

1                   **POST-EMPLOYMENT RESTRICTIONS AMENDMENTS**

2                                   2018 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Mike Schultz**

5                                   Senate Sponsor: Daniel Hemmert

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7 **LONG TITLE**

8 **General Description:**

9                   This bill modifies provisions of the Post-employment Restrictions Act.

10 **Highlighted Provisions:**

11                   This bill:

- 12                   ▶ defines terms;
- 13                   ▶ addresses the circumstances and conditions under which a post-employment
- 14 restrictive covenant between a broadcasting company and a broadcasting employee
- 15 is valid; and
- 16                   ▶ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18                   None

19 **Other Special Clauses:**

20                   None

21 **Utah Code Sections Affected:**

22 AMENDS:

23                   **34-51-102**, as enacted by Laws of Utah 2016, Chapter 153

24                   **34-51-201**, as enacted by Laws of Utah 2016, Chapter 153

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

27                   Section 1. Section **34-51-102** is amended to read:

28                   **34-51-102. Definitions.**

29 As used in this chapter:

30 (1) "Broadcasting employee" means an employee of a broadcasting company.

31 (2) "Broadcasting company" means a person engaged in the business of:

32 (a) distributing or transmitting electronic or electromagnetic signals to the general  
33 public using one or more of the following:

34 (i) television;

35 (ii) cable; or

36 (iii) radio; or

37 (b) preparing, developing, or creating one or more programs or messages for  
38 distribution or transmission by means described in Subsection (2)(a).

39 (3) "Exempt broadcasting employee" means a broadcasting employee who is  
40 compensated on a salary basis, as defined in 29 C.F.R. Sec. 541.602, at a rate equal to or  
41 greater than the greater of:

42 (a) \$913 per week, or an equivalent amount if calculated for a period longer than one  
43 week; or

44 (b) the rate at which an employee qualifies as exempt under the Fair Labor Standards  
45 Act, 29 U.S.C. Sec. 213(a) on a salary basis as defined in 29 C.F.R. Part 541.

46 ~~[(1)]~~ (4) (a) "Post-employment restrictive covenant," also known as a "covenant not to  
47 compete" or "noncompete agreement," means an agreement, written or oral, between an  
48 employer and employee under which the employee agrees that the employee, either alone or as  
49 an employee of another person, will not compete with the employer in providing products,  
50 processes, or services that are similar to the employer's products, processes, or services.

51 (b) "Post-employment restrictive covenant" does not include nonsolicitation  
52 agreements or nondisclosure or confidentiality agreements.

53 ~~[(2)]~~ (5) "Sale of a business" means a transfer of the ownership by sale, acquisition,  
54 merger, or other method of the tangible or intangible assets of a business entity, or a division or  
55 segment of the business entity.

56 Section 2. Section **34-51-201** is amended to read:

57 **34-51-201. Post-employment restrictive covenants.**

58 (1) [H] Except as provided in Subsection (2) and in addition to any requirements  
59 imposed under common law, for a post-employment restrictive covenant entered into on or  
60 after May 10, 2016, an employer and an employee may not enter into a post-employment  
61 restrictive covenant for a period of more than one year from the day on which the employee is  
62 no longer employed by the employer. A post-employment restrictive covenant that violates this  
63 [section] subsection is void.

64 (2) (a) Subject to Subsection (2)(b), a post-employment restrictive covenant between a  
65 broadcasting company and a broadcasting employee is valid only if:

66 (i) the broadcasting employee is an exempt broadcasting employee;

67 (ii) the post-employment restrictive covenant is part of a written employment contract  
68 with a term of no more than four years; and

69 (iii) (A) the broadcasting company terminates the broadcasting employee for cause; or

70 (B) the broadcasting employee breaches the employment contract in a manner that  
71 results in the broadcasting employee no longer being employed by the broadcasting company.

72 (b) A post-employment restrictive covenant described in Subsection (2)(a) is  
73 enforceable for no longer than the earlier of:

74 (i) one year after the day on which the broadcasting employee is no longer employed by  
75 the broadcasting company; or

76 (ii) the day on which the original term of the employment contract containing the  
77 post-employment restrictive covenant ends.

78 (c) A post-employment restrictive covenant between a broadcasting company and a  
79 broadcasting employee that does not comply with this subsection is void.