

Representative Lorie D. Fowlke proposes the following substitute bill:

**EMPLOYEE NONCOMPETITION CONTRACTS REGARDING
GOODWILL**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Judicial Code to address employee noncompetition contracts.

Highlighted Provisions:

This bill:

- defines terms;
- provides when noncompetition contracts are enforceable regarding goodwill;
- addresses enforcement; and
- addresses scope of the section.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78-27-66, Utah Code Annotated 1953

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



Section 1. Section ~~78-27-66~~ is enacted to read:

78-27-66. Employment related to noncompetition contracts.

(1) As used in this section:

(a) "Common calling" means any employment:

(i) (A) for which no special skill or talent is involved;

(B) that may be performed by any other employee of average competence;

(C) that does not involve any significant development of a goodwill relationship with a customer or client of the employer; and

(D) that does not involve the possession of a trade secret or confidential information;

or

(ii) defined by a court of competent jurisdiction as a common calling.

(b) "Employer" means a person that employs one or more persons.

(c) "Goodwill" means the benefit that accrues to an employer because of the following that results in the probable retention of old or acquisition of new customers or clients:

(i) location;

(ii) reputation for dependability;

(iii) skill or quality; or

(iv) other circumstances.

(2) A contract between an employer and an employee that restricts or prohibits the employee from competing with the employer after the employee no longer works for the employer is enforceable if:

(a) the contract limits the former employee's ability to compete:

(i) to a reasonable geographical area in relation to where the employee transacts business while employed with the employer including through:

(A) the employee's physical presence; or

(B) the employee's use of technology having electrical, digital, wireless, optical, electromagnetic, or similar capabilities;

(ii) by restricting the employee from accepting employment with any person that directly competes with the employer; or

(iii) by restricting the employee from contacting or soliciting a client or customer with whom the employee dealt or had a relationship while the employee was employed by the

57 employer;

58 (b) the contract does not impose a greater restraint on the former employee than is
59 necessary to protect the employer's goodwill;

60 (c) the restriction or prohibition described in Subsection (2)(a) is for a period of no
61 more than 18 months from the day on which the employee is no longer employed by the
62 employer; and

63 (d) the employee is not engaged in a common calling.

64 (3) If a court finds that any part of a contract provision that restricts or prohibits an
65 employee from competing with the employer after the employee no longer works for the
66 employer violates this section, the court may, depending upon the severity of the violation of
67 this section:

68 (a) enforce that contract provision up to the extent that the contract provision would be
69 allowable under this section; or

70 (b) void that contract provision.

71 (4) (a) This section applies only to a contract entered into on or after April 30, 2007.

72 (b) Subject to Subsection (4)(c), this section applies only if an employer is seeking to
73 enforce a contract provision described in Subsection (2) against an employee or former
74 employee to protect the employer's goodwill.

75 (c) This section does not apply to an employer enforcing a contract provision described
76 in Subsection (2) to protect a legitimate business interest other than goodwill that is recognized
77 by a court including:

78 (i) goodwill obtained as part of the purchase of a business, unless the seller of the
79 business becomes an employee of the person who purchases the business;

80 (ii) a trade secret;

81 (iii) confidential information; or

82 (iv) a significant investment in an employee's training.