

Tyler Clancy proposes the following substitute bill:

Non-Compete Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Tyler Clancy

Senate Sponsor: Heidi Balderree

LONG TITLE

General Description:

This bill amends provisions relating to non-compete agreements.

Highlighted Provisions:

This bill:

- defines terms;
- prohibits an employer from enforcing a non-compete agreement against an employee under certain conditions;
- prohibits a person from enforcing a non-compete agreement against an independent contractor;
- requires that an employer presenting an employee with an offer of employment include with the offer of employment a non-compete agreement if the employer intends to enter into a non-compete agreement with the employee;
- imposes requirements on an employer presenting an employee with a non-compete agreement;
- requires that an employer give an employee advance notice of a non-compete agreement;
- makes void a non-compete agreement under certain conditions;
- provides that a person that fails to comply with provisions that this bill enacts may not enforce a non-compete agreement;
- grants a right of action to an individual against a person that attempts to enforce an unlawful non-compete agreement; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34-51-102, as last amended by Laws of Utah 2018, Chapter 465

34-51-201, as last amended by Laws of Utah 2019, Chapter 132

34-51-202, as enacted by Laws of Utah 2016, Chapter 153

34-51-301, as enacted by Laws of Utah 2016, Chapter 153

REPEALS:

34-51-101, as enacted by Laws of Utah 2016, Chapter 153

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

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

34-51-102 . Definitions.

As used in this chapter:

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

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

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

(i) television;

(ii) cable; or

(iii) radio; or

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

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

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

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

(4) "Nonexempt employee" means an employee who is nonexempt under the requirements of the Fair Labor Standards Act of 1938, 29 U.S.C. 201 et seq.

~~[(4)] (5)(a) ["Post-employment restrictive covenant," also known as a "covenant not to compete" or "noncompete agreement,"]~~ "Non-compete agreement" means an agreement, written or oral, between an employer and employee under which the

employee agrees that on or after the day on which the employer no longer employs the employee, the employee, either alone or as an employee of another person, will not compete with the employer in providing ~~[products, processes, or services]~~ a product, process, or service that ~~[are]~~ is similar to the employer's ~~[products, processes, or services]~~ product, process, or service.

(b) ~~["Post-employment restrictive covenant"]~~ "Non-compete agreement" does not include:

- (i) ~~[-]~~ a nonsolicitation agreement;
- (ii) ~~[-or-]~~ a nondisclosure agreement;
- (iii) ~~[-or-]~~ a confidentiality agreement; or
- (iv) a training repayment agreement.

~~[(5)]~~ (6) "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 business entity, or a division or segment of the business entity.

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

34-51-201 . Non-compete agreements.

(1) Except as provided in Subsection ~~[(2)]~~ (7) and in addition to any requirements imposed under common law, for a ~~[post-employment restrictive covenant]~~ non-compete agreement entered into on or after May 10, 2016, an employer and an employee may not enter into a ~~[post-employment restrictive covenant]~~ non-compete agreement for a period of more than one year from the day on which the employer no longer employs the employee.~~[is no longer employed by the employer. A post-employment restrictive covenant that violates this subsection is void.]~~

(2) An employer may not enforce a non-compete agreement entered into on or after May 6, 2026, against an employee if:

(a) the employee is:

- (i) a nonexempt employee;
- (ii) a student who is enrolled in a full-time or part-time undergraduate or graduate program while engaging in an internship or other short-term employment with an employer; or
- (iii) eighteen years old or younger;

(b) the employee's total earnings from the employer in the most recent calendar year are less than \$155,000; or

(c) the employer terminates the employee as a result of a reduction in force.

(3) A person may not enforce a non-compete agreement entered into on or after May 6,

2026, against an independent contractor.

(4)(a) Subject to Subsection (5), when making an offer of employment, an employer shall include with the offer of employment to the prospective employee any non-compete agreement the employer intends to enter into with the prospective employee.

(b) When including the non-compete agreement with an offer of employment as described in Subsection (4)(a), an employer shall:

(i) present the non-compete agreement in a way that a reasonable individual would understand the non-compete agreement; and

(ii) provide, in the offer of employment or contract, a statutory reference to this section.

(5) Before entering into a non-compete agreement with an employee, an employer shall provide to the employee a written notice of the non-compete agreement at least 14 calendar days before the earlier of the day on which:

(a) the employee begins working for the employer; or

(b) the non-compete agreement becomes effective.

(6)(a) A non-compete agreement that violates Subsections (1) through (3) is void.

(b) An employer that does not comply with the requirements of Subsections (4) and (5) may not enforce the provisions of a non-compete agreement.

~~[(2)]~~ (7)(a) Subject to Subsection ~~[(2)(b)]~~ (7)(b), a [post-employment restrictive covenant] non-compete agreement between a broadcasting company and a broadcasting employee is valid only if:

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

(ii) the ~~[post-employment restrictive covenant]~~ non-compete agreement is part of a written employment contract of reasonable duration, based on industry standards, the position, the broadcasting employee's experience, geography, and the parties' unique circumstances; and

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

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

(b) A ~~[post-employment restrictive covenant]~~ non-compete agreement described in Subsection ~~[(2)(a)]~~ (7)(a) is enforceable for no longer than the earlier of:

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

(ii) the day on which the original term of the employment contract containing the [~~post-employment restrictive covenant~~] non-compete agreement ends.

(c) A [~~post-employment restrictive covenant~~] non-compete agreement between a broadcasting company and a broadcasting employee that does not comply with this [~~subsection~~] Subsection (7) is void.

Section 3. Section **34-51-202** is amended to read:

34-51-202 . Non-compete agreements -- Exceptions.

(1) This chapter does not prohibit or affect:

(a) 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. A severance agreement remains subject to any requirements imposed under common law.~~] non-compete agreement; or

[(2)] (b) [~~This chapter does not prohibit a post-employment restrictive covenant~~] a non-compete agreement related to or arising out of the sale of a business, if the individual subject to the [~~restrictive covenant~~] non-compete agreement receives value related to the sale of the business.

(2) Notwithstanding Subsection (1)(a), a severance agreement remains subject to any requirements imposed under common law.

Section 4. Section **34-51-301** is amended to read:

34-51-301 . Award of arbitration costs, attorney fees and court costs, and damages.

(1) If an employer seeks to enforce a [~~post-employment restrictive covenant~~] non-compete agreement through arbitration[~~or by filing a civil action~~] and [it is determined] the arbitrator determines that the [~~post-employment restrictive covenant is unenforceable, the employer is liable for the employee's~~] non-compete agreement violates this chapter, the arbitrator shall award the employee:

[(1)] (a) costs associated with arbitration; and

[(2)] attorney fees and court costs; and

[(3)] (b) actual damages.

(2)(a) An employee or independent contractor has a right of action against a person that seeks to enforce a non-compete agreement that violates this chapter if the employee is a party to the non-compete agreement.

(b) If an individual brings an action against a person in accordance with Subsection (2)(a), and a court finds that the non-compete agreement violates this chapter, the court shall award the individual:

(i) actual damages;

(ii) injunctive relief;

(iii) costs associated with arbitration; and

(iv) reasonable costs and attorney fees.

Section 5. Repealer.

This bill repeals:

Section **34-51-101, Title.**

Section 6. Effective Date.

This bill takes effect on May 6, 2026.