

Representative Mike Schultz proposes the following substitute bill:

POST-EMPLOYMENT RESTRICTIONS AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: Daniel Hemmert

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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



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 ~~[(+)]~~ (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) ~~[In]~~ 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.