceability of a restrictive employment agreement or proves a violation of this [act]. (d) An employer seeking to enforce a restrictive employment agreement has the burden of proving compliance with this [act]. (e) An employer that enters a restrictive employment agreement that the employer knows or reasonably should know is prohibited by this [act] commits a civil violation. The [Attorney General] [State Department of Labor] [other state official] may bring an action on behalf of the worker, or the worker may bring a private	Agreement can be interpreted so that it sets out both reasonable and unreasonable restricted territories. We found above that the restrictions to all of North Carolina and South Carolina, the only territorial restrictions in the Agreement, are unreasonable. Striking the unreasonable portions leaves no territory left within which to enforce the covenant not to compete. As a result, blue-penciling cannot save the Agreement. *Beverage Sys. of the Carolinas, LLC v. Associated Beverage Repair, LLC*, 368 N.C. 693, 699, 784 S.E.2d 457, 461-62 (2016) (citations and quotation marks omitted).	words. For example, if the territory covered by a contract is all of North Carolina and the court finds that it is overbroad, the court could not save the contract; however, if the contract listed all 100 counties of North Carolina, the court could delete some of the counties in order to save the contract.

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action, against the employer to enforce this subsection. The court may award statutory damages of not more than $[5,000] per worker per agreement for each violation of this subsection.		
Section 17. Choice of Law and Venue (a) A choice of law provision that applies to a restrictive employment agreement is prohibited and unenforceable unless it requires that a dispute arising under the agreement be governed by the law of the jurisdiction where the worker primarily works for the employer or, if the work relationship has ended, the jurisdiction where the worker primarily worked when the relationship ended. (b) A choice of venue provision that applies to a restrictive employment agreement is prohibited and unenforceable unless it requires that a dispute arising under the agreement be decided in a jurisdiction where: (1) the worker primarily works or, if the work relationship has ended, a jurisdiction where the worker primarily worked when the relationship ended; or (2) the worker resides at the time of the dispute.	*Choice of law:* In general, a court interprets a contract according to the intent of the parties to the contract. *Bueltel v. Lumber Mut. Ins. Co.*, 134 N.C. App. 626, 631, 518 S.E.2d 205, 209 (1999), *disc. review denied*, 351 N.C. 186, 541 S.E.2d 709 (1999). In addition, "[i]f the plain language of a contract is clear, the intention of the parties is inferred from the words of the contract." *Id.* Thus, the Court in *Bueltel* held that "following the logic of *Land Co.*, it is apparent that when a choice of law provision is included in a contract, the parties intend to make an exception to the presumptive rule that the contract is governed by the law of the place where it was made." *Id.* The contract in the present case provides that its "validity, performance and effect shall be determined in accordance with the internal laws . . . of Colorado." However, under certain circumstances, North Carolina courts will not honor a choice of law provision. *See Behr v. Behr*, 46 N.C. App. 694, 266 S.E.2d 393 (1980) (citing Restatement (Second) of Conflict of Laws § 187 (1971)); *Torres v. McClain*, 140 N.C. App. 238, 535 S.E.2d 623 (2000). In *Behr*, the parties' dispute involved their separation agreement, which they had executed in New York, and which	The Uniform Act prohibits a choice of law provision unless it requires that a restrictive employment agreement be governed by the law of the jurisdiction where the worker primarily worked. Current law will generally uphold a choice of law provision, unless doing so is unreasonable or would violate the public policy of the jurisdiction whose law would otherwise govern. The Uniform Act also prohibits a choice of venue provision unless

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	"specifically provide[d] that it should be interpreted under the laws of that State." *Behr* at 696, 266 S.E.2d at 395. Section 187 of the Restatement (Second) of the Conflict of Laws, cited and incorporated into our common law analysis of this issue by *Behr* and *Torres*, provides that: (2) The law of the state chosen by the parties to govern their contractual rights and duties will be applied, even if the particular issue is one which the parties could not have resolved by an explicit provision in their agreement directed to that issue, unless either (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of applicable law in the absence of an effective choice of law by the parties. Restatement (Second) of Conflict of Laws § 187 (1971). Applying these principles, this Court in *Behr* followed New York law in accordance with the	it requires that a dispute be decided in the jurisdiction where the worker primarily worked or currently resides. G.S. 22B-3 provides that generally a provision of a contract entered into in North Carolina that requires that a dispute be decided in another state is unenforceable.

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	contract noting that the "parties' choice of law is generally binding on the interpreting court as long as they had a reasonable basis for their choice and the law of the chosen State does not violate a fundamental policy of the state of otherwise applicable law." *Behr* at 696, 266 S.E.2d at 395; *see also, Bundy v. Commercial Credit Co.*, 200 N.C. 511, 516, 157 S.E. 860, 863 (1931) (refusing to apply parties' choice of Delaware law because their contractual stipulation was "immaterial" in that the "record [did] not disclose that any transaction took place in Delaware or that the parties even contemplated either the making or the performance of the contract in said State."); *Torres v. McClain*, 140 N.C. App. 238, 535 S.E.2d 623 (2000); *Key Motorsports, Inc., v. Speedvision Network, L.L.C.*, 40 F. Supp. 2d 344, 346 (M.D.N.C.1999) (applying principles from *Behr* and *Bundy* in recognizing that "in limited circumstances, North Carolina courts will ignore the parties' choice of law and instead apply the law of the place where the contract is made"); *Broadway & Seymour, Inc. v. Wyatt*, 944 F.2d 900 (4th Cir. 1991) (recognizing that the application of the Restatement finds support in North Carolina in *Behr*). *Cable Tel Servs., Inc. v. Overland Contracting, Inc.*, 154 N.C. App. 639, 642-43, 574 S.E.2d 31, 33-34 (2002). <u>*Choice of venue:*</u> **§ 22B-3. Contracts with forum selection provisions.**	

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	Except as otherwise provided in this section, any provision in a contract entered into in North Carolina that requires the prosecution of any action or the arbitration of any dispute that arises from the contract to be instituted or heard in another state is against public policy and is void and unenforceable. This prohibition shall not apply to non-consumer loan transactions or to any action or arbitration of a dispute that is commenced in another state pursuant to a forum selection provision with the consent of all parties to the contract at the time that the dispute arises. (1993, c. 436, s. 2; 1995, c. 100, s. 1.)	
Section 18. Uniformity of Application and Construction In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.	**Not applicable**	
Section 19. Saving Provision Except as provided in Section 20, this [act] does not affect the validity of a restrictive employment agreement in effect before [the effective date of this [act]].	**Not applicable**	
Section 20. Transitional Provision Sections 4(a)(5) and 5 apply to a restrictive employment agreement entered into before, on, or after [the effective date of this [act]].	**Not applicable**	

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[Section 21. Severability If a provision of this [act] or its application to a worker or employer is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]	**Not applicable**	
[Section 22. Repeals; Conforming Amendments (a) . . . (b) . . .]	**Not applicable**	
Section 23. Effective Date This [act] takes effect . . .	**Not applicable**	

Note: The *Practitioner's Guide to North Carolina Employment Law*, Third Edition, authored by Laura J. Wetsch and published by the North Carolina Advocates for Justice and LexisNexis, was particularly helpful in researching current law.

Related law:

Article 24.

Trade Secrets Protection Act.

§ 66-152. Definitions.

As used in this Article, unless the context requires otherwise:

(1) "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.

(2) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, joint venture, or any other legal or commercial entity.

(3) "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.

The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons. (1981, c. 890, s. 1.)

§ 66-153. Action for misappropriation.

The owner of a trade secret shall have remedy by civil action for misappropriation of his trade secret. (1981, c. 890, s. 1.)

§ 66-154. Remedies.

(a) Except as provided herein, 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 for the period that the trade secret exists plus an additional period as the court may deem necessary under the circumstances to eliminate any inequitable or unjust advantage arising from the misappropriation.

(1) If the court determines that it would be unreasonable to enjoin use after a judgment finding misappropriation, an injunction may condition such use upon payment of a reasonable royalty for any period the court may deem just. In appropriate circumstances, affirmative acts to protect the trade secret may be compelled by order of the court.

(2) A person who in good faith derives knowledge of a trade secret from or through misappropriation or by mistake, or any other person subsequently acquiring the trade secret therefrom or thereby, shall be enjoined from disclosing the trade secret, but no damages shall be awarded against any person for any misappropriation prior to the time the person knows or has reason to know that it is a trade secret. If the person has substantially changed his position in good faith reliance upon the availability of the trade secret for future use, he shall not be enjoined from using the trade secret but may be required to pay a reasonable royalty as deemed just by the court. If the person has acquired inventory through such knowledge or use of a trade secret, he can dispose of the inventory without payment of royalty. If his use of the trade secret has no adverse economic effect upon the owner of the trade secret, the only available remedy shall be an injunction against disclosure.

(b) In addition to the relief authorized by subsection (a), actual damages may be recovered, measured by the economic loss or the unjust enrichment caused by misappropriation of a trade secret, whichever is greater.

(c) If willful and malicious misappropriation exists, the trier of fact also may award punitive damages in its discretion.

(d) If a claim of misappropriation is made in bad faith or if willful and malicious misappropriation exists, the court may award reasonable attorneys' fees to the prevailing party. (1981, c. 890, s. 1.)

§ 66-155. Burden of proof.

Misappropriation of a trade secret is prima facie established by the introduction of substantial evidence that the person against whom relief is sought both:

(1) Knows or should have known of the trade secret; and

(2) Has had a specific opportunity to acquire it for disclosure or use or has acquired, disclosed, or used it without the express or implied consent or authority of the owner.

This prima facie evidence is rebutted by the introduction of substantial evidence that the person against whom relief is sought acquired the information comprising the trade secret by independent development, reverse engineering, or it was obtained from another person with a right to disclose the trade secret. This section shall not be construed to deprive the person against whom relief is sought of any other defenses provided under the law. (1981, c. 890, s. 1.)

§ 66-156. Preservation of secrecy.

In an action under this Article, a court shall protect an alleged trade secret by reasonable steps which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action subject to further court order, and ordering any person who gains access to an alleged trade secret during the litigation not to disclose such alleged trade secret without prior court approval. (1981, c. 890, s. 1.)

§ 66-157. Statute of limitations.

An action for misappropriation of a trade secret must be commenced within three years after the misappropriation complained of is or reasonably should have been discovered. (1981, c. 890, s. 1.)