

1 **WORKFORCE SERVICES AMENDMENTS**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Lloyd W. Frandsen**

5 AN ACT RELATING TO WORKFORCE SERVICES; TRANSFERRING RESPONSIBILITY
6 FOR PRIVATE EMPLOYMENT AGENCIES TO THE LABOR COMMISSION; MAKING THE
7 PENALTY FOR OVERPAYMENT OF PUBLIC ASSISTANCE PROGRAM-SPECIFIC; AND
8 MAKING TECHNICAL AND CONFORMING AMENDMENTS.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 **34-29-10**, as last amended by Chapter 375, Laws of Utah 1997

12 **34-29-21**, as last amended by Chapter 375, Laws of Utah 1997

13 **35A-1-104**, as last amended by Chapter 375, Laws of Utah 1997

14 **35A-1-202**, as last amended by Chapter 116, Laws of Utah 1998

15 **35A-1-501**, as renumbered and amended by Chapter 174, Laws of Utah 1997

16 **35A-1-502**, as renumbered and amended by Chapter 174, Laws of Utah 1997

17 **35A-1-503**, as renumbered and amended by Chapter 174, Laws of Utah 1997

18 **35A-6-103**, as renumbered and amended by Chapter 375, Laws of Utah 1997

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

20 Section 1. Section **34-29-10** is amended to read:

21 **34-29-10. Schedule of fees -- Fee limitations.**

22 (1) (a) Every private employment agency shall file with the division [~~of Workforce~~
23 ~~Information and Payment Services in the Department of Workforce Services~~] a schedule of fees
24 to be charged and collected in the conduct of its business.

25 (b) The agency shall post the schedule in a conspicuous place in the agency.

26 (c) The agency may make changes in the schedule, but a change is not effective until seven
27 days after the date the amended schedule is refiled with the division [~~of Workforce Information~~

28 and Payment Services].

29 (d) The agency may not charge or collect any fee that is greater than the fees scheduled and
30 in force at the time the contract for employment is issued.

31 (2) The [~~Department of Workforce Services~~] commission may enact rules to enforce and
32 administer this section.

33 (3) When controversies arise under this section, the parties shall file a request for agency
34 action with the Division of Adjudication in the [~~Department of Workforce Services~~] commission.

35 (4) An employment agency may not charge any fee greater than 25% of the amount actually
36 earned in the employment during the first 30 days, if the employment was ended during such
37 30-day period.

38 Section 2. Section **34-29-21** is amended to read:

39 **34-29-21. Approval of licensees by division.**

40 A county, city, or town may not license under this chapter any intelligence or employment
41 office unless the applicant is licensed to establish and operate the same by the division [~~of
42 Workforce Information and Payment Services in the Department of Workforce Services~~].

43 Section 3. Section **35A-1-104** is amended to read:

44 **35A-1-104. Department authority.**

45 Within all other authority or responsibility granted to it by law, the department may:

46 (1) adopt rules when authorized by this title, in accordance with the procedures of Title
47 63, Chapter 46a, Utah Administrative Rulemaking Act;

48 (2) purchase, as authorized or required by law, services that the department is responsible
49 to provide for legally eligible persons;

50 (3) conduct adjudicative proceedings in accordance with the procedures of Title 63,
51 Chapter 46b, Administrative Procedures Act;

52 (4) establish eligibility standards for its programs, not inconsistent with state or federal law
53 or regulations;

54 (5) take necessary steps, including legal action, to recover money or the monetary value
55 of services provided to a recipient who is not eligible;

56 [~~(6) license agencies in accordance with this title and Title 34, Labor in General;~~]

57 [~~(7)~~] (6) acquire, manage, and dispose of any real or personal property needed or owned
58 by the department, not inconsistent with state law;

59 [(8)] (7) receive gifts, grants, devises, and donations or the proceeds thereof, crediting the
60 program designated by the donor, and using the gift, grant, devise, or donation for the purposes
61 requested by the donor, as long as the request conforms to state and federal policy;

62 [(9)] (8) accept and employ volunteer labor or services;

63 [(10)] (9) reimburse volunteers for necessary expenses, when the department considers that
64 reimbursement to be appropriate;

65 [(11)] (10) carry out the responsibility assigned by the State Workforce Services Plan
66 developed by the State Council on Workforce Services;

67 [(12)] (11) provide training and educational opportunities for its staff;

68 [(13)] (12) examine and audit the expenditures of any public funds provided to a local
69 authority, agency, or organization that contracts with or receives funds from those authorities or
70 agencies;

71 [(14)] (13) accept and administer grants from the federal government and from other
72 sources, public or private;

73 [(15)] (14) employ and determine the compensation of clerical, legal, technical,
74 investigative, and other employees necessary to carry out its policymaking, regulatory, and
75 enforcement powers, rights, duties, and responsibilities under this title;

76 [(16)] (15) establish and conduct free employment agencies, and [~~license, supervise, and~~
77 ~~regulate private employment offices, and~~] bring together employers seeking employees and
78 working people seeking employment, and make known the opportunities for employment in this
79 state;

80 [(17)] (16) collect, collate, and publish statistical and other information relating to
81 employees, employers, employments, and places of employment, and other statistics as it considers
82 proper;

83 [(18)] (17) encourage the expansion and use of apprenticeship programs meeting state or
84 federal standards for apprenticeship programs;

85 [(19)] (18) develop processes to ensure that the department responds to the full range of
86 employee and employer clients; and

87 [(20)] (19) carry out the responsibilities assigned to it by statute.

88 Section 4. Section 35A-1-202 is amended to read:

89 **35A-1-202. Divisions -- Creation -- Duties -- Workforce Appeals Board, councils, and**

90 **regional services areas.**

91 (1) There is created within the department the following divisions:

92 (a) the Division of Employment Development to administer the development and
93 implementation of employment assistance programs that are:

94 (i) related to the operations of the department; and

95 (ii) consistent with federal and state law;

96 (b) the Division of Workforce Information and Payment Services to administer those
97 services that are not delivered through the regional workforce services areas; and

98 (c) the Division of Adjudication to adjudicate claims or actions in accordance with this
99 title.

100 (2) In addition to the divisions created under this section, within the department are the
101 following:

102 (a) the Workforce Appeals Board created in Section 35A-1-205;

103 (b) the State Council on Workforce Services created in Section 35A-1-206;

104 (c) the [~~unemployment insurance advisory council~~] Employment Advisory Council created
105 in Section 35A-4-502;

106 (d) the [~~child care advisory committee~~] Child Care Advisory Committee created in Section
107 35A-3-205; and

108 (e) the regional workforce services areas and councils created in accordance with
109 Chapter 2, Regional Workforce Services Areas.

110 Section 5. Section **35A-1-501** is amended to read:

111 **35A-1-501. Legal representation of department.**

112 At the request of the department, it is the duty of the county attorney or district attorney,
113 as appropriate under Sections 17-18-1, 17-18-1.5, and 17-18-1.7, and the attorney general to
114 represent the department in any legal action taken under this part, Chapter 3, Employment Support
115 Act, or under Title 76, Chapter 8, Part 12, Public Assistance Fraud.

116 Section 6. Section **35A-1-502** is amended to read:

117 **35A-1-502. Civil liability for overpayment.**

118 (1) As used in this section:

119 (a) "Intentionally, knowingly, and recklessly" mean the same as those terms are defined
120 in Section 76-2-103.

121 (b) (i) "Overpayment" means money, public assistance, or any other thing of value
122 provided under a state or federally funded benefit program to the extent that the person receiving
123 the thing of value is not entitled to receive it or is not entitled to receive it at the level provided.

124 (ii) "Overpayment" includes money paid to a provider under this title in connection with
125 public assistance; Title 62A, Chapter 11, Part 3, Public Support of Children Act; Title 78, Chapter
126 45, Uniform Civil Liability for Support Act; Title 78, Chapter 45a, Uniform Act on Paternity; or
127 any other publicly funded assistance benefit program to the extent that the provider receives
128 payment:

129 (A) for goods or services not provided; or

130 (B) in excess of the amount to which the provider is entitled.

131 (c) "Provider" means the same as that term is defined in Section 62A-11-103.

132 (2) Each provider, client, or other person who receives an overpayment shall, regardless
133 of fault, return the overpayment or repay its value to the department immediately:

134 (a) upon receiving written notice of the overpayment from the department; or

135 (b) upon discovering the overpayment, if that occurs prior to receiving notice.

136 (3) (a) Except as provided under Subsection (3)(b), interest on the unreturned balance of
137 the overpayment shall accrue at the rate of 10% a year until an administrative or judicial judgment
138 is entered.

139 (b) If the overpayment was not the fault of the person receiving it, that person is not liable
140 for interest on the unreturned balance.

141 (c) In accordance with rules adopted by the department, an overpayment may be recovered
142 through deductions from cash assistance, general assistance, food stamps, or other cash-related
143 assistance provided to a client under Chapter 3, Employment Support Act.

144 (4) Each person who knowingly assists a client, provider, or other person in obtaining an
145 overpayment is jointly and severally liable for the overpayment.

146 (5) (a) In proving civil liability for overpayment under this section or Subsection
147 62A-11-204.1(2)(a)(i) when fault is alleged, the department shall prove by clear and convincing
148 evidence that the overpayment was obtained intentionally, knowingly, recklessly, by false
149 statement, misrepresentation, impersonation, or other fraudulent means, such as by committing any
150 of the acts or omissions described in Sections 76-8-1203 through 76-8-1205.

151 (b) If fault is established under Subsection (5)(a), **h SECTION 62A-11-204.1, OR TITLE 76,**
151a **CHAPTER 8, PART 12, PUBLIC ASSISTANCE FRAUD,** h any person who obtained or helped

152 another obtain an overpayment shall be subject to:

153 (i) a civil penalty of 10% of the amount of the overpayment; and

154 (ii) disqualification from ~~the~~ receiving CASH [public] assistance FROM the
 154a family employment program AND THE GENERAL ASSISTANCE PROGRAM
 155 if [that is the program from which] the overpayment was obtained FROM EITHER OF THOSE
 155a PROGRAMS for 12 months for the first

156 offense, 24 months for the second offense, and permanently for the third offense, or as otherwise
 157 provided by federal law[-]; or

158 (iii) disqualification from the food stamp program, if that is the program from which the
 159 overpayment was received, for 12 months for the first offense, 24 months for the second offense,
 160 and permanently for the third offense, or as otherwise provided by federal law.

161 (6) ~~(a)~~ If an action is filed, the department may recover, in addition to the principal sum
 162 plus interest, reasonable attorneys' fees and costs unless the repayment obligation arose from an
 163 administrative error by the ~~division~~ department.

164 ~~[(b) Upon receipt, the department shall forward attorneys' fees recovered under Subsection~~
 165 ~~(6)(a) to the attorney general's office or the county attorney's office that litigated the matter.]~~

166 (7) If a court finds that funds or benefits were secured, in whole or part, by fraud by the
 167 person from whom repayment is sought, the court shall assess an additional sum as considered
 168 appropriate as punitive damages up to the amount of repayment being sought.

169 (8) Criminal actions for public assistance fraud are governed by Title 76, Chapter 8, Part
 170 12, Public Assistance Fraud.

171 Section 7. Section **35A-1-503** is amended to read:

172 **35A-1-503. Evidence in legal actions.**

173 (1) In any civil action pursuant to this part or criminal action pursuant to Title 76, Chapter
 174 8, Part 12, Public Assistance Fraud:

175 ~~[(1) A]~~ (a) a fund transfer or payment instrument made to the order of a party shall
 176 constitute prima facie evidence that such party received cash assistance under Chapter 3,
 177 Employment Support Act, from the state[-];

178 ~~[(2) (b) [In any civil or criminal action pursuant to this part,]~~ all of the records in the
 179 custody of the department relating to the application for, verification of, issuance of, receipt of, and
 180 use of public assistance shall constitute business records within the meaning of the exceptions to
 181 the hearsay rule of evidence[-]; and

182 (c) the value of the benefits received shall be based on the ordinary and usual charge for

183 similar benefits in the private sector.

184 [~~(3)~~] (2) (a) A conviction or a guilty plea on a misdemeanor or felony charge of public
185 assistance fraud is admissible in a civil action brought under this part.

186 (b) Subsection [~~(3)~~] (2)(a) may not be construed to limit the right to use a conviction or
187 guilty plea in any manner permitted by law or court rule.

188 [~~(4) In any civil or criminal action pursuant to this part, the value of the benefits received~~
189 ~~shall be based on the ordinary or usual charge for similar benefits in the private sector.]~~

190 Section 8. Section **35A-6-103** is amended to read:

191 **35A-6-103. Apprenticeship agreements -- Terms and conditions.**

192 Every apprenticeship agreement entered into under this chapter shall contain:

193 (1) the names of the contracting parties;

194 (2) the date of birth of the apprentice;

195 (3) a statement of the trade, craft, or business which the apprentice is to be taught, and the
196 time at which the apprenticeship will begin;

197 (4) a statement showing the number of hours to be spent by the apprentice in work and the
198 number of hours to be spent in related and supplemental instruction, which instruction shall be not
199 less than 144 hours per year, unless prior educational experience is substituted [~~as is provided in~~
200 ~~Section 35A-10-105~~] or prior practical experience programs are substantial as provided in other
201 state laws;

202 (5) a statement setting forth a schedule of the work processes in the trade or industry
203 divisions in which the apprentice is to be taught and the approximate time to be spent at each
204 process;

205 (6) a statement of the graduated scale of wages to be paid the apprentice and whether the
206 required school time shall be compensated;

207 (7) a statement providing for a period of probation during which time the apprenticeship
208 agreement may be terminated by either party to the agreement; and

209 (8) a statement that if an employer is unable to fulfill the employer's obligation under the
210 apprenticeship agreement, the employer may transfer such obligation to another employer.

Legislative Review Note

as of 2-1-99 6:12 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel