

POST-EMPLOYMENT RESTRICTIONS AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill enacts provisions related to post-employment restrictive covenants.

Highlighted Provisions:

This bill:

- ▶ enacts the Post-Employment Restrictions Act, including:
 - defining terms;
 - addressing post-employment restrictive covenants;
 - addressing exceptions; and
 - addressing remedies.

Money Appropriated in this Bill:

None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 ENACTS:

32 **34-51-101**, Utah Code Annotated 1953

33 **34-51-102**, Utah Code Annotated 1953

34 **34-51-201**, Utah Code Annotated 1953

35 **34-51-202**, Utah Code Annotated 1953

36 **34-51-301**, Utah Code Annotated 1953



38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **34-51-101** is enacted to read:

40 **CHAPTER 51. POST-EMPLOYMENT RESTRICTIONS ACT**

41 **Part 1. General Provisions**

42 **34-51-101. Title.**

43 This chapter is known as the "Post-Employment Restrictions Act."

44 Section 2. Section **34-51-102** is enacted to read:

45 **34-51-102. Definition.**

46 As used in this chapter:

47 (1) (a) "Post-employment restrictive covenant," also known as a "covenant not to
48 compete" or "noncompete agreement," means an agreement, written or oral, between an
49 employer and employee under which the employee agrees that the employee, either alone or as
50 an employee of another person, will not compete with the employer in providing products,
51 processes, or services that are similar to the employer's products, processes, or services.

52 (b) "Post-employment restrictive covenant" does not include nonsolicitation
53 agreements or nondisclosure or confidentiality agreements.

54 (2) "Sale of a business" means a transfer of the ownership by sale, acquisition, merger,
55 or other method of the tangible or intangible assets of a business entity, or a division or

56 segment of the business entity.

57 Section 3. Section **34-51-201** is enacted to read:

58 **Part 2. Scope of Post-Employment Restrictions**

59 **34-51-201. Post-employment restrictive covenants.**

60 In addition to any requirements imposed under common law, for a post-employment
61 restrictive covenant entered into on or after May 10, 2016, an employer and an employee may
62 not enter into a post-employment restrictive covenant for a period of more than one year from
63 the day on which the employee is no longer employed by the employer. A post-employment
64 restrictive covenant that violates this section is void.

65 Section 4. Section **34-51-202** is enacted to read:

66 **34-51-202. Exceptions.**

67 (1) This chapter does not prohibit a reasonable severance agreement mutually and
68 freely agreed upon in good faith at or after the time of termination that includes a
69 post-employment restrictive covenant. A severance agreement remains subject to any
70 requirements imposed under common law.

71 (2) This chapter does not prohibit a post-employment restrictive covenant related to or
72 arising out of the sale of a business, if the individual subject to the restrictive covenant receives
73 value related to the sale of the business.

74 Section 5. Section **34-51-301** is enacted to read:

75 **Part 3. Remedies**

76 **34-51-301. Award of arbitration costs, attorney fees and court costs, and damages.**

77 If an employer seeks to enforce a post-employment restrictive covenant through
78 arbitration or by filing a civil action and it is determined that the post-employment restrictive
79 covenant is unenforceable, the employer is liable for the employee's:

80 (1) costs associated with arbitration;

81 (2) attorney fees and court costs; and

82 (3) actual damages.