2026 General Assembly Legislation Summary

Noncompetes

Last Updated May 26, 2026

During the 2026 General Assembly Session, legislators pursued efforts to limit the use and enforceability of non-compete clauses both broadly across industries and specifically within the health care sector. These efforts resulted in a prohibition on non-compete clauses for health care professionals, as well as new restrictions on the enforceability of such clauses for other employees based on the circumstances of their separation from employment. This document provides a summary of the changes to law and provides background and guidance to assist you in compliance.

If you have any questions or require additional information, please contact Brent Rawlings brawlings@vhha.com or Julie Dime jdime@vhha.com.

Summary

AMENDS EXISTING LAW – Both pieces of legislation amend Virginia Code § 40.1-28.7:8.

HB627 (Herring)/ SB128 (VanValkenburg) provides that no employer can enter into, enforce, or threaten to enforce a covenant not to compete with a health care professional. The legislation defines "health care professional" as any person licensed, registered, or certified by the Board of Medicine, Nursing, Counseling, Optometry, Psychology, or Social Work. The legislation provides that any employer that violates the prohibition against covenants not to compete with a health care professional is subject to the civil penalty in current law of $10,000 for each violation. The legislation also authorizes health care professions to bring civil actions against employers for violations. The provisions of the legislation specify that it shall not invalidate, alter, or otherwise affect any contracts, covenants, or agreements entered into or renewed prior to July 1, 2026, and clarifies that nothing in the law shall serve to limit the creation or application of certain nondisclosure agreements, covenants not to compete as part of a sale of business, or including in employment agreements certain provisions relating to repayment of all or a pro-rated portion of recruitment-related costs and non-solicitation of customers of the employer. However, such provisions shall not preclude a health care professional from disclosing the following information to a patient to whom the health care professional was providing consultation or treatment before departure from an employer: the health care professional's continuing practice of medicine, the health care professional's new contact information, and the patient's right to choose a health care professional. **The law is effective July 1, 2026.**

SB170 (McPike) provides that no covenant not to compete, as defined in existing law, between an employer and an employee is enforceable if such employer discharges such employee from employment without providing severance benefits or other monetary payment to such employee that is disclosed upon execution of the covenant not to compete, unless the employee is discharged for cause. The provisions of the legislation shall not invalidate, alter, or otherwise affect any contracts, covenants, or agreements entered into or renewed prior to July 1, 2026. **The law is effective July 1, 2026.**

Action Required

Legal counsel should review standard employment agreements to confirm compliance with these new laws. Employment agreements entered on or after July 1, 2026, cannot contain any non-compete clauses for health care professionals who hold a license, registration, or certification from any of the Boards identified in the legislation. For non-healthcare professionals, employment agreements must meet the requirements of SB170, which requires up-front disclosure of severance benefits or other monetary payment made to an employee if discharged from employment, unless discharged for cause. Organizations should also assess whether updates to existing policies and procedures are necessary to address these requirements, including how they apply to voluntary departures, terminations without cause, and terminations for cause. In addition, in-house teams should consider alternatives to non-compete clauses in employment agreements, such as non-disclosure agreements, non-solicitation provisions, and recruitment incentives.

Background Information

In recent years, Virginia has seen a growing trend toward narrowing the use and enforceability of non-compete agreements, particularly in the health care sector. During this legislative session, five different categories of bills were introduced seeking to limit the use of non-compete clauses.

For HB627/SB128, the patrons' stated goal was to increase workforce mobility and improve patient access to care, especially in underserved areas, by allowing clinicians greater freedom to change employers. These measures were supported by a range of health care workforce groups, including provider and nursing associations, which argue that non-compete agreements restrict professional mobility and limit access to care. In contrast, VHHA, alongside hospital systems and other health care employers, opposed the legislation and raised concerns about its potential

impact on recruitment, retention, and financial stability, emphasizing that non-competes are often tied to investments in hiring and training. VHHA worked with the patrons to secure favorable amendments; however, a proposed salary-based exception was ultimately not included in the final legislation.

SB170 takes a broader, cross-industry approach by focusing on the circumstances under which non-compete agreements may be enforced. According to the patron, the legislation was intended, in part, to respond to workforce disruptions, including government reductions, and the challenges faced by highly specialized employees who may struggle to find new employment due to non-compete restrictions. A central objective of the legislation is to ensure that employees are informed, in advance, of any severance or compensation they would receive if terminated without cause while remaining subject to a non-compete agreement. SB569 (Sturtevant) was incorporated into this legislation.

Statutory Text

(NOTE: The language in *italics* and ~~strikethrough~~ are the only changes to the law. All other language and requirements under the law remain unchanged.)

Because both pieces of legislation amend the same Virginia Code provision; the two versions will need to be reconciled in the law.

HB627/SB128

1. That § 40.1-28.7:8 of the Code of Virginia is amended and reenacted as follows:

§ 40.1-28.7:8. Covenants not to compete prohibited; exceptions; civil penalty.

A. As used in this section:

"Covenant not to compete" means a covenant or agreement, including a provision of a contract of employment, between an employer and employee that restrains, prohibits, or otherwise restricts an individual's ability, following the termination of the individual's employment, to compete with his former employer. A "covenant not to compete" shall not restrict an employee from providing a service to a customer or client of the employer if the employee does not initiate contact with or solicit the customer or client.

"Health care professional" means any person licensed, registered, or certified by the Board of Medicine, Nursing, Counseling, Optometry, Psychology, or Social Work.

"Low-wage employee" means an employee (i) whose average weekly earnings, calculated by dividing the employee's earnings during the period of 52 weeks immediately preceding the date of termination of employment by 52, or if an employee worked fewer than 52 weeks, by the number of weeks that the employee was actually paid during the 52-week period, are less than the average weekly wage of the Commonwealth as determined pursuant to subsection B of § 65.2-500 or (ii) who, regardless of his average weekly earnings, is entitled to overtime compensation under the provisions of 29 U.S.C. § 207 for any hours worked in excess of 40 hours in any one workweek. "Low-wage employee" includes interns, students, apprentices, or trainees employed, with or without pay, at a trade or occupation in order to gain work or educational experience. "Low-wage employee" also includes an individual who has independently contracted with another person to perform services independent of an employment relationship and who is compensated for such services by such person at an hourly rate that is less than the median hourly wage for the Commonwealth for all occupations as reported, for the preceding year, by the Bureau of Labor Statistics of the U.S. Department of Labor. For the purposes of this section, "low-wage employee" shall *does* not include any employee whose earnings are derived, in whole or in predominant part, from sales commissions, incentives, or bonuses paid to the employee by the employer.

B. No employer shall enter into, enforce, or threaten to enforce a covenant not to compete with any low-wage employee *or health care professional*.

C. Nothing in this section shall serve to limit the creation or application of nondisclosure agreements intended to prohibit the taking, misappropriating, threatening to misappropriate, or sharing of certain information to which an employee has access, including trade secrets, as defined in § 59.1-336, and proprietary or confidential information.

D. A low-wage employee *or health care professional* may bring a civil action in a court of competent jurisdiction against any former employer or other person that attempts to enforce a covenant not to compete against such employee in violation of this section. An action under this section

shall be brought within two years of the latter of (i) the date the covenant not to compete was signed, (ii) the date the low-wage employee *or health care professional* learns of the covenant not to compete, (iii) the date the employment relationship is terminated, or (iv) the date the employer takes any step to enforce the covenant not to compete. The court shall have jurisdiction to void any covenant not to compete with a low-wage employee *or health care professional* and to order all appropriate relief, including enjoining the conduct of any person or employer, ordering payment of liquidated damages, and awarding lost compensation, damages, and reasonable attorney fees and costs. No employer may discharge, threaten, or otherwise discriminate or retaliate against a low-wage employee *or health care professional* for bringing a civil action pursuant to this section.

~~E.~~ *D.* Any employer that violates the provisions of subsection B as determined by the Commissioner shall be subject to a civil penalty of $10,000 for each violation. Civil penalties owed under this subsection shall be paid to the Commissioner for deposit in the general fund.

~~F.~~ *E.* If the court finds a violation of the provisions of this section, the plaintiff shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorney fees from the former employer or other person who attempts to enforce an unlawful covenant not to compete against such plaintiff.

~~G.~~ *F.* Every employer shall post a copy of this section or a summary approved by the Department in the same location where other employee notices required by state or federal law are posted. An employer that fails to post a copy of this section or an approved summary of this section shall be issued by the Department a written warning for the first violation, shall be subject to a civil penalty not to exceed $250 for a second violation, and shall be subject to a civil penalty not to exceed $1,000 for a third and each subsequent violation as determined by the Commissioner. Civil penalties owed under this subsection shall be paid to the Commissioner for deposit in the general fund.

The Commissioner shall prescribe procedures for the payment of proposed assessments of penalties that are not contested by employers. Such procedures shall include provisions for an employer to consent to abatement of the alleged violation and to pay a proposed penalty or a negotiated sum in lieu of such penalty without admission of any civil liability arising from such alleged violation.

G. Nothing in this section shall serve to limit the creation or application of:

1. Nondisclosure agreements intended to prohibit the taking, misappropriating, threatening to misappropriate, or sharing of certain information to which an employee has access, including trade secrets, as defined in § 59.1-336, and proprietary or confidential information; or

2. Covenants not to compete or similarly restrictive covenants with any health care professional or such person's business entity as part of a sale of business when the transaction includes the sale of all or substantially all of (a) the operating assets together with the goodwill of the health care professional's business entity, (b) the operating assets of a division or subsidiary of the health care professional's business entity together with the goodwill of that division or subsidiary, or (c) the ownership interest of the health care professional's business entity or any division or subsidiary thereof. In such transactions, the seller and buyer may enter a covenant not to compete or similarly restrictive covenant for the health care professional or such person's business entity, provided that such covenant not to compete or similarly restrictive covenant is reasonable in scope, duration, and geographic area.

H. Nothing in this section shall serve to limit the ability of employers of health care professionals to:

1. Include provisions in employment agreements, through a promissory note or otherwise, that require repayment for all or a prorated portion of recruitment-related costs, including relocation expenses, signing or retention bonuses, and other remuneration provided to induce relocation or establishment of a practice in a specified geographic area, as well as recruiting, education, or training expenses from a departing health care professional who has been employed for fewer than five years, and such provisions shall be valid and enforceable by law; or

2. Include provisions in employment agreements requiring a health care professional, for the benefit of an employer and for a stated period of time following termination, to refrain from soliciting or attempting to solicit, directly or by assisting others, any business from any of such employer's customers, including actively seeking prospective customers, with whom the employee had material contact during his employment, for purposes of providing products or services that are the same or substantially similar to those provided by the employer, except for any notice or communication as required by state or federal law. Any reference to a prohibition against soliciting or attempting to solicit customers shall be narrowly construed to apply only to (i) the health care professional's customers, including actively sought prospective customers, with whom the health care professional had material contact during employment and (ii) products and services that are the same as or substantially similar to

those provided by the employer. Such provisions shall be valid and enforceable by law. Such provisions shall not preclude a health care professional from disclosing the following information to a patient to whom the health care professional was providing consultation or treatment before departure from an employer: the health care professional's continuing practice of medicine, the health care professional's new contact information, and the patient's right to choose a health care professional.

2. That nothing in this act shall invalidate, alter, or otherwise affect any contracts, covenants, or agreements entered into or renewed prior to July 1, 2026.

SB170

1. That § 40.1-28.7:8 of the Code of Virginia is amended and reenacted as follows:

§ 40.1-28.7:8. Covenants not to compete prohibited; exceptions; civil penalty.

A. As used in this section:

"Covenant not to compete" means a covenant or agreement, including a provision of a contract of employment, between an employer and employee that restrains, prohibits, or otherwise restricts an individual's ability, following the termination of the individual's employment, to compete with his former employer. A "covenant not to compete" shall not restrict an employee from providing a service to a customer or client of the employer if the employee does not initiate contact with or solicit the customer or client.

"Low-wage employee" means an employee (i) whose average weekly earnings, calculated by dividing the employee's earnings during the period of 52 weeks immediately preceding the date of termination of employment by 52, or if an employee worked fewer than 52 weeks, by the number of weeks that the employee was actually paid during the 52-week period, are less than the average weekly wage of the Commonwealth as determined pursuant to subsection B of § 65.2-500 or (ii) who, regardless of his average weekly earnings, is entitled to overtime compensation under the provisions of 29 U.S.C. § 207 for any hours worked in excess of 40 hours in any one workweek. "Low-wage employee" includes interns, students, apprentices, or trainees employed, with or without pay, at a trade or occupation in order to gain work or educational experience. "Low-wage employee" also includes an individual who has independently contracted with another person to perform services independent of an employment relationship and who is compensated for such services by such person at an hourly rate that is less than the median hourly wage for the Commonwealth for all occupations as reported, for the preceding year, by the Bureau of Labor Statistics of the U.S. Department of Labor. For the purposes of this section, "low-wage employee" shall not include any employee whose earnings are derived, in whole or in predominant part, from sales commissions, incentives, or bonuses paid to the employee by the employer.

B. No employer shall enter into, enforce, or threaten to enforce a covenant not to compete with any low-wage employee.

C. *No covenant not to compete between an employer and an employee is enforceable if such employer discharges such employee from employment without providing severance benefits or other monetary payment to such employee, unless such employer discharges such employee for cause. Such severance benefits or other monetary payment shall be disclosed upon execution of the covenant not to compete.*

D. Nothing in this section shall serve to limit the creation or application of nondisclosure agreements intended to prohibit the taking, misappropriating, threatening to misappropriate, or sharing of certain information to which an employee has access, including trade secrets, as defined in § 59.1-336, and proprietary or confidential information.

~~D. A low-wage~~ *E. An* employee may bring a civil action in a court of competent jurisdiction against any former employer or other person that attempts to enforce a covenant not to compete against such employee in violation of this section. An action under this section shall be brought within two years of the latter of (i) the date the covenant not to compete was signed, (ii) the date the ~~low-wage~~ employee learns of the covenant not to compete, (iii) the date the employment relationship is terminated, or (iv) the date the employer takes any step to enforce the covenant not to compete. The court shall have jurisdiction to void any covenant not to compete with ~~a low-wage~~ *an* employee and to order all appropriate relief, including enjoining the conduct of any person or employer, ordering payment of liquidated damages, and awarding lost compensation, damages, and reasonable attorney fees and costs. No employer may discharge, threaten, or otherwise discriminate or retaliate against ~~a low-wage~~ *an* employee for bringing a civil action pursuant to this section.

~~E.~~ *F.* Any employer that violates the provisions of subsection B *or C* as determined by the Commissioner shall be subject to a civil penalty of $10,000 for each violation. Civil penalties owed under this subsection shall be paid to the Commissioner for deposit in the general fund.

~~F.~~ *G.* If the court finds a violation of the provisions of this section, the plaintiff shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorney fees from the former employer or other person who attempts to enforce an unlawful covenant not to compete against such plaintiff.

~~G.~~ *H.* Every employer shall post a copy of this section or a summary approved by the Department in the same location where other employee notices required by state or federal law are posted. An employer that fails to post a copy of this section or an approved summary of this section shall be issued by the Department a written warning for the first violation, shall be subject to a civil penalty not to exceed $250 for a second violation, and shall be subject to a civil penalty not to exceed $1,000 for a third and each subsequent violation as determined by the Commissioner. Civil penalties owed under this subsection shall be paid to the Commissioner for deposit in the general fund.

The Commissioner shall prescribe procedures for the payment of proposed assessments of penalties that are not contested by employers. Such procedures shall include provisions for an employer to consent to abatement of the alleged violation and to pay a proposed penalty or a negotiated sum in lieu of such penalty without admission of any civil liability arising from such alleged violation.

2. That nothing in this act shall invalidate, alter, or otherwise affect any contract, covenant, or agreement entered into, amended, or renewed prior to July 1, 2026.