

1 UNEMPLOYMENT INSURANCE AMENDMENTS

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 Chief Sponsor: Jeremy A. Peterson

5 Senate Sponsor: _____

6

7 LONG TITLE

8 Committee Note:

9 The Workforce Services and Community and Economic Development Interim
10 Committee recommended this bill.

11 General Description:

12 This bill modifies the Employment Security Act by reducing the maximum
13 unemployment insurance contribution rate for an employer beginning in calendar year
14 2012 and capping the social unemployment insurance contribution rate for all
15 employers for calendar year 2012 only.

16 Highlighted Provisions:

17 This bill:

18 ▶ reduces the maximum unemployment insurance contribution rate for an employer
19 from 9% plus the social contribution rate to 7% plus the social contribution rate
20 beginning in calendar year 2012;

21 ▶ caps the social unemployment insurance contribution rate for all employers at .4%
22 for calendar year 2012 only;

23 ▶ provides that if the reserve fund is insolvent, the reserve factor is 2.0 until the
24 reserve fund becomes solvent; and

25 ▶ makes technical changes.

26 Money Appropriated in this Bill:

27 None



28 **Other Special Clauses:**

29 This bill provides an immediate effective date.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **35A-4-303**, as last amended by Laws of Utah 2011, Chapters 297 and 342

33 **35A-4-304**, as last amended by Laws of Utah 2011, Chapter 297



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

36 Section 1. Section **35A-4-303** is amended to read:

37 **35A-4-303. Determination of contribution rates.**

38 (1) (a) An employer's basic contribution rate is the same as the employer's benefit
39 ratio[;] and is determined by dividing the total benefit costs charged back to an employer
40 during the immediately preceding four fiscal years by the total taxable wages of the employer
41 for the same time period, calculated to four decimal places, disregarding [~~the~~] any remaining
42 fraction[; ~~if any~~].

43 (b) In calculating the basic contribution rate under Subsection (1)(a)[; ~~(i)~~], if four fiscal
44 years of data are not available[;]:

45 (i) the data of [~~three~~] the number of complete fiscal years that is available shall be
46 divided by the total taxable wages for the same time period[;]; or

47 [(ii) if three fiscal years of data are not available, the data of two fiscal years shall be
48 divided by the total taxable wages for the same time period; ~~or~~]

49 [(iii) if two fiscal years of data are not available, the data of one fiscal year shall be
50 divided by the total taxable wages for the same time period.]

51 [~~(2)(a) In calculating the social contribution rate under Subsection (2)(b) or (c):]~~

52 [(i) if four fiscal years of data are not available, the data of three fiscal years shall be
53 divided by the total taxable wages for the same time period; ~~or~~]

54 [(ii) if three fiscal years of data are not available, the data of two fiscal years shall be
55 divided by the total taxable wages for the same time period.]

56 [(b) Beginning January 1, 2005, the division shall calculate the social contribution rate
57 by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding
58 four fiscal years by the total taxable wages of all employers subject to contributions for the

59 ~~same period, calculated to four decimal places, disregarding any remaining fraction.]~~

60 ~~[(c) Beginning January 1, 2009]~~

61 (ii) if the employer is a new employer, the basic contribution rate shall be determined
62 as described in Subsection (5).

63 (2) (a) Subject to Subsection (2)(b), the division shall [calculate] determine the social
64 contribution rate by dividing all social costs as defined in Subsection 35A-4-307(1) applicable
65 to the preceding four fiscal years by the total taxable wages of all employers subject to
66 contributions for the same period, calculated to four decimal places, disregarding any
67 remaining fraction, and [rounded] rounding the result to three decimal places[~~, disregarding any~~
68 further fraction,] as follows:

69 (i) if the fourth decimal place is .0004 or less, [or rounding up to the next higher
70 number,] the third decimal place does not change; or

71 (ii) if the fourth decimal place is .0005 or more, rounding the third decimal place up.

72 (b) For calendar year 2012 only, if the calculation of the social contribution rate under
73 Subsection (2)(a) is greater than .004, the social contribution rate for calendar year 2012 is
74 .004.

75 (3) (a) [Beginning January 1, 2000, the] The division shall [by administrative decision]
76 set the reserve factor at a rate that [shall sustain] sustains an adequate reserve.

77 (b) For the purpose of setting the reserve factor:

78 [~~(i) (A) the adequate reserve is defined as between 17 and 19 months of benefits at the~~
79 ~~average of the five highest benefit cost rates in the last 25 years;]~~

80 [~~(B) beginning January 1, 2009,]~~ (i) the adequate reserve is defined as between 18 and
81 24 months of benefits at the average of the five highest benefit cost rates in the last 25 years;

82 (ii) the division shall set the reserve factor [shall be] at 1.0000 if the actual reserve fund
83 balance as of June 30 preceding the computation date is determined to be an adequate reserve;

84 (iii) the division shall set the reserve factor [will be set] between 0.5000 and 1.0000 if
85 the actual reserve fund balance as of June 30 preceding the computation date is greater than the
86 adequate reserve;

87 (iv) the division shall set the reserve factor [will be set] between 1.0000 and 1.5000 if
88 the actual reserve fund balance as of June 30 prior to the computation date is less than the
89 adequate reserve;

90 (v) if the actual reserve fund balance as of June 30 preceding the computation date is
91 insolvent or negative or if there is an outstanding loan from the Federal Unemployment
92 Account~~[-]~~ or other lending institution, the division shall set the reserve factor ~~[will be set]~~ at
93 2.0000 until the actual reserve fund balance as of June 30 preceding the computation date is
94 determined ~~[to be an adequate reserve]~~ by the division to be solvent or positive and there is no
95 outstanding loan;

96 (vi) the division shall set the reserve factor ~~[will be set]~~ on or before January 1 of each
97 year; and

98 (vii) money made available to the state under Section 903 of the Social Security Act,
99 42 U.S.C. 1103, as amended, which is received on or after January 1, 2004, may not be
100 considered in establishing the reserve factor under this section for the rate year 2005 or any
101 ~~[subsequent]~~ following rate year.

102 ~~[(4) (a) On or after January 1, 2004, an employer's overall contribution rate is the~~
103 ~~employer's basic contribution rate multiplied by the reserve factor established according to~~
104 ~~Subsection (3), calculated to four decimal places, disregarding the remaining fraction, plus the~~
105 ~~social contribution rate established according to Subsection (2), and calculated to three~~
106 ~~decimal places, disregarding the remaining fraction, but not more than a maximum overall~~
107 ~~contribution rate of 9.0%, plus the applicable social contribution rate and not less than 1.1% for~~
108 ~~new employers.];~~

109 ~~[(b)]~~ (4) (a) Beginning January 1, 2009, an employer's overall contribution rate is:

110 (i) except as provided in Subsection (4)(a)(ii) or (iii), the employer's basic contribution
111 rate multiplied by the reserve factor established ~~[according to]~~ under Subsection (3)(b),
112 calculated to four decimal places, disregarding ~~[the]~~ any remaining fraction, plus the social
113 contribution rate established ~~[according to]~~ under Subsection (2), and the result calculated to
114 three decimal places, disregarding ~~[the]~~ any remaining fraction~~[-, but not more than a maximum~~
115 ~~overall contribution rate of 9%, plus the applicable social contribution rate and not less than~~
116 ~~1.1% for new employers.];~~

117 (ii) if under Subsection (4)(a)(i) the overall contribution rate calculation for an
118 employer is greater than 9% plus the applicable social contribution rate, the overall
119 contribution rate for the employer shall be reduced to 9% plus the applicable social
120 contribution rate; or

121 (iii) if under Subsection (4)(a)(i) the overall contribution rate calculation for a new
 122 employer is less than 1.1%, the overall contribution rate for the new employer shall be
 123 increased to 1.1%.

124 (b) Beginning January 1, 2012, an employer's overall contribution rate is:

125 (i) except as provided in Subsection (4)(b)(ii) or (iii), the employer's basic contribution
 126 rate multiplied by the reserve factor established under Subsection (3)(b), calculated to four
 127 decimal places, disregarding any remaining fraction, plus the social contribution rate
 128 established under Subsection (2), and the result calculated to three decimal places, disregarding
 129 any remaining fraction;

130 (ii) if under Subsection (4)(b)(i) the overall contribution rate calculation for an
 131 employer is greater than 7% plus the applicable social contribution rate, the overall
 132 contribution rate for the employer shall be reduced to 7% plus the applicable social
 133 contribution rate; or

134 (iii) if under Subsection (4)(b)(i) the overall contribution rate calculation for a new
 135 employer is less than 1.1%, the overall contribution rate for the new employer shall be
 136 increased to 1.1%.

137 (c) The overall contribution rate described under this Subsection (4) does not include
 138 the addition of any penalty applicable to an employer;

139 (i) as a result of delinquency in the payment of contributions as provided in Subsection
 140 (9)[-]; or

141 [~~(d) The overall contribution rate does not include the addition of any penalty~~
 142 ~~applicable to an employer]~~

143 (ii) that is assessed a penalty rate under Subsection 35A-4-304(5)(a).

144 (5) (a) Except as otherwise provided in [~~Subsection (9), each new employer shall pay a~~
 145 ~~contribution rate]~~ this section, the basic contribution rate for a new employer is based on the
 146 average benefit cost rate experienced by employers of the major industry, as defined by
 147 department rule, to which the new employer belongs[~~, the basic contribution rate to be~~
 148 ~~determined as follows:];~~

149 [~~(a)~~] (b) Except as provided in Subsection (5)[~~(b)~~](c), by January 1 of each year, the
 150 basic contribution rate to be used in computing [~~the~~] a new employer's overall contribution rate
 151 under Subsection (4) is the benefit cost rate [~~which~~] that is the greater of:

152 (i) the amount calculated by dividing the total benefit costs charged back to both active
153 and inactive employers of the same major industry for the last two fiscal years by the total
154 taxable wages paid by those employers that were paid during the same time period, computed
155 to four decimal places, disregarding ~~the~~ any remaining fraction~~[, if any]~~; or

156 (ii) 1%.

157 ~~(b)~~ (c) If the major industrial classification assigned to a new employer is an industry
158 for which a benefit cost rate does not exist because the industry has not operated in the state or
159 has not been covered under this chapter, the employer's basic contribution rate ~~shall be~~ is
160 5.4%. This basic contribution rate is used in computing the employer's overall contribution
161 rate under Subsection (4).

162 (6) Notwithstanding any other provision of this chapter, and except as provided in
163 Subsection (7), if an employing unit that moves into this state is declared to be a qualified
164 employer because it has sufficient payroll and benefit cost experience under another state, a
165 rate shall be computed on the same basis as a rate is computed for all other employers subject
166 to this chapter if that unit furnishes adequate records on which to compute the rate.

167 (7) An employer who begins to operate in this state after having operated in another
168 state shall be assigned the maximum overall contribution rate until the employer acquires
169 sufficient experience in this state to be considered a "qualified employer" if the employer is:

170 (a) regularly engaged as a contractor in the construction, improvement, or repair of
171 buildings, roads, or other structures on lands;

172 (b) generally regarded as being a construction contractor or a subcontractor specialized
173 in some aspect of construction; or

174 (c) required to have a contractor's license or similar qualification under Title 58,
175 Chapter 55, Utah Construction Trades Licensing Act, or the equivalent in laws of another state.

176 (8) (a) If an employer acquires the business or all or substantially all the assets of
177 another employer and the other employer had discontinued operations upon the acquisition or
178 transfers its trade or business, or a portion of its trade or business, under Subsection
179 35A-4-304(3)(a):

180 (i) for purposes of determining and establishing the acquiring party's qualifications for
181 an experience rating classification, the payrolls of both employers during the qualifying period
182 shall be jointly considered in determining the period of liability with respect to:

- 183 (A) the filing of contribution reports;
- 184 (B) the payment of contributions; and
- 185 (C) [~~after January 1, 1985,~~] the benefit costs of both employers;
- 186 (ii) the transferring employer shall be divested of the transferring employer's
- 187 unemployment experience provided the transferring employer had discontinued operations, but
- 188 only to the extent as defined under Subsection 35A-4-304(3)(c); and
- 189 (iii) if an employer transfers its trade or business, or a portion of its trade or business,
- 190 as defined under Subsection 35A-4-304(3), the transferring employer may not be divested of its
- 191 employer's unemployment experience.
- 192 (b) An employing unit or prospective employing unit that acquires the unemployment
- 193 experience of an employer shall, for all purposes of this chapter, be an employer as of the date
- 194 of acquisition.
- 195 (c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in
- 196 Subsection (8)(a), is divested of the employer's unemployment experience by transferring all of
- 197 the employer's business to another and by ceasing operations as of the date of the transfer, the
- 198 transferring employer shall cease to be an employer, as defined by this chapter, as of the date of
- 199 transfer.
- 200 (9) (a) [~~A rate of less than 8% shall be effective January 1 of any contribution year on~~
- 201 ~~or after January 1, 1985, but before January 1, 1988, and a] A rate of less than the maximum~~
- 202 overall contribution rate [~~on or after January 1, 1988,~~] is effective only [~~with respect to] for~~
- 203 new employers and to those qualified employers who, except for amounts due under division
- 204 determinations that have not become final, paid all contributions prescribed by the division
- 205 [~~with respect to] for~~ the four consecutive calendar quarters in the fiscal year immediately
- 206 preceding the computation date [~~on or after January 1, 1985~~].
- 207 (b) Notwithstanding Subsections (1), (5), (6), and (8), [~~on or after January 1, 1988,~~] an
- 208 employer who fails to pay all contributions prescribed by the division [~~with respect to] for~~
- 209 the four consecutive calendar quarters in the fiscal year immediately preceding the computation
- 210 date, except for amounts due under determinations that have not become final, shall pay a
- 211 contribution rate equal to the overall contribution rate determined under the experience rating
- 212 provisions of this chapter, plus a surcharge of 1% of wages.
- 213 (c) An employer who pays all required contributions shall, for the current contribution

214 year, be assigned a rate based upon the employer's own experience as provided under the
215 experience rating provisions of this chapter effective the first day of the calendar quarter in
216 which the payment was made.

217 (d) Delinquency in filing contribution reports may not be the basis for denial of a rate
218 less than the maximum contribution rate.

219 (10) If an employer makes a contribution payment based on the overall contribution
220 rate in effect at the time the payment was made and a provision of this section retroactively
221 reduces the overall contribution rate for that payment, the division:

222 (a) may not directly refund the difference between what the employer paid and what
223 the employer would have paid under the new rate; and

224 (b) shall allow the employer to make an adjustment to a future contribution payment to
225 offset the difference between what the employer paid and what the employer would have paid
226 under the new rate.

227 Section 2. Section **35A-4-304** is amended to read:

228 **35A-4-304. Special provisions regarding transfers of unemployment experience**
229 **and assignment rates.**

230 (1) As used in this section:

231 (a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance
232 or reckless disregard for the prohibition involved.

233 (b) "Person" has the meaning given that term by Section 7701(a)(1) of the Internal
234 Revenue Code of 1986.

235 (c) "Trade or business" includes the employer's workforce.

236 (d) "Violate or attempt to violate" includes intent to evade, misrepresentation, or
237 willful nondisclosure.

238 (2) Notwithstanding any other provision of this chapter, Subsections (3) and (4) shall
239 apply regarding assignment of rates and transfers of unemployment experience.

240 (3) (a) If an employer transfers its trade or business, or a portion of its trade or
241 business, to another employer and, at the time of the transfer, there is common ownership,
242 management, or control of the employers, then the unemployment experience attributable to
243 each employer shall be combined into a common experience rate calculation.

244 (b) The contribution rates of the employers shall be recalculated and made effective

245 upon the date of the transfer of trade or business as determined by division rule in accordance
246 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

247 (c) (i) If one or more of the employers is a qualified employer at the time of the
248 transfer, then all employing units that are party to a transfer described in Subsection (3)(a) of
249 this section shall be assigned an overall contribution rate under Subsection 35A-4-303(4)~~(c)~~,
250 using combined unemployment experience rating factors, for the rate year during which the
251 transfer occurred and for the subsequent three rate years.

252 (ii) If none of the employing units is a qualified employer at the time of the transfer,
253 then all employing units that are party to the transfer described in Subsection (3)(a) shall be
254 assigned the highest overall contribution rate applicable at the time of the transfer to any
255 employer who is party to the acquisition for the rate year during which the transfer occurred
256 and for subsequent rate years until the time when one or more of the employing units is a
257 qualified employer.

258 (iii) Once one or more employing units described in Subsection (3)(c)(ii) is a qualified
259 employer, all the employing units shall be assigned an overall rate under Subsection
260 35A-4-303(4)~~(c)~~, using combined unemployment experience rating factors for subsequent
261 rate years, not to exceed three years following the year of the transfer.

262 (d) The transfer of some or all of an employer's workforce to another employer shall be
263 considered a transfer of its trade or business when, as the result of the transfer, the transferring
264 employer no longer performs trade or business with respect to the transferred workforce, and
265 the trade or business is now performed by the employer to whom the workforce is transferred.

266 (4) (a) Whenever a person is not an employer under this chapter at the time it acquires
267 the trade or business of an employer, the unemployment experience of the acquired business
268 may not be transferred to that person if the division finds that the person acquired the business
269 solely or primarily for the purpose of obtaining a lower rate of contributions.

270 (b) The person shall be assigned the applicable new employer rate under Subsection
271 35A-4-303(5).

272 (c) In determining whether the business was acquired solely or primarily for the
273 purpose of obtaining a lower rate of contributions, the division shall use objective factors
274 which may include:

275 (i) the cost of acquiring the business;

276 (ii) whether the person continued the business enterprise of the acquired business;
277 (iii) how long the business enterprise was continued; or
278 (iv) whether a substantial number of new employees were hired for performance of
279 duties unrelated to the business activity conducted prior to acquisition.

280 (5) (a) If a person knowingly violates or attempts to violate Subsection (3) or (4) or any
281 other provision of this chapter related to determining the assignment of a contribution rate, or if
282 a person knowingly advises another person in a way that results in a violation of any of those
283 subsections or provisions, the person is subject to the following penalties:

284 (i) (A) If the person is an employer, then the employer shall be assigned an overall
285 contribution rate of 5.4% for the rate year during which the violation or attempted violation
286 occurred and for the subsequent rate year.

287 (B) If the person's business is already at 5.4% for any year, or if the amount of increase
288 in the person's rate would be less than 2% for that year, then a penalty surcharge of
289 contributions of 2% of taxable wages shall be imposed for the rate year during which the
290 violation or attempted violation occurred and for the subsequent rate year.

291 (ii) (A) If the person is not an employer, the person shall be subject to a civil penalty of
292 not more than \$5,000.

293 (B) The fine shall be deposited in the penalty and interest account established under
294 Section 35A-4-506.

295 (b) (i) In addition to the penalty imposed by Subsection (5)(a), a violation of this
296 section may be prosecuted as unemployment insurance fraud.

297 (ii) The determination of the degree of an offense shall be measured by the total value
298 of all contributions avoided or reduced or contributions sought to be avoided or reduced by the
299 unlawful conduct as applied to the degrees listed under Subsection 76-8-1301(2)(a).

300 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
301 division shall make rules to identify the transfer or acquisition of a business for purposes of this
302 section.

303 (7) This section shall be interpreted and applied in a manner that meets the minimum
304 requirements contained in any guidance or regulations issued by the United States Department
305 of Labor.

306 Section 3. **Effective date.**

307 If approved by two-thirds of all the members elected to each house, this bill takes effect
308 upon approval by the governor, or the day following the constitutional time limit of Utah
309 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
310 the date of veto override.

Legislative Review Note
as of 11-17-11 11:41 AM

Office of Legislative Research and General Counsel