

POST-EMPLOYMENT RESTRICTIONS AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: Mike Schultz

LONG TITLE

Committee Note:

The Business and Labor Interim Committee recommended this bill.

Legislative Vote: 14 voting for 0 voting against 6 absent

General Description:

This bill amends provisions related to post-employment restrictive covenants.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the permissible scope of a post-employment restrictive covenant; 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

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



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

29 **34-51-102. Definitions.**

30 As used in this chapter:

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

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

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

35 (i) television;

36 (ii) cable; or

37 (iii) radio; or

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

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

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

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

47 (4) "Legitimate business interest" means an employer's:

48 (a) trade secrets;

49 (b) intellectual property; ~~§~~ → or

49a (c) properly designated and protected confidential information or materials. ← ~~§~~

50 ~~§~~ → [(c) business plans;

51 ~~(d) business processes and practices;~~

52 ~~(e) customers;~~

53 ~~(f) customer lists;~~

54 ~~(g) customer referral sources;~~

55 ~~(h) goodwill; or~~

56 ~~(i) financial and marketing information.] ← ~~§~~~~

57 [(4)] (5) (a) "Post-employment restrictive covenant," also known as a "covenant not to
58 compete" or "noncompete agreement," means an agreement, written or oral, between an

59 employer and employee under which the employee agrees that the employee, either alone or as
 60 an employee of another person, will not compete with the employer in providing products,
 61 processes, or services that are similar to the employer's products, processes, or services.

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

64 [(5)] (6) "Sale of a business" means a transfer of the ownership by sale, acquisition,
 65 merger, or other method of the tangible or intangible assets of a business entity, or a division or
 66 segment of the business entity.

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

68 **34-51-201. Post-employment restrictive covenants.**

69 (1) (a) Except as provided in Subsection (2) and in addition to any requirements
 70 imposed under common law, [~~for a post-employment restrictive covenant entered into~~] an
 71 employer and an employee may not enter into a post-employment restrictive covenant:

72 (i) on or after May 10, 2016, [~~an employer and an employee may not enter into a~~
 73 ~~post-employment restrictive covenant~~] for a period of more than one year from the day on
 74 which the employee is no longer employed by the employer[:]; ~~§~~ → [or] and ← ~~§~~

75 (ii) on or after May 5, 2021, that:

76 (A) is broader than necessary to protect the legitimate business interests of the
 77 employer; or

78 (B) applies to a geographic area that is larger than the geographic area in which the
 79 employer has significant presence or influence.

80 (b) A post-employment restrictive covenant that violates this [~~subsection~~] Subsection
 81 (1) is void.

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

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

85 (ii) the post-employment restrictive covenant is part of a written employment contract
 86 of reasonable duration, based on industry standards, the position, the broadcasting employee's
 87 experience, geography, and the parties' unique circumstances; and

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

89 (B) the broadcasting employee breaches the employment contract in a manner that

90 results in the broadcasting employee no longer being employed by the broadcasting company.

91 (b) A post-employment restrictive covenant described in Subsection (2)(a) is

92 enforceable for no longer than the earlier of:

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

94 the broadcasting company; or

95 (ii) the day on which the original term of the employment contract containing the

96 post-employment restrictive covenant ends.

97 (c) A post-employment restrictive covenant between a broadcasting company and a

98 broadcasting employee that does not comply with this subsection is void.