

## **HB0251S11 compared with HB0251S10**

**{deleted text}** shows text that was in HB0251S10 but was deleted in HB0251S11.

**inserted text** shows text that was not in HB0251S10 but was inserted into HB0251S11.

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Senator **{J. Stuart Adams}****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

Cosponsors:	Gregory H. Hughes	Paul Ray
Rebecca Chavez-Houck	Don L. Ipson	Angela Romero
Scott H. Chew	Michael S. Kennedy	Scott D. Sandall
Kim Coleman	Brad King	V. Lowry Snow
Susan Duckworth	Brian S. King	Robert M. Spendlove
Justin L. Fawson	John Knotwell	Jon E. Stanard
Francis D. Gibson	Daniel McCay	Norman K Thurston
Brian M. Greene	Michael E. Noel	Brad R. Wilson
Timothy D. Hawkes	Derrin Owens	
Sandra Hollins	Marie H. Poulson	

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### **LONG TITLE**

**General Description:**

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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;~~;~~
  - addressing exceptions;~~;~~ and
  - addressing remedies.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

None

### **Utah Code Sections Affected:**

ENACTS:

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

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

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

~~{ 34-51-202, Utah Code Annotated 1953 }~~

~~} 34-51-301, Utah Code Annotated 1953~~

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

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

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

#### **Part 1. General Provisions**

##### **34-51-101. Title.**

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

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

##### **34-51-102. Definition.**

As used in this chapter~~;~~

~~(1) (a) "Post-employment" post-employment restrictive covenant," also known as a "covenant not to compete" or "noncompete agreement," means an agreement, written or oral,~~

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between an employer and employee under which the employee agrees that the employee, either alone or as an employee of another person, will not compete with the employer in providing products, processes, or services that are similar to the employer's products, processes, or services.

- + (b) "Post-employment restrictive covenant" does not include nonsolicitation agreements or nondisclosure or confidentiality agreements.
- (2) "Sale of a business" means a transfer of the ownership by sale, acquisition, merger, or other method of the tangible or intangible assets of a business entity, or a division or segment of the business entity.
- + Section 3. Section 34-51-201 is enacted to read:

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

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

{In addition to any requirements imposed under common law, an} (1) This chapter does not prohibit an employer and employee from entering into non-solicitation or non-disclosure agreements effective during the term of employment and post-employment, and likewise does not prohibit non-solicitation, non-disclosure or post-employment agreements arising out of the sale of all or substantially all of the ownership, tangible or intangible assets of a corporation, limited liability company, limited partnership, or a division or segment of any of those business entities by sale, acquisition, merger, or other method.

(2) (a) An employer and an employee may not enter into a post-employment restrictive covenant for a period of more than {one year from the day on which the employee is no longer employed by the employer. A} a reasonable temporal duration. With respect to a post-employment restrictive covenant that {violates this section is void.}

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

#### **34-51-202. Exceptions.**

(1) This chapter does not prohibit a reasonable severance agreement mutually and freely agreed upon in good faith at or after the time of termination that includes; does not arise out of the sale of a business, the post-employment restrictive covenant shall be presumed to be of reasonable temporal duration if it is one year or less in duration, and presumed to be of unreasonable temporal duration if it is more than two years in duration. With respect to a post-employment restrictive covenant {. A severance agreement remains subject to any}

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requirements imposed under common law.

— (2) This chapter does not prohibit a restrictive covenant related to or arising out of, that arises out of or is related to the sale of a business, if the individual subject to the post-employment restrictive covenant receives value from the transaction.

— Section 5 shall be presumed to be of reasonable duration if it is three years or less in duration. The presumptions in this section are rebuttable.

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

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

### **Part 3. Remedies**

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

(1) 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 unenforceable, the employer is liable for the employee's:

(1)a) costs associated with arbitration;

(2)b) attorney fees and court costs; and

(3)c) actual damages.

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