

**POST-EMPLOYMENT RESTRICTIVE COVENANT
AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian M. Greene

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to post-employment restrictive covenants.

Highlighted Provisions:

This bill:

- ▶ outlines the scope of the chapter;
- ▶ addresses consideration and termination of employment as they relate to post-employment restrictive covenants;
- ▶ modifies remedy provisions;
- ▶ restricts the time for bringing an action to enforce post-employment restrictive covenants; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34-51-201, as enacted by Laws of Utah 2016, Chapter 153

34-51-301, as enacted by Laws of Utah 2016, Chapter 153



28 ENACTS:

29 **34-51-103**, Utah Code Annotated 1953

30 **34-51-302**, Utah Code Annotated 1953

31

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

33 Section 1. Section **34-51-103** is enacted to read:

34 **34-51-103. Scope of chapter.**

35 Consistent with this chapter, a court of competent jurisdiction determines whether a
36 post-employment restrictive covenant is enforceable.

37 Section 2. Section **34-51-201** is amended to read:

38 **34-51-201. Post-employment restrictive covenants.**

39 (1) In addition to any requirements imposed under common law, for a
40 post-employment restrictive covenant entered into on or after May 10, 2016, an employer and
41 an employee may not enter into a post-employment restrictive covenant for a period of more
42 than one year from the day on which the employee is no longer employed by the employer.

43 (2) (a) An employer may not enforce a post-employment restrictive covenant against an
44 employee if:

45 (i) at the time the post-employment restrictive covenant is executed, the employee:

46 (A) is employed by the employer; and

47 (B) does not receive new consideration such as an increase in wages or a promotion; or

48 (ii) without cause, the employer terminates the employment of the employee within one
49 year of the date on which the employee executes the post-employment restrictive covenant.

50 (b) For purposes of Subsection (2)(a)(i), continuation of employment of an existing
51 employee is not consideration for a post-employment restrictive covenant.

52 (3) A post-employment restrictive covenant that violates this section is void.

53 Section 3. Section **34-51-301** is amended to read:

54 **34-51-301. Award of arbitration costs, attorney fees and court costs, and**
55 **damages.**

56 If an employer seeks to enforce a post-employment restrictive covenant through
57 arbitration or by filing a civil action and it is determined that the post-employment restrictive
58 covenant is unenforceable, the employer is liable for [the employee's]:

- 59 (1) the employee's costs associated with arbitration;
60 (2) the employee's attorney fees and court costs; and
61 (3) three times the amount of actual damages.

62 Section 4. Section **34-51-302** is enacted to read:

63 **34-51-302. Timing of action.**

64 An employer may not bring an action to enforce a post-employment restrictive covenant
65 after the day on which the time period stated in the post-employment restrictive covenant
66 expires.

Legislative Review Note
Office of Legislative Research and General Counsel