

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
8	Scott H. Chew	Michael S. Kennedy	Scott D. Sandall
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 restrictive covenants.

Highlighted Provisions:

This bill:

- ▶ enacts the Post-Employment Restrictions Act, including:
 - defining terms;
 - prohibiting post-employment restrictive covenants subject to certain exceptions;



- 25 • providing circumstances when post-employment restrictive covenants or
- 26 employment agreements may be executed; and
- 27 • addressing remedies.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill provides a special effective date.

32 **Utah Code Sections Affected:**

33 ENACTS:

- 34 **34-51-101**, Utah Code Annotated 1953
- 35 **34-51-102**, Utah Code Annotated 1953
- 36 **34-51-201**, Utah Code Annotated 1953
- 37 **34-51-202**, Utah Code Annotated 1953
- 38 **34-51-203**, Utah Code Annotated 1953
- 39 **34-51-301**, Utah Code Annotated 1953



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

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

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

44 **Part 1. General Provisions**

45 **34-51-101. Title.**

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

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

48 **34-51-102. Definitions.**

49 As used in this chapter:

50 (1) "Adequate consideration" means compensation, stocks, or anything of economic
51 value that is paid, granted, given, donated, or transferred to an employee that equals or exceeds
52 5% of the annual basewages of the employee determined as of the day on which a
53 post-employment restrictive covenant is signed.

54 (2) (a) "Annual base wages" means, if an employee is paid a salary, the employee's
55 base annual salary, excluding any contingent or variable compensation such as a bonus or

56 incentive award, or any deferred compensation, benefit, or expense allowance.

57 (b) "Annual base wages" means, if an employee is paid an hourly wage, an amount
58 calculated by multiplying the hourly wage times the number of hours the employee and
59 employer agree that the employee is expected to work in the next 12 months, excluding any
60 contingent or variable compensation such as a bonus or incentive award, or any deferred
61 compensation, benefit and expense allowance.

62 (3) "Common calling" means any employment:

63 (a) for which the employee possesses no special, unique, or extraordinary skill or
64 talent; and

65 (b) that may be performed by any other employee of average competence.

66 (4) "Direct competitor" means a person that offers substantially similar products,
67 processes, or services as does an employer and competes directly with the employer.

68 (5) "Employee" does not include an independent contractor.

69 (6) "Post-employment restrictive covenant" means an agreement, written or oral,
70 express or implied, between an employer and employee under which the employee agrees that
71 the employee, either alone or as an employee of another person, will not compete with the
72 employer in providing products, processes, or services that are similar to the employer's
73 products, processes, or services.

74 (7) "Proprietary or confidential information or process" means information or a process
75 that has not been publicly disseminated and is not readily available from other sources without
76 breach of an obligation of confidentiality, including unique compilations of data, the release of
77 which might cause the employer material competitive harm.

78 (8) "Sale of a business" means a transfer of the ownership by sale, acquisition, merger,
79 or other method of the tangible or intangible assets of a corporation, limited liability company,
80 or limited partnership, or a division or segment of a corporation, limited liability company, or
81 limited partnership.

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

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

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

85 **34-51-201. Post-employment restrictions prohibited.**

86 (1) Except as otherwise provided in this chapter, an employer may not enter into a

87 post-employment restrictive covenant with an employee. A post-employment restrictive
88 covenant entered into in violation of this chapter is void.

89 (2) This chapter applies only to agreements entered into on or after January 1, 2017.

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

91 **34-51-202. Employment related agreements.**

92 This chapter does not prohibit an employer or employee from entering into:

93 (1) a confidentiality agreement to protect proprietary or confidential information or
94 process or a trade secret of the employer;

95 (2) a non-solicitation agreement to protect the employer's business relations;

96 (3) a repayment agreement to reimburse the employer's reasonable investment in an
97 employee, including:

98 (a) specialized training;

99 (b) education;

100 (c) a signing bonus;

101 (d) moving expenses; and

102 (e) costs of certification; or

103 (4) another employment related agreement not in violation of this chapter.

104 Section 5. Section **34-51-203** is enacted to read:

105 **34-51-203. Post-employment restrictive covenants exceptions.**

106 (1) This chapter does not prohibit an employer and an employee from entering into an
107 agreement with a post-employment restrictive covenant provided that:

108 (a) the post-employment restrictive covenant is for a period of no more than one year
109 from the day on which the employee is no longer employed by the employer;

110 (b) the post-employment restrictive covenant limits the employee from providing
111 products, processes, or services within the one or more markets in which the employee worked
112 during the time the employee was employed;

113 (c) the employee is not employed in a common calling;

114 (d) the employee has knowledge of proprietary or confidential information or processes
115 during employment;

116 (e) the employer provides adequate consideration for the agreement, aside from
117 continued employment; and

118 (f) the employee is only prohibited from directly competing with, or working with or
119 for a direct competitor of the employer.

120 (2) (a) This chapter does not prohibit a reasonable severance agreement mutually and
121 freely agreed upon in good faith at or after the time of termination that includes a
122 post-employment restrictive covenant.

123 (b) The requirements of Subsection (1) do not apply to a severance agreement entered
124 into under this Subsection (2).

125 (3) (a) This chapter does not prohibit a restrictive covenant related to or arising out of
126 the sale of a business, if the individual subject to the restrictive covenant receives value from
127 the transaction.

128 (b) The requirements of Subsection (1) do not apply to a restrictive covenant entered
129 into under this Subsection (3).

130 (4) (a) This chapter does not apply to post-employment restrictive covenants between:

131 (i) owners of an S corporation;

132 (ii) partners of a general partnership;

133 (iii) members of a limited liability company;

134 (iv) partners of a limited liability partnership;

135 (v) partners of a limited partnership; or

136 (vi) members or partners of a business entity similar to Subsections (4)(a)(i) through
137 (e)(vi).

138 (b) The requirements of Subsection (1) do not apply to a post-employment restrictive
139 covenant entered into under this Subsection (4).

140 Section 6. Section **34-51-301** is enacted to read:

141 **Part 3. Remedies**

142 **34-51-301. Award of arbitration costs, attorney fees and court costs, and damages.**

143 If a person seeks to enforce or void a post-employment covenant through arbitration or
144 by filing a civil action, the arbitrator or court may award to the prevailing party:

145 (1) attorney fees;

146 (2) allowable costs; and

147 (3) actual damages.

148 Section 7. **Effective date.**

149

This bill takes effect on January 1, 2017.