

Memorandum

To: Noncompete Drafting Committee
From: Stewart Schwab, Reporter
Date: February 28, 2021

Re: Possible Titles for our Act

Introduction

In 2018, the Uniform Law Commission Executive Committee appointed a study committee on “Covenants Not to Compete.” In May 2020 the study committee recommended that the project go forward, suggested expanding its scope to include other restrictive agreements such as non-solicitation agreements and confidentiality agreements, and recommended that the drafting committee have discretion on the exact title. In July 2020 the Executive Committee approved the formation of a Drafting Committee on Covenants not to Compete.

ULC Style Guidelines

The ULC Style Manual (2021 edition) has clear guidelines on the title of an act. The most important of these for us are that the title:

1. must reflect the substance of the act accurately;
2. should signal the main topic of the act and should begin with that main topic; and
3. should be 3-6 words long, including the word “Uniform” at the beginning and “Act” at the end.

Possible Titles

1. Covenants Not to Compete Act [current name of draft]
2. Noncompetition Agreement Act [name of Massachusetts statute]
3. Noncompete Agreement Act
4. Post-Employment Agreement Act
5. Restrictive Employment Agreement Act
6. Post-Employment Restrictions Act [name of Utah statute]
7. Post-Employment Restrictive Agreement Act
8. Restrictive Post-Employment Agreement Act
9. Fair Competition Restrictive Agreement Act

Note: All these titles could be written in the singular or plural. The ULC style manual doesn't say anything specifically about singular or plural titles, but Rule 703(c) does say generally: "Use the singular rather than the plural unless only the plural is intended. The singular includes the plural and is simpler and clearer than the plural."

Reporter Favorites

My current favorite is # 7 above (Post-Employment Restrictive Agreement Act), followed closely by # 5 or # 6. Hurray for Utah.

Points to Consider

1. The body of the act as currently drafted uses “agreement” rather than “covenant.”
2. “Noncompete Agreement” and “Covenants Not to Compete” are both generally recognized terms by lawyers. “Restrictive Employment Agreement” and “Post-Employment Restrictive Agreement” are less generally known.
3. The act covers more than noncompetes, making post-employment restrictive agreement or restrictive employment agreement the terms that more accurately reflect the substance of the act.

Examples from Various State Statutes

D.C. -- Ban on Non-Compete Agreements Amendment Act of 2020 [does not cover no-solicits]

Illinois -- Freedom to Work Act (2016)

Maine -- An Act To Promote Keeping Workers in Maine (2019)

Massachusetts -- Noncompetition Agreement Act (2018)

Rhode Island -- Noncompetition Agreement Act (2019)

Utah -- Post-Employment Restrictions Act (2016)

New York -- New York State Mobility and Opportunity for Vulnerable Employees Act or the NY Move Act" [unenacted]

Tennessee -- Freedom to Work Act [unenacted]

United States -- Workforce Mobility Act of 2020 [unenacted]

Appendix

Uniform Law Commission Drafting Rules and Style Manual (2021 ed.)

Rule 102. Title of Act

(a) The title of an act is the title approved by the Executive Committee of the ULC. The Executive Committee also decides whether to designate the act as “Uniform” or “Model” and often makes that decision on recommendation of the drafting committee. The decision may be deferred until shortly before the act is submitted for final approval. Until the Executive Committee makes the decision, omit the term “Uniform” or “Model” from the title.

(b) The title of a uniform act should begin with “Uniform” and end with “Act” or the title may be “Uniform Act [on] [for] [to] [relating to] . . .”. The title of a model act should begin with “Model” and end with “Act”, or the title may be “Model Act [on] [for] [to] [relating to] . . .”. The title must reflect the substance of the act accurately.

(c) The title of a uniform or model act is distinguished from the longer, more detailed description of an act that often is included in a bill introduced in a state legislature. Each state has its own standards and practices as to what a title requires, many prescribed by the state's constitution, statutes, or legislative rules.

(d) Use the following guidelines for naming an act:

(1) The name should signal the main topic of the act and should begin with that main topic. Often that means eliminating or switching the order of words in a title. For example, "Prevention of and Remedies for Human Trafficking Act" would be named "Human Trafficking Prevention Act". "Protection of Charitable Assets Act" would be named "Charitable Assets Protection Act".

(2) The name of an act should be three to six words long, including the words "Uniform" or "Model" and "Act".

(3) An acronym for the title should not be used in the title or text of an act or in a legislative note but may be used in a comment. Even in a comment, a more informative shorthand reference, such as a one- or two-word reference, is preferable to an acronym.

(4) The name of an original act should not include a date. A revision of an act, including a technical amendment, must include the date of the revision in parentheses at the end of the name of the act.

(5) When the act is published in print and on the ULC website, the ULC office will add history information about the act. The history information will:

(A) be at the bottom of the title page;

(B) identify the year the act initially was approved and each year it was amended; and

(C) when presented electronically, include a hyperlink to every other version of the act.

(6) When a new version of an act replaces an earlier version, the ULC office will alter the history information on the ULC website about the earlier version to indicate it is not the current version.

(7) The distinction between a revised and an amended act is discontinued. Neither term should be used in the name of an act. The history information under (5) and (6) will provide legislators with information that is appropriate to the particular state – if the state has adopted the previous version, the act should be introduced as an amendment; if not, it should be introduced as a new act.