

**WORKFORCE SERVICES AMENDMENTS**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Lloyd W. Frandsen**

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

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

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The agency may not charge or collect any fee that is greater than the fees scheduled and

in force at the time the contract for employment is issued.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(19)] (18) develop processes to ensure that the department responds to the full range of

employee and employer clients; and

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

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

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

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

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

- (i) related to the operations of the department; and
- (ii) consistent with federal and state law;

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

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

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

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

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

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

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

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

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

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

At the request of the department, it is the duty of the county attorney or district attorney, as appropriate under Sections 17-18-1, 17-18-1.5, and 17-18-1.7, and the attorney general to represent the department in any legal action taken under this part, Chapter 3, Employment Support Act, or

under Title 76, Chapter 8, Part 12, Public Assistance Fraud.

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

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

(1) As used in this section:

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

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

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

(A) for goods or services not provided; or

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

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

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

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

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

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

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

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

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

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

(b) If fault is established under Subsection (5)(a), Section 62A-11-204.1, or Title 76, Chapter 8, Part 12, Public Assistance Fraud, any person who obtained or helped another obtain an overpayment shall be subject to:

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

(ii) disqualification from receiving [public] cash assistance from the Family Employment Program and the general assistance program, if the overpayment was obtained from either of those programs, for 12 months for the first offense, 24 months for the second offense, and permanently for the third offense, or as otherwise provided by federal law[-]; or

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

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

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

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

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

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

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

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

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

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

(c) the value of the benefits received shall be based on the ordinary and usual charge for similar benefits in the private sector.

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

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

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

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

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

Every apprenticeship agreement entered into under this chapter shall contain:

- (1) the names of the contracting parties;
- (2) the date of birth of the apprentice;
- (3) a statement of the trade, craft, or business which the apprentice is to be taught, and the time at which the apprenticeship will begin;
- (4) a statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction shall be not

less than 144 hours per year, unless prior educational experience is substituted [~~as is provided in Section 35A-10-105~~] or prior practical experience programs are substantial as provided in other state laws;

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

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

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

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