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

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Derrin Owens
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;
• 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

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
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 restrictive covenant," also known as a "covenant not to compete" or "noncompete agreement," means an agreement, written or oral, 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, for a post-employment
restrictive covenant entered into on or after May 10, 2016, 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
post-employment restrictive covenant that violates this section is void.

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


(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 a
post-employment restrictive covenant. A severance agreement remains subject to any
requirements imposed under common law.

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

Section 5. 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.

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) costs associated with arbitration;

(2) attorney fees and court costs; and

(3) actual damages.