

HB0251S02 compared with HB0251S01

~~deleted text~~ shows text that was in HB0251S01 but was deleted in HB0251S02.

inserted text shows text that was not in HB0251S01 but was inserted into HB0251S02.

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.

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:	Timothy D. Hawkes	<u>Paul Ray</u>
<u>Rebecca Chavez-Houck</u>	Gregory H. Hughes	Scott D. Sandall
Scott H. Chew	Don L. Ipson	V. Lowry Snow
Kim Coleman	Michael S. Kennedy	Robert M. Spendlove
Susan Duckworth	Brad King	Jon E. Stanard
Justin L. Fawson	<u>Daniel McCay</u>	Norman K. Thurston
Francis D. Gibson	Michael E. Noel	Brad R. Wilson
Brian M. Greene	Derrin Owens	

LONG TITLE

General Description:

This bill enacts provisions related to restrictive covenants.

Highlighted Provisions:

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This bill:

- ▶ enacts the Post-Employment Restrictions Act, including:
 - defining terms;
 - prohibiting post-employment restrictive covenants subject to certain exceptions;
 - providing circumstances when restrictive covenants 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

34-51-301, 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) (a) "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

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products, processes, or services.

(b) "Post-employment restrictive covenants," subject to Section 34-51-202, does not include nonsolicitation or confidentiality agreements.

(2) "Proprietary or confidential information ~~or process~~" means information ~~or a process~~ that has not been publicly disseminated ~~for~~ and is ~~unavailable~~ not readily available from other sources without breach of an obligation of confidentiality, the release of which might cause the employer ~~significant~~ material 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. 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 to agreements entered into on or after July 1, 2016.

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

34-51-202. 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 protect:

(a) ~~protect~~ a trade secret of the employer;

(b) ~~protect~~ proprietary or confidential information or process of the employer;

(c) ~~prohibit solicitation of~~ the employer's business relations with the employer's ~~clients~~ customers or employees; or

(d) ~~reimburse costs incurred by~~ the ~~employer on behalf of~~ employer's investment in the employee, including ~~costs for~~ investments in:

(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.

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(3) This chapter does not prohibit a severance agreement mutually **and freely** agreed upon **in good faith** at **or after** the time of termination that includes a post-employment 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; **or (d) or Subsection (3) may only be:**~~

(a) for a reasonable time period and scope; or

(b) within a reasonable market.

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 void under this chapter, the employer is liable for the employee's:

(1) costs associated with arbitration;

(2) attorney fees and court costs; and

(3) actual damages.

Section 6. **Effective date.**

This bill takes effect on July 1, 2016.