

Senator Lincoln Fillmore 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; and



25 • addressing remedies.

26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 ENACTS:

32 **34-51-101**, Utah Code Annotated 1953

33 **34-51-102**, Utah Code Annotated 1953

34 **34-51-201**, 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. Definition.**

45 As used in this chapter "post-employment restrictive covenant," also known as a
46 "covenant not to compete" or "noncompete agreement," means an agreement, written or oral,
47 between an employer and employee under which the employee agrees that the employee, either
48 alone or as an employee of another person, will not compete with the employer in providing
49 products, processes, or services that are similar to the employer's products, processes, or
50 services.

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

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

53 **34-51-201. Post-employment restrictive covenants.**

54 (1) This chapter does not prohibit an employer and employee from entering into
55 non-solicitation or non-disclosure agreements effective during the term of employment and

56 post-employment, and likewise does not prohibit non-solicitation, non-disclosure or
57 post-employment agreements arising out of the sale of all or substantially all of the ownership,
58 tangible or intangible assets of a corporation, limited liability company, limited partnership, or
59 a division or segment of any of those business entities by sale, acquisition, merger, or other
60 method.

61 (2) (a) An employer and an employee may not enter into a post-employment restrictive
62 covenant for a period of more than a reasonable temporal duration. With respect to a
63 post-employment restrictive covenant that does not arise out of the sale of a business, the
64 post-employment restrictive covenant shall be presumed to be of reasonable temporal duration
65 if it is one year or less in duration, and presumed to be of unreasonable temporal duration if it
66 is more than two years in duration. With respect to a post-employment restrictive covenant that
67 arises out of or is related to the sale of a business, the post-employment restrictive covenant
68 shall be presumed to be of reasonable duration if it is three years or less in duration. The
69 presumptions in this section are rebuttable.

70 (b) This Subsection (2) does not apply to a non-solicitation or non-disclosure
71 agreement.

72 Section 4. Section **34-51-301** is enacted to read:

73 **Part 3. Remedies**

74 **34-51-301. Award of arbitration costs, attorney fees and court costs, and damages.**

75 (1) If an employer seeks to enforce a post-employment restrictive covenant through
76 arbitration or by filing a civil action and it is determined that the post-employment restrictive
77 covenant is unenforceable, the employer is liable for the employee's:

- 78 (a) costs associated with arbitration;
79 (b) attorney fees and court costs; and
80 (c) actual damages.

81 (2) If a court or arbitrator determines that a post-employment restrictive covenant is not
82 of reasonable market scope or reasonable temporal duration or is otherwise unenforceable
83 under this chapter, the court or arbitrator may modify or amend the post-employment restrictive
84 covenant to render it enforceable to the maximum extent permitted by this chapter.