

HB0251S05 compared with HB0251S03

~~text~~ shows text that was in HB0251S03 but was deleted in HB0251S05.

text shows text that was not in HB0251S03 but was inserted into HB0251S05.

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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: _____

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	

LONG TITLE

General Description:

HB0251S05 compared with HB0251S03

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;
 - providing circumstances when post-employment restrictive covenants or employment agreements may be executed; and
 - addressing remedies.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

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

34-51-203, 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

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. Definitions.

As used in this chapter:

HB0251S05 compared with HB0251S03

(1) "Adequate consideration" means compensation, stocks, or anything of economic value that is paid, granted, given, donated, or transferred to an employee ~~in a single transaction and~~ that equals or exceeds 5% of the annual ~~salary~~ base wages of the employee determined as of the day on which a post-employment restrictive covenant is signed.

(2) (a) "Annual base wages" means, if an employee is paid a salary, the employee's base annual salary, excluding any contingent or variable compensation such as a bonus or incentive award, or any deferred compensation, benefit, or expense allowance.

(b) "Annual base wages" means, if an employee is paid an hourly wage, an amount calculated by multiplying the hourly wage times the number of hours the employee and employer agree that the employee is expected to work in the next 12 months, excluding any contingent or variable compensation such as a bonus or incentive award, or any deferred compensation, benefit and expense allowance.

~~(2)3~~ "Common calling" means any employment:

(a) for which the employee possesses no special, unique, or extraordinary skill or talent; and

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

~~(3)4~~ "Direct competitor" means a person that offers substantially similar products, processes, or services as does an employer and competes directly with the employer.

(5) "Employee" does not include an independent contractor.

~~(4)6~~ "Post-employment restrictive covenant" means an agreement, written or oral, express or implied, 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.

~~(5)7~~ "Proprietary or confidential information or process" means information or a process that has not been publicly disseminated and is not readily available from other sources without breach of an obligation of confidentiality, including unique compilations of data, the release of which might cause the employer material competitive harm.

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

~~(7)8~~ "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 corporation, limited liability

HB0251S05 compared with HB0251S03

company, or limited partnership, or a division or segment of a corporation, limited liability company, or limited partnership.

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

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

Part 2. Scope of Post-Employment Restrictions

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

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

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

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

34-51-202. Employment related agreements.

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

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

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

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

(a) specialized training;

(b) ~~specialized~~ education;

(c) a signing bonus;

(d) moving expenses; and

(e) costs of certification; or

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

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

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

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

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

(b) the post-employment restrictive covenant limits the employee from providing

HB0251S05 compared with HB0251S03

products, processes, or services within the one or more markets in which the ~~employer operated~~; ~~employee worked~~ during the time the employee was employed ~~if the employee had knowledge about the market~~;

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

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

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

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

(2) (a) 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.

(b) The requirements of Subsection (1) do not apply to a severance agreement entered into under this Subsection (2).

(3) (a) This chapter does not prohibit a 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.

(b) The requirements of Subsection (1) do not apply to a restrictive covenant entered into under this Subsection (3).

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

(~~a~~) owners of ~~a~~ an S corporation;

(~~b~~) partners of a general partnership;

(~~c~~) members of a limited liability company;

(~~d~~) partners of a limited liability partnership;

(~~e~~) partners of a limited partnership; or

(~~f~~) members or partners of a business entity similar to Subsections (4)(a)(i)

through (e)(vi).

(b) The requirements of Subsection (1) do not apply to a post-employment restrictive covenant entered into under this Subsection (4).

Section 6. Section 34-51-301 is enacted to read:

HB0251S05 compared with HB0251S03

Part 3. Remedies

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

If a person seeks to enforce or void a post-employment covenant through arbitration or by filing a civil action, the arbitrator or court may award to the prevailing party:

- (1) attorney fees;
- (2) allowable costs; and
- (3) actual damages.

Section 7. Effective date.

This bill takes effect on January 1, 2017.