

# SENATE BILL NO. 1393

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strikethrough and italic,  
indicating text to be  
removed.*~~

## Bill Status

S1393.....by COMMERCE AND HUMAN RESOURCES  
BUSINESS INTERESTS - Adds to existing law relating to labor to provide for  
agreements and covenants to protect employers' legitimate business  
interests.

02/08 Senate intro - 1st rdg - to printing

02/11 Rpt prt - to Com/HuRes

02/27 Rpt out - rec d/p - to 2nd rdg

02/28 2nd rdg - to 3rd rdg

02/29 3rd rdg - PASSED - 25-10-0

AYES -- Andreason, Bair, Bastian, Broadsword, Cameron, Corder,  
Darrington, Davis, Fulcher, Gannon, Geddes, Goedde, Hammond,  
Heinrich, Hill, Jorgenson, Keough, Little, Lodge, McGee, McKague,  
Pearce, Richardson, Siddoway, Stegner

NAYS -- Bilyeu, Burkett, Coiner, Kelly, Langhorst, Malepeai(Sagness),  
McKenzie, Schroeder, Stennett, Werk

Absent and excused -- None

Floor Sponsor - Goedde

Title apvd - to House

03/03 House intro - 1st rdg - to Bus

03/12 Rpt out - rec d/p - to 2nd rdg

03/13 2nd rdg - to 3rd rdg

03/18 3rd rdg - PASSED - 43-27-0

AYES -- Anderson, Andrus, Bayer, Bedke, Bell, Bilbao, Black, Block,  
Bolz, Bowers, Brackett, Bradford, Chadderdon, Clark, Collins, Crane,  
Eskridge, Hagedorn, Hart, Harwood, Henderson, Kren, Lake, Loertscher,  
Marriott, Mathews, McGeachin, Moyle, Nielsen, Nonini, Patrick,  
Raybould, Roberts, Schaefer, Shepherd(02), Shepherd(08), Shirley,  
Snodgrass, Stevenson, Thomas, Wills, Wood(27), Mr. Speaker

NAYS -- Barrett, Bock, Boe, Chavez, Chew, Durst, Henbest, Jaquet,

Killen, King, Labrador, LeFavour, Luker, Mortimer, Pasley-Stuart,  
Pence, Ringo, Ruchti, Rusche, Sayler, Shively, Smith(30), Smith(24),  
Thayn, Trail, Vander Woude, Wood(35)

Absent and excused -- None

Floor Sponsors - Patrick & Anderson

Title apvd - to Senate

03/19 To enrol  
03/20 Rpt enrol - Pres signed  
03/21 Sp signed  
03/24 To Governor  
03/28 Governor signed  
Session Law Chapter 295  
Effective: 07/01/08

## Bill Text

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]]]] LEGISLATURE OF THE STATE OF IDAHO ]]]]  
Fifty-ninth Legislature Second Regular Session - 2008

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### IN THE SENATE

SENATE BILL NO. 1393

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

1 AN ACT  
2 RELATING TO LABOR; AMENDING TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW  
3 CHAPTER 27, TITLE 44, IDAHO CODE, TO PROVIDE FOR AGREEMENTS AND COVENANTS  
4 TO PROTECT EMPLOYERS' LEGITIMATE BUSINESS INTERESTS, TO DEFINE TERMS, TO  
5 PROVIDE THAT A COURT MAY LIMIT OR MODIFY CERTAIN AGREEMENTS AND TO PROVIDE  
6 FOR ENFORCEMENT, TO PROVIDE THAT CERTAIN RESTRICTIONS OF DIRECT COMPETI-  
7 TION SHALL NOT EXCEED A SPECIFIED PERIOD OF TIME AND TO PROVIDE REBUTTABLE  
8 PRESUMPTIONS.

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Title 44, Idaho Code, be, and the same is hereby amended  
11 by the addition thereto of a **NEW CHAPTER**, to be known and designated as Chap-  
12 ter 27, Title 44, Idaho Code, and to read as follows:

13 CHAPTER 27  
14 AGREEMENTS AND COVENANTS PROTECTING  
15 LEGITIMATE BUSINESS INTERESTS

16 44-2701. AGREEMENTS AND COVENANTS PROTECTING LEGITIMATE BUSINESS INTER-  
17 ESTS. A key employee or key independent contractor may enter into a written

18 agreement or covenant that protects the employer's legitimate business inter-  
 19 ests and prohibits the key employee or key independent contractor from engag-  
 20 ing in employment or a line of business that is in direct competition with the  
 21 employer's business after termination of employment, and the same shall be  
 22 enforceable, if the agreement or covenant is reasonable as to its duration,  
 23 geographical area, type of employment or line of business, and does not impose  
 24 a greater restraint than is reasonably necessary to protect the employer's  
 25 legitimate business interests.

26 44-2702. DEFINITIONS. For purposes of this section, the following terms  
 27 shall have the following meanings:

28 (1) "Key employees" and "key independent contractors" shall include those  
 29 employees or independent contractors who, by reason of the employer's invest-  
 30 ment of time, money, trust, exposure to the public, or exposure to  
 31 technologies, intellectual property, business plans, business processes and  
 32 methods of operation, customers, vendors or other business relationships dur-  
 33 ing the course of employment, have gained a high level of inside knowledge,  
 34 influence, credibility, notoriety, fame, reputation or public persona as a  
 35 representative or spokesperson of the employer, and as a result, have the  
 36 ability to harm or threaten an employer's legitimate business interests.

37 (2) "Legitimate business interests" shall include, but not be limited to,  
 38 an employer's goodwill, technologies, intellectual property, business plans,  
 39 business processes and methods of operation, customers, customer lists, cus-  
 40 tomer contacts and referral sources, vendors and vendor contacts, financial  
 41 and marketing information, and trade secrets as that term is defined by chap-

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1 ter 8, title 48, Idaho Code.

2 44-2703. CONSTRUCTION AND ENFORCEMENT. To the extent any such agreement  
 3 or covenant is found to be unreasonable in any respect, a court shall limit or  
 4 modify the agreement or covenant as it shall determine necessary to reflect  
 5 the intent of the parties and render it reasonable in light of the circum-  
 6 stances in which it was made and specifically enforce the agreement or cove-  
 7 nant as limited or modified.

8 44-2704. RESTRICTION OF DIRECT COMPETITION -- REBUTTABLE PRESUMPTIONS.

9 (1) Under no circumstances shall a provision of such agreement or covenant, as  
 10 set forth herein, establish a postemployment restriction of direct competition  
 11 that exceeds a period of eighteen (18) months from the time of the key  
 12 employee's or key independent contractor's termination unless consideration,  
 13 in addition to employment or continued employment, is given to a key employee  
 14 or key independent contractor. Nothing in this chapter shall be construed to  
 15 limit a party's ability to otherwise protect trade secrets or other informa-  
 16 tion deemed proprietary or confidential.

17 (2) It shall be a rebuttable presumption that an agreement or covenant  
 18 with a postemployment term of eighteen (18) months or less is reasonable as to  
 19 duration.

20 (3) It shall be a rebuttable presumption that an agreement or covenant is  
 21 reasonable as to geographic area if it is restricted to the geographic areas  
 22 in which the key employee or key independent contractor provided services or

23 had a significant presence or influence.

24 (4) It shall be a rebuttable presumption that an agreement or covenant  
25 is reasonable as to type of employment or line of business if it is limited to  
26 the type of employment or line of business conducted by the key employee or  
27 key independent contractor while working for the employer.

28 (5) It shall be a rebuttable presumption that an employee or independent  
29 contractor who is among the highest paid five percent (5%) of the employer's  
30 employees or independent contractors is a "key employee" or a "key independent  
31 contractor." To rebut such presumption, an employee or independent contractor  
32 must show that it has no ability to adversely affect the employer's legitimate  
33 business interests.

## Statement of Purpose / Fiscal Impact

### STATEMENT OF PURPOSE

RS 17822

This legislation provides that an employer may enter into agreements with key employees and key independent contractors to protect a company's legitimate business interests. The legislation defines "key employees" and "legitimate business interests," and creates rebuttable presumptions as to the terms of the agreements.

### FISCAL IMPACT

There is no impact to the general fund.

#### Contact

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S 1393