

POST-EMPLOYMENT RESTRICTIONS MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: _____

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 related to certain health care 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:

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

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

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

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

45 (4) "Health care" means care, treatment, service, or a procedure to improve, maintain,
46 or diagnose an individual's physical, mental, or behavioral condition.

47 (5) (a) "Health care employee" means, except as provided in Subsection (5)(b), an
48 employee of a health care provider who provides or facilitates the providing of health care
49 while acting within the course and scope of the employee's employment.

50 (b) "Health care employee" does not include an employee of a health care provider
51 who, as a primary function of the employee's job, performs medical or scientific research.

52 (6) (a) "Health care provider" means, except as provided in Subsection (6)(b), a person
53 engaged in the business of providing health care.

54 (b) "Health care provider" does not include a drug manufacturer.

55 ~~[(4)]~~ (7) (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)]~~ (8) "Sale of a business" means a transfer of the ownership by sale, acquisition,
63 merger, or other method of the tangible or intangible assets of a business entity, or a division or
64 segment of the business entity.

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

66 **34-51-201. Post-employment restrictive covenants.**

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

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

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

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

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

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

81 (B) the broadcasting employee breaches the employment contract in a manner that
82 results in the broadcasting employee no longer being employed by the broadcasting company.

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

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

87 (ii) the day on which the original term of the employment contract containing the
88 post-employment restrictive covenant ends.

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

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

91 (3) (a) A post-employment restrictive covenant between a health care provider and the
92 health care employee is void.

93 (b) Subsection (3)(a) does not apply to a tuition reimbursement program or other
94 employee incentive or retention program.