

Senator J. Stuart Adams proposes the following substitute bill:

POST-EMPLOYMENT RESTRICTIONS AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: J. Stuart Adams

6	Cosponsors:	Gregory H. Hughes	Paul Ray
7	Rebecca Chavez-Houck	Don L. Ipson	Angela Romero
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9	Kim Coleman	Brad King	V. Lowry Snow
10	Susan Duckworth	Brian S. King	Robert M. Spendlove
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12	Francis D. Gibson	Daniel McCay	Norman K Thurston
13	Brian M. Greene	Michael E. Noel	Brad R. Wilson
14	Timothy D. Hawkes	Derrin Owens	
15	Sandra Hollins	Marie H. Poulson	



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;



- 25 • addressing exceptions; and
- 26 • addressing remedies.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 ENACTS:

- 33 **34-51-101**, Utah Code Annotated 1953
- 34 **34-51-102**, Utah Code Annotated 1953
- 35 **34-51-201**, Utah Code Annotated 1953
- 36 **34-51-202**, Utah Code Annotated 1953
- 37 **34-51-301**, Utah Code Annotated 1953



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

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

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

42 **Part 1. General Provisions**

43 **34-51-101. Title.**

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

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

46 **34-51-102. Definition.**

47 As used in this chapter:

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

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

55 (2) "Sale of a business" means a transfer of the ownership by sale, acquisition, merger,

56 or other method of the tangible or intangible assets of a business entity, or a division or
57 segment of the business entity.

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

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

60 **34-51-201. Post-employment restrictive covenants.**

61 In addition to any requirements imposed under common law, ~~§~~ → **for a post-employment**
61a **restrictive covenant entered into on or after May 10, 2016,** ← ~~§~~ an employer and an
62 employee may not enter into a post-employment restrictive covenant for a period of more than
63 one year from the day on which the employee is no longer employed by the employer. A
64 post-employment 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
71a to or arising out of the
72 sale of a business, if the individual subject to the restrictive covenant receives value ~~§~~ → **[from the**
73 **transaction]** 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.