

HB0251S01 compared with HB0251

~~{deleted text}~~ shows text that was in HB0251 but was deleted in HB0251S01.

inserted text shows text that was not in HB0251 but was inserted into HB0251S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

~~{POST-EMPLOYMENT}~~ Representative Mike Schultz proposes the following substitute bill:

POST-EMPLOYMENT RESTRICTIONS AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: _____

Cosponsors:

Scott H. Chew

Kim Coleman

Susan Duckworth

Justin L. Fawson

Francis D. Gibson

Brian M. Greene

Timothy D. Hawkes

Gregory H. Hughes

Don L. Ipson

Michael S. Kennedy

Brad King

Michael E. Noel

Derrin Owens

Scott D. Sandall

V. Lowry Snow

Robert M. Spendlove

Jon E. Stanard

Norman K Thurston

Brad R. Wilson

LONG TITLE

General Description:

This bill ~~{addresses post-employment restrictions}~~ enacts provisions related to restrictive covenants.

Highlighted Provisions:

HB0251S01 compared with HB0251

This bill:

- ▶ enacts the Post-Employment Restrictions Act, including:
 - defining terms;
 - prohibiting ~~{certain}~~ post-employment ~~{restrictions}~~ restrictive covenants subject to certain exceptions;
 - ~~{outlining enforcement of post-employment restrictions}~~ providing circumstances when restrictive covenants may be executed; and
 - addressing remedies.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{None}~~ 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

34-51-301, 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 ~~{,}~~:

(1) "~~{post-employment restriction}~~ **Post-employment restrictive covenant**" means ~~{a condition an employer imposes on an employee, whether by agreement, policy, or otherwise.~~

HB0251S01 compared with HB0251

~~that restricts the employee's actions after termination of employment}~~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.

(2) "Proprietary or confidential information" means information that has not been publicly disseminated or is unavailable from other sources, the release of which might cause the employer significant competitive harm.

(3) "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. { Prohibited post-employment}~~ Post-employment restrictions~~{~~

~~(1) }~~ 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 ~~restriction may not include any of the following:~~

~~(a) a restriction that, after termination of employment, the employee may not provide products, processes, or services that are similar to the employer's products, processes, or services or otherwise work in the same industry as the employer's for any period that extends beyond the termination of employment;~~

~~(b) a restriction that, after termination of employment, the employee may not, either directly or indirectly, own an interest in an entity that provides products, processes, or services that are similar to the employer's products, processes, or services; or~~

~~(c) a restriction that gives an employer the right to require an employee to solely and exclusively negotiate an extension of the employment agreement with the employer.~~

~~(2) This section may not be interpreted as prohibiting an employer or employee from entering into an employment contract that includes post-employment restrictions not prohibited by this section}~~restrictive covenant entered into in violation of this chapter is void.

(2) This chapter applies to agreements entered into on or after July 1, 2016.

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

~~34-51-202. { Scope of chapter:~~

HB0251S01 compared with HB0251

~~Consistent with this chapter, a court of competent jurisdiction or an arbitrator, if the post-employment restriction provides for arbitration, may determine whether?~~ Post-employment restrictions exceptions.

(1) This chapter does not prohibit an employer or employee from entering into an employment contract with a restrictive covenant applicable after termination of employment to:

- (a) protect a trade secret of the employer;
- (b) protect proprietary or confidential information of the employer;
- (c) prohibit solicitation of the employer's clients or employees; or
- (d) reimburse costs incurred by the employer on behalf of the employee, including

costs for:

- (i) specialized training;
- (ii) specialized education; or
- (iii) a signing bonus.

(2) This chapter does not prohibit a restrictive covenant related to the sale of a business if the individual subject to the restrictive covenant receives value from the sale of the business.

(3) This chapter does not prohibit a severance agreement mutually agreed upon at the time of termination that includes a post-employment ~~restriction is enforceable~~ restrictive covenant.

(4) A post-employment restrictive covenant permitted under Subsection (1)(b), (c), (d) or (3) may not restrict the employee's actions for:

- (a) a period longer than one year from the day on which employment is terminated; or
- (b) a geographical area that is not reasonable.

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 ~~restriction~~ restrictive covenant through arbitration or by filing a ~~court~~ civil action and it is determined that the post-employment ~~restriction~~ restrictive covenant is ~~prohibited~~ void under ~~Section 34-51-201~~ this chapter, the employer is liable for the ~~former~~ employee's:

(1) ~~(a) if enforcement is sought through arbitration,~~ costs associated with arbitration; ~~or~~

HB0251S01 compared with HB0251

~~(b)2) if the employer files a court action,~~ attorney fees and court costs; and

~~(2)3) actual damages.~~

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Legislative Review Note

~~Office of Legislative Research and General Counsel~~ Section 6. Effective date.

This bill takes effect on July 1, 2016.