

HB0251S03 compared with HB0251S02

~~{deleted text}~~ shows text that was in HB0251S02 but was deleted in HB0251S03.

inserted text shows text that was not in HB0251S02 but was inserted into HB0251S03.

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~~{Representative Mike Schultz}~~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	<u>Marie H. Poulson</u>
Rebecca Chavez-Houck	Don L. Ipson	Paul Ray
Scott H. Chew	Michael S. Kennedy	<u>Angela Romero</u>
Kim Coleman	Brad King	Scott D. Sandall
Susan Duckworth	<u>Brian S. King</u>	V. Lowry Snow
Justin L. Fawson	<u>John Knotwell</u>	Robert M. Spendlove
Francis D. Gibson	Daniel McCay	Jon E. Stanard
Brian M. Greene	Michael E. Noel	Norman K. Thurston
Timothy D. Hawkes	Derrin Owens	Brad R. Wilson
<u>Sandra Hollins</u>		

LONG TITLE

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General Description:

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.

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As used in this chapter:

(1) ~~{(a)}~~ "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 of the employee determined as of the day on which a post-employment restrictive covenant is signed.

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

(4) "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.

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

~~{~~ ~~(2)}~~(5) "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.

~~{3}~~(6) "Trade secret" means the same as the term is defined in Section 13-24-2.

(7) "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 company, or limited partnership, or a division or segment of a corporation, limited liability company, or limited partnership.

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

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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 ~~July~~ January 1, ~~2016~~ 2017.

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

34-51-202. ~~Post-employment restrictions exceptions~~ Employment agreements.

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

~~(b) :~~

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

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

(3) a repayment agreement to reimburse the employer's ~~customers or employees; or~~

~~(d) the employer's~~ reasonable investment in ~~the~~ an employee, including ~~investments in~~;

~~(i) a~~ specialized training;

~~(ii) b~~ specialized education; ~~or~~

~~(iii) c~~ a signing bonus ~~;~~

~~(2) :~~

(d) moving expenses; and

(e) costs of certification; or

(4) another employment 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~~ an employer and an employee from entering into an agreement with a post-employment restrictive covenant ~~related to~~ provided that:

(a) the ~~sale of a business if the individual subject to the~~ post-employment restrictive covenant ~~receives value from the sale of the business.~~

~~(3)~~ is for a period of no more than one year from the day on which the employee is no

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longer employed by the employer;

(b) the post-employment restrictive covenant limits the employee from providing products, processes, or services within the one or more markets in which the employer operated 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) 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.

~~(4) A~~(3) 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.

(4) This chapter does not apply to post-employment restrictive ~~covenant permitted under Subsection (1)(b), (c), or (d) or Subsection (3) may only be:~~

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

~~— (b) within a reasonable market.~~

~~— Section 5}covenants between:~~

(a) owners of a 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) through (e).

Section 6. 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.

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If ~~{an employer}~~ a person seeks to enforce or void 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), the arbitrator or court may award to the prevailing party:~~
 - (1) attorney fees ~~{and court}~~;
 - (2) allowable costs; and
 - (3) actual damages.

Section ~~{6}~~ 7. **Effective date.**

This bill takes effect on ~~{July}~~ January 1, ~~{2016}~~ 2017.