

Representative Mike Schultz proposes the following substitute bill:

1 **POST-EMPLOYMENT RESTRICTIONS AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Mike Schultz**

5 Senate Sponsor: Daniel Hemmert

6 **LONG TITLE**

7 **General Description:**

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

9 **Highlighted Provisions:**

10 This bill:

11 ▶ defines terms;

12 ▶ addresses the circumstances and conditions under which a post-employment
13 restrictive covenant between a broadcasting company and a broadcasting employee
14 is valid; and

15 ▶ makes technical and conforming changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 **AMENDS:**

22 **34-51-102**, as enacted by Laws of Utah 2016, Chapter 153

23 **34-51-201**, as enacted by Laws of Utah 2016, Chapter 153

24



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 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 distribution or transmission by means described in Subsection (2)(a).

39 (3) "Exempt broadcasting employee" means a broadcasting employee who is 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.

42 [(1)] (4) (a) "Post-employment restrictive covenant," also known as a "covenant not to compete" or "noncompete agreement," means an agreement, written or oral, 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.

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

49 [(2)] (5) "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.

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

53 **34-51-201. Post-employment restrictive covenants.**

54 (1) In addition to any requirements imposed under common law, for a post-employment restrictive covenant entered into on or after May 10, 2016, an employer and an employee may not enter into a post-employment restrictive covenant for a period of more

57 than one year from the day on which the employee is no longer employed by the employer.

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

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

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

63 (iii) (A) the broadcasting company terminates the broadcasting employee for cause; or
64 (B) the broadcasting employee breaches the employment contract in a manner that
65 results in the broadcasting employee no longer being employed by the broadcasting company.

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

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

70 (ii) the day on which the term of the employment contract would have ended but for
71 the event described in Subsection (2)(a)(iii).

72 (3) A post-employment restrictive covenant that violates this section is void.