Senator **Michael K. McKell** proposes the following substitute bill:

1 **POST-EMPLOYMENT RESTRICTIONS REVISIONS**

2 2023 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Anthony E. Loubet**

5 Senate Sponsor: Michael K. McKell

6

7 **LONG TITLE**

8 **General Description:**

9   This bill amends the Post-employment Restrictions Act.

10 **Highlighted Provisions:**

11   This bill:

12   ▸ defines terms;

13   ▸ prohibits certain agreements between a disability service provider and an employee

14 or independent contractor that impact the employee's or independent contractor's

15 ability to provide certain disability services after employment with the disability

16 service provider ends; and

17   ▸ makes technical and conforming changes.

18 **Money Appropriated in this Bill:**

19   None

20 **Other Special Clauses:**

21   None

22 **Utah Code Sections Affected:**

23 AMENDS:

24   **34-51-102**, as last amended by Laws of Utah 2018, Chapter 465

25   **34-51-201**, as last amended by Laws of Utah 2019, Chapter 132

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26
27   *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) "Disability support provider" means a person who provides support, supervision, or
41   assistance to an individual with an intellectual disability in a residential setting, private home,
42   or in the community.
43   (4) "Exempt broadcasting employee" means a broadcasting employee who is
44   compensated on a salary basis, as defined in 29 C.F.R. Sec. 541.602, at a rate equal to or
45   greater than the greater of:
46   (a) $913 per week, or an equivalent amount if calculated for a period longer than one
47   week; or
48   (b) the rate at which an employee qualifies as exempt under the Fair Labor Standards
49   Act, 29 U.S.C. Sec. 213(a) on a salary basis as defined in 29 C.F.R. Part 541.
50   (5) "Independent contractor restrictive covenant" means an agreement, written or oral,
51   between an employer and an independent contractor under which the independent contractor
52   agrees that the independent contractor, either alone or as an employee or independent
53   contractor of another person, will not compete with the employer in providing products,
54   processes, or services that are similar to the employer's products, processes, or services.
55   [(4)] (6) (a) "Post-employment restrictive covenant," also known as a "covenant not to
56   compete" or "noncompete agreement," means an agreement, written or oral, between an

57   employer and employee under which the employee agrees that the employee, either alone or as

58   an employee of another person, will not compete with the employer in providing products,

59   processes, or services that are similar to the employer's products, processes, or services.

60   (b) "Post-employment restrictive covenant" does not include nonsolicitation

61   agreements or nondisclosure or confidentiality agreements.

62   [(5)]

63   (7) "Sale of a business" means a transfer of the ownership by sale, acquisition, merger,

64   or other method of the tangible or intangible assets of a business entity, or a division or

65   segment of the business entity.

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

67   **34-51-201. Post-employment restrictive covenants -- Disability support provider**

68   **restrictions.**

69   (1) (a) Except as provided in [Subsection (2)] Subsections (2) and (3) and in addition

70   to any requirements imposed under common law, for a post-employment restrictive covenant

71   entered into on or after May 10, 2016, an employer and an employee may not enter into a

72   post-employment restrictive covenant for a period of more than one year [from] after the day

73   on which the employee is no longer employed by the employer.

74   (b) A post-employment restrictive covenant that violates this [subsection] Subsection

75   (1) is void.

76   (2) (a) Subject to Subsection (2)(b), a post-employment restrictive covenant between a

77   broadcasting company and a broadcasting employee is valid only if:

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

79   (ii) the post-employment restrictive covenant is part of a written employment contract

80   of reasonable duration, based on industry standards, the position, the broadcasting employee's

81   experience, geography, and the parties' unique circumstances; and

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

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

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

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

86   enforceable for no longer than the earlier of:

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

88   the broadcasting company; or

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

90   post-employment restrictive covenant ends.

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

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

93   (3) (a) A post-employment restrictive covenant or independent contractor restrictive

94   covenant between a disability support provider and an employee or independent contractor of

95   the disability support provider is void.

96   (b) A disability support provider may not enter into an agreement with an employee or

97   independent contractor that limits the right of an individual with an intellectual disability to

98   choose to receive services from the employee or independent contractor after the day on which

99   the employee or independent contractor ceases to be employed by the disability support

100   provider.