

HB0055S01 compared with HB0055

~~{deleted text}~~ shows text that was in HB0055 but was deleted in HB0055S01.

inserted text shows text that was not in HB0055 but was inserted into HB0055S01.

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Representative Matt MacPherson proposes the following substitute bill:

EMPLOYMENT CONFIDENTIALITY AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: Todd D. Weiler

LONG TITLE

~~{Committee Note:~~

~~—————The Judiciary Interim Committee recommended this bill.~~

~~—————Legislative Vote: 14 voting for 1 voting against 2 absent~~

~~{General Description:~~

This bill enacts provisions related to sexual assault and sexual harassment in the workplace.

Highlighted Provisions:

This bill:

- ▶ makes ~~{void}~~voidable and unenforceable nondisclosure and non-disparagement clauses (confidentiality clauses) that prevent an employee from:
 - discussing or disclosing sexual assault, sexual harassment, or the existence of a settlement agreement resolving a sexual assault dispute or sexual harassment

HB0055S01 compared with HB0055

dispute; or

- making a negative statement about the employer related to a claim of sexual assault or sexual harassment;
- ▶ provides that a person who attempts to enforce a ~~prohibited~~ voided confidentiality clause:
 - is liable for costs and reasonable attorney fees; and
 - is not entitled to monetary damages for a breach of a confidentiality clause;
- ▶ prohibits retaliation against an employee who does not enter into an employment contract that contains a ~~prohibited~~ non-voidable confidentiality clause as part of a settlement agreement;
- ▶ defines terms; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

34A-5-114, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34A-5-114** is enacted to read:

34A-5-114. Limitations on enforceability of nondisclosure and non-disparagement clauses -- Retaliation prohibited.

(1) As used in this section:

(a) "Confidentiality clause" means a nondisclosure clause ~~for~~ and a non-disparagement clause.

(b) "Employee" includes a former employee.

(c) "Nondisclosure clause" means an agreement between an employee and employer that:

(i) prevents, or has the effect of preventing, an employee from disclosing or discussing:

HB0055S01 compared with HB0055

(A) sexual assault;

(B) allegations of sexual assault;

~~(B)~~(C) sexual harassment;

(D) allegations of sexual harassment; or

~~(C)~~(E) the existence of a settlement agreement; and

(ii) is for the purpose, or has the effect, of concealing details related to a claim an employee reasonably believes is an allegation of sexual assault or sexual harassment.

(d) "Non-disparagement clause" means an agreement between an employee and employer that prohibits, or has the effect of prohibiting, an employee from making a negative statement that is:

(i) about the employer; and

(ii) related to:

(A) a claim of sexual assault or sexual harassment;

(B) a sexual assault dispute; or

(C) a sexual harassment dispute.

(e) "Post-employment restrictive covenant" means the same as that term is defined in Section 34-51-102.

(f) "Proprietary information" means an employer's business plan or customer information.

(g) "Retaliate" means taking an adverse action against an employee, including:

(i) failure to hire;

(ii) discharge;

(iii) suspension;

(iv) demotion; or

(v) discrimination in the terms, conditions, or privileges of employment.

(h) "Settlement agreement" means an agreement resolving a sexual assault dispute or sexual harassment dispute.

(i) "Sexual assault" means:

(i) conduct that would constitute a violation of 18 U.S.C. Secs. 2241 through 2244; or

(ii) any criminal conduct described in Title 76, Chapter 5, Part 4, Sexual Offenses.

(j) "Sexual assault dispute" means a dispute between an employer and the employer's

HB0055S01 compared with HB0055

employee relating to alleged sexual assault.

(k) "Sexual harassment" means conduct that is a violation of:

(i) Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e et seq.; or

(ii) Subsection 34A-5-106(1)(a)(i) prohibiting harassment on the basis of sex, sexual orientation, or gender.

(l) "Sexual harassment dispute" means a dispute between an employer and the employer's employee relating to alleged sexual harassment.

(2) (a) A confidentiality clause ~~+, including+~~ regarding sexual misconduct in an employment contract, or as a condition of employment, is against public policy and is void and unenforceable.

(b) An employer may enter into a settlement agreement with mutual non-disclosure and non-disparagement clauses in instances of actual or alleged sexual misconduct, if the settlement agreement is voidable by the claimant.

(c) A claimant may void a settlement agreement, including a confidentiality clause in the settlement agreement.

~~(b)~~ d) Subsection (2)(a) applies regardless of whether the parties agree to the confidentiality clause before or after a sexual assault dispute or sexual harassment dispute arises.

~~(c)~~ e) An employer may not retaliate against an employee because the employee does not enter into a confidentiality clause or an employment contract that contains a confidentiality clause.

(3) An employer who attempts to enforce a ~~voided~~ confidentiality clause is:

(a) liable for all costs, including reasonable attorney fees, resulting from any legal action to enforce the confidentiality clause; and

(b) not entitled to monetary damages resulting from a breach of a confidentiality clause.

(4) Nothing in this section:

(a) prevents an agreement between an employee who alleges sexual assault or sexual harassment and an employer from containing a clause prohibiting disclosure of:

(i) the amount of a monetary settlement; or

(ii) at the request of the employee, facts that could reasonably lead to the identification

HB0055S01 compared with HB0055

of the employee;

(b) prevents an employer from requiring an employee to:

(i) sign a post-employment restrictive covenant; or

(ii) agree not to disclose an employer's non-public trade secrets, proprietary information, or confidential information that does not involve illegal acts;

(c) authorizes an employee to:

(i) disclose data otherwise protected by law or legal privilege; or

(ii) knowingly make statements or disclosures that are false or made with reckless disregard of the truth;

(d) permits a disclosure that would violate state or federal law; or

(e) limits other grounds that may exist at law or in equity for the unenforceability of a confidentiality clause.

Section 2. **Effective date.**

This bill takes effect on May 1, 2024.