

PROTECTED DRAFT

Senator _____ proposes the following substitute bill:

POST-EMPLOYMENT RESTRICTIONS AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: _____

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 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

40

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 in a single transaction
52 and that equals or exceeds 5% of the annual salary of the employee determined as of the day on
53 which a post-employment restrictive covenant is signed.

54 (2) "Common calling" means any employment:

55 (a) for which the employee possesses no special, unique, or extraordinary skill or

56 talent; and

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

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

60 (4) "Post-employment restrictive covenant" means an agreement, written or oral,
61 express or implied, between an employer and employee under which the employee agrees that
62 the employee, either alone or as an employee of another person, will not compete with the
63 employer in providing products, processes, or services that are similar to the employer's
64 products, processes, or services.

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

69 (6) "Trade secret" means the same as the term is defined in Section 13-24-2.

70 (7) "Sale of a business" means a transfer of the ownership by sale, acquisition, merger,
71 or other method of the tangible or intangible assets of a corporation, limited liability company,
72 or limited partnership, or a division or segment of a corporation, limited liability company, or
73 limited partnership.

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

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

76 **34-51-201. Post-employment restrictions prohibited.**

77 (1) Except as otherwise provided in this chapter, an employer may not enter into a
78 post-employment restrictive covenant with an employee. A post-employment restrictive
79 covenant entered into in violation of this chapter is void.

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

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

82 **34-51-202. Employment agreements.**

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

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

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

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

89 (a) specialized training;

90 (b) specialized education;

91 (c) a signing bonus;

92 (d) moving expenses; and

93 (e) costs of certification; or

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

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

96 **34-51-203. Post-employment restrictive covenants exceptions.**

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

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

101 (b) the post-employment restrictive covenant limits the employee from providing
102 products, processes, or services within the one or more markets in which the employer operated
103 during the time the employee was employed, if the employee had knowledge about the market;

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

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

107 (e) the employer provides adequate consideration for the agreement, aside from
108 continued at-will employment; and

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

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

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

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

