

Representative Anthony E. Loubet proposes the following substitute bill:

POST-EMPLOYMENT RESTRICTIONS REVISIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Anthony E. Loubet

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill amends the Post-employment Restrictions Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that a post-employment restrictive covenant or nonsolicitation agreement related to certain disability services is void; 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 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:



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

27 **34-51-102. Definitions.**

28 As used in this chapter:

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

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

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

33 (i) television;

34 (ii) cable; or

35 (iii) radio; or

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

38 (3) (a) "Disability" means a mental condition that materially limits an individual's
39 activities or functioning.

40 (b) "Disability" includes autism spectrum disorder.

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

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

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

48 (5) "Home and community-based service provider" means a person who provides
49 support, supervision, and assistance to an individual with a disability in a residential setting,
50 private home, or in the community.

51 (6) "Independent contractor restrictive covenant" means an agreement, written or oral,
52 between an employer and an independent contractor under which the independent contractor
53 agrees that the independent contractor, either alone or as an employee or independent
54 contractor of another person, will not compete with the employer in providing products,
55 processes, or services that are similar to the employer's products, processes, or services.

56 (7) "Nonsolicitation agreement" means an agreement, written or oral, between an

57 employer and an employee or independent contractor under which the employee or independent
 58 contractor agrees that the employee or independent contractor, either alone or as an employee
 59 or independent contractor of another person, will not solicit the employer's employees,
 60 contractors, or clients.

61 [(4)] (8) (a) "Post-employment restrictive covenant," also known as a "covenant not to
 62 compete" or "noncompete agreement," means an agreement, written or oral, between an
 63 employer and employee under which the employee agrees that the employee, either alone or as
 64 an employee of another person, will not compete with the employer in providing products,
 65 processes, or services that are similar to the employer's products, processes, or services.

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

68 [(5)] (9) "Sale of a business" means a transfer of the ownership by sale, acquisition,
 69 merger, or other method of the tangible or intangible assets of a business entity, or a division or
 70 segment of the business entity.

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

72 **34-51-201. Post-employment restrictive covenants -- Nonsolicitation agreements.**

73 (1) (a) Except as provided in [~~Subsection (2)~~] Subsections (2) and (3) and in addition
 74 to any requirements imposed under common law, [~~for a post-employment restrictive covenant~~
 75 ~~entered into on or after May 10, 2016;~~] an employer and an employee may not enter into a
 76 post-employment restrictive covenant for a period of more than one year [~~from~~] after the day
 77 on which the employee is no longer employed by the employer.

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

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

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

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

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

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

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

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

90 enforceable for no longer than the earlier of:

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

92 the broadcasting company; or

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

94 post-employment restrictive covenant ends.

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

96 broadcasting employee that does not comply with this [~~subsection~~] Subsection (2) is void.

97 (3) A post-employment restrictive covenant, independent contractor restrictive

98 covenant, or nonsolicitation agreement between a home and community-based service provider

99 and an employee or independent contractor of the home and community-based service provider

100 is void.