

Representative Mike Schultz 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:	Timothy D. Hawkes	Paul Ray
7	Rebecca Chavez-Houck	Gregory H. Hughes	Scott D. Sandall
8	Scott H. Chew	Don L. Ipson	V. Lowry Snow
9	Kim Coleman	Michael S. Kennedy	Robert M. Spendlove
10	Susan Duckworth	Brad King	Jon E. Stanard
11	Justin L. Fawson	Daniel McCay	Norman K Thurston
12	Francis D. Gibson	Michael E. Noel	Brad R. Wilson
13	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.



25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 This bill provides a special effective date.

29 **Utah Code Sections Affected:**

30 ENACTS:

31 **34-51-101**, Utah Code Annotated 1953

32 **34-51-102**, Utah Code Annotated 1953

33 **34-51-201**, Utah Code Annotated 1953

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

35 **34-51-301**, Utah Code Annotated 1953



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

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

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

40 **Part 1. General Provisions**

41 **34-51-101. Title.**

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

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

44 **34-51-102. Definitions.**

45 As used in this chapter:

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

51 (b) "Post-employment restrictive covenants," subject to Section **34-51-202**, does not
52 include nonsolicitation or confidentiality agreements.

53 (2) "Proprietary or confidential information or process" means information or a process
54 that has not been publicly disseminated and is not readily available from other sources without
55 breach of an obligation of confidentiality, the release of which might cause the employer

56 material competitive harm.

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

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 restrictions prohibited.**

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

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

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

66 **34-51-202. Post-employment restrictions exceptions.**

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

70 (a) a trade secret of the employer;

71 (b) proprietary or confidential information or process of the employer;

72 (c) the employer's business relations with the employer's customers or employees; or

73 (d) the employer's investment in the employee, including investments in:

74 (i) specialized training;

75 (ii) specialized education; or

76 (iii) a signing bonus.

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

79 (3) This chapter does not prohibit a severance agreement mutually and freely agreed
80 upon in good faith at or after the time of termination that includes a post-employment
81 restrictive covenant.

82 (4) A post-employment restrictive covenant permitted under Subsection (1)(b), (c), or
83 (d) or Subsection (3) may only be:

84 (a) for a reasonable time period and scope; or

85 (b) within a reasonable market.

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

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Part 3. Remedies

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

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

- (1) costs associated with arbitration;
- (2) attorney fees and court costs; and
- (3) actual damages.

Section 6. Effective date.

This bill takes effect on July 1, 2016.