

**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
11	Justin L. Fawson	John Knotwell	Jon E. Stanard
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, 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 restrictive covenant related 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.

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.