

Representative Mike Schultz proposes the following substitute bill:

POST-EMPLOYMENT RESTRICTIONS AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: _____

6	Cosponsors:	Timothy D. Hawkes	Scott D. Sandall
7	Scott H. Chew	Gregory H. Hughes	V. Lowry Snow
8	Kim Coleman	Don L. Ipson	Robert M. Spendlove
9	Susan Duckworth	Michael S. Kennedy	Jon E. Stanard
10	Justin L. Fawson	Brad King	Norman K Thurston
11	Francis D. Gibson	Michael E. Noel	Brad R. Wilson
12	Brian M. Greene	Derrin Owens	



LONG TITLE

General Description:

This bill enacts provisions related to restrictive covenants.

Highlighted Provisions:

This bill:

- ▶ enacts the Post-Employment Restrictions Act, including:
 - defining terms;
 - prohibiting post-employment restrictive covenants subject to certain exceptions;
 - providing circumstances when restrictive covenants may be executed; and
 - addressing remedies.

Money Appropriated in this Bill:



25 None

26 **Other Special Clauses:**

27 This bill provides a special effective date.

28 **Utah Code Sections Affected:**

29 ENACTS:

30 [34-51-101](#), Utah Code Annotated 1953

31 [34-51-102](#), Utah Code Annotated 1953

32 [34-51-201](#), Utah Code Annotated 1953

33 [34-51-202](#), Utah Code Annotated 1953

34 [34-51-301](#), Utah Code Annotated 1953



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

37 Section 1. Section [34-51-101](#) is enacted to read:

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

39 **Part 1. General Provisions**

40 **34-51-101. Title.**

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

42 Section 2. Section [34-51-102](#) is enacted to read:

43 **34-51-102. Definitions.**

44 As used in this chapter:

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

50 (2) "Proprietary or confidential information" means information that has not been
51 publicly disseminated or is unavailable from other sources, the release of which might cause
52 the employer significant competitive harm.

53 (3) "Trade secret" means the same as the term is defined in Section [13-24-2](#).

54 Section 3. Section [34-51-201](#) is enacted to read:

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

56 **34-51-201. Post-employment restrictions prohibited.**

57 (1) Except as otherwise provided in this chapter, an employer may not enter into a
58 post-employment restrictive covenant with an employee. A post-employment restrictive
59 covenant entered into in violation of this chapter is void.

60 (2) This chapter applies to agreements entered into on or after July 1, 2016.

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

62 **34-51-202. Post-employment restrictions exceptions.**

63 (1) This chapter does not prohibit an employer or employee from entering into an
64 employment contract with a restrictive covenant applicable after termination of employment to:

- 65 (a) protect a trade secret of the employer;
- 66 (b) protect proprietary or confidential information of the employer;
- 67 (c) prohibit solicitation of the employer's clients or employees; or
- 68 (d) reimburse costs incurred by the employer on behalf of the employee, including
69 costs for:

- 70 (i) specialized training;
- 71 (ii) specialized education; or
- 72 (iii) a signing bonus.

73 (2) This chapter does not prohibit a restrictive covenant related to the sale of a business
74 if the individual subject to the restrictive covenant receives value from the sale of the business.

75 (3) This chapter does not prohibit a severance agreement mutually agreed upon at the
76 time of termination that includes a post-employment restrictive covenant.

77 (4) A post-employment restrictive covenant permitted under Subsection (1)(b), (c), (d)
78 or (3) may not restrict the employee's actions for:

- 79 (a) a period longer than one year from the day on which employment is terminated; or
- 80 (b) a geographical area that is not reasonable.

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

82 **Part 3. Remedies**

83 **34-51-301. Award of arbitration costs, attorney fees and court costs, and damages.**

84 If an employer seeks to enforce a post-employment restrictive covenant through
85 arbitration or by filing a civil action and it is determined that the post-employment restrictive
86 covenant is void under this chapter, the employer is liable for the employee's:

- 87 (1) costs associated with arbitration;
- 88 (2) attorney fees and court costs; and
- 89 (3) actual damages.
- 90 Section 6. **Effective date.**
- 91 This bill takes effect on July 1, 2016.