

H.B. 273

WORKFORCE SERVICES AMENDMENTS

HOUSE FLOOR AMENDMENTS

AMENDMENT 4

FEBRUARY 17, 1999 2:28 PM

Representative **Frandsen** proposes the following amendments:

1. Page 1, Line 7: After "PROGRAM-SPECIFIC;" insert " REMOVING THE DISQUALIFICATION OF UNEMPLOYMENT BENEFITS TO A PERSON WHO VOLUNTARILY TERMINATES EMPLOYMENT TO ACCOMPANY A SPOUSE TO A NEW LOCATION THAT IS MORE THAN 100 MILES AWAY; REDUCING THE PENALTY FOR FRAUDULENTLY OBTAINING UNEMPLOYMENT BENEFITS BY REMOVING THE MANDATORY TIME PERIOD FOR INELIGIBILITY, PERMITTING INDIVIDUALS TO KEEP BENEFITS THAT THEY ARE ELIGIBLE FOR, AND PLACING A CAP ON CIVIL PENALTIES;"
2. Page 1, Line 8: After "AMENDMENTS" insert "; AND PROVIDING AN EFFECTIVE DATE"
3. Page 1, Line 17: After line 17 insert:
"35A-4-307, as renumbered and amended by Chapter 240, Laws of Utah 1996
35A-4-405, as renumbered and amended by Chapter 240, Laws of Utah 1996"
4. Page 7, Line 189: After line 189 insert:
"Section 8. Section 35A-4-307 is amended to read:
35A-4-307. Social costs -- Relief of charges
(1) Social costs shall consist of those benefit costs defined as follows:
(a) Benefit costs of an individual will not be charged to a base-period employer, but will be considered social costs if the individual's separation from that employer occurred under any of the following circumstances:
(i) the individual was discharged by the employer or voluntarily quit employment with the employer for disqualifying reasons, but subsequently requalified for benefits and actually received benefits;
(ii) the individual received benefits following a quit which was not

attributable to the employer; ~~[or]~~

(iii) the individual received benefits following a discharge for nonperformance due to medical reasons~~[-]; or~~

(iv) the individual received benefits following a quit to accompany, follow, or join the individual's spouse to or in a new locality.

(b) Social costs are benefit costs which are or have been charged to employers who have terminated coverage and are no longer liable for contributions, less the amount of contributions paid by such employers during the same time period.

(c) The difference between the benefit charges of all employers whose benefit ratio exceeds the maximum overall contribution rate and the amount determined by multiplying the taxable payroll of the same employers by the maximum overall contribution rate is a social cost.

(d) Benefit costs attributable to a concurrent base-period employer will not be charged to that employer if the individual's customary hours of work for that employer have not been reduced.

(e) Benefit costs incurred during the course of division-approved training which occurs after December 31, 1985, will not be charged to base-period employers.

(f) Benefit costs will not be charged to employers if such costs are attributable to:

(i) the state's share of extended benefits;

(ii) uncollectible benefit overpayments;

(iii) the proportion of benefit costs of combined wage claims that are chargeable to Utah employers and are insufficient when separately considered for a monetary eligible claim under Utah law and which have been transferred to a paying state; and

(iv) benefit costs attributable to wages used in a previous benefit year that are available for a second benefit year under Subsection 35A-4-401(2) because of a change in method of computing base-periods, overlapping base-periods, or for other reasons required by law.

(g) Any benefit costs that are not charged to an employer and not defined in this subsection are also social costs.

(2) Subsection (1) applies only to contributing employers and not to employers that have elected to finance the payment of benefits in accordance with Section 35A-4-309 or 35A-4-311.

Section 9. Section **35A-4-405** is amended to read:

35A-4-405. Ineligibility for benefits.

An individual is ineligible for benefits or credit for [~~purposes of establishing~~] a waiting period:

(1) (a) For the week in which the claimant left work voluntarily without good cause, if so found by the division, and for each week thereafter until the claimant has performed services in bona fide, covered employment and earned wages for those services equal to at least six times the claimant's weekly benefit amount.

(b) A claimant shall not be denied eligibility for benefits if the claimant leaves work under circumstances of such a nature that it would be contrary to equity and good conscience to impose a disqualification.

(c) The division shall, in cooperation with the employer, consider for the purposes of this chapter the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

(d) Notwithstanding any other subsection of this section, a claimant who has left work voluntarily to accompany, follow, or join the claimant's spouse to or in a new locality does so without good cause for purposes of Subsection (1) if the new locality is within 100 miles of the claimant's previous place of employment.

(2) (a) For the week in which the claimant was discharged for just cause or for an act or omission in connection with employment, not constituting a crime, which is deliberate, willful, or wanton and adverse to the employer's rightful interest, if so found by the division, and thereafter until the claimant has earned an amount equal to at least six times the claimant's weekly benefit amount in bona fide covered employment.

(b) For the week in which he was discharged for dishonesty constituting a crime or any felony or class A misdemeanor in connection with his work as shown by the facts, together with his admission, or as shown by his conviction of that crime in a court of competent jurisdiction and for the 51 next following weeks. Wage credits shall be deleted from the claimant's base period, and are not available for this or any subsequent claim for benefits.

(3) (a) If the division finds that the claimant has failed without good cause to properly apply for available suitable work, to accept a referral to suitable work offered by the employment office, or to accept suitable work offered by an employer or the employment

office. The ineligibility continues until the claimant has performed services in bona fide covered employment and earned wages for the services in an amount equal to at least six times the claimant's weekly benefit amount.

(b) (i) A claimant shall not be denied eligibility for benefits for failure to apply, accept referral, or accept available suitable work under circumstances of such a nature that it would be contrary to equity and good conscience to impose a disqualification.

(ii) The division shall consider the purposes of this chapter, the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

(c) In determining whether or not work is suitable for an individual, the division shall consider the:

- (i) degree of risk involved to his health, safety, and morals;
- (ii) individual's physical fitness and prior training;
- (iii) individual's prior earnings and experience;
- (iv) individual's length of unemployment;
- (v) prospects for securing local work in his customary occupation;
- (vi) wages for similar work in the locality; and
- (vii) distance of the available work from his residence.

(d) Prior earnings shall be considered on the basis of all four quarters used in establishing eligibility and not just the earnings from the most recent employer. The division shall be more prone to find work as suitable the longer the claimant has been unemployed and the less likely the prospects are to secure local work in his customary occupation.

(e) Notwithstanding any other provision of this chapter, no work is suitable, and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (i) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or
- (iii) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) For any week in which the division finds that his

unemployment is due to a stoppage of work that exists because of a strike involving his grade, class, or group of workers at the factory or establishment at which he is or was last employed.

(a) If the division finds that a strike has been fomented by a worker of any employer, none of the workers of the grade, class, or group of workers of the individual who is found to be a party to the plan, or agreement to foment a strike, shall be eligible for benefits. However, if the division finds that the strike is caused by the failure or refusal of any employer to conform to the provisions of any law of the state or of the United States pertaining to hours, wages, or other conditions of work, the strike shall not render the workers ineligible for benefits.

(b) If the division finds that the employer, his agent or representative has conspired, planned, or agreed with any of his workers, their agents or representatives to foment a strike, that strike shall not render the workers ineligible for benefits.

(c) A worker may receive benefits if, subsequent to his unemployment because of a strike as defined in Subsection (4), he has obtained employment and has been paid wages of not less than the amount specified in Subsection 35A-4-401(4) and has worked as specified in Subsection 35A-4-403(1)(f). During the existence of the stoppage of work due to this strike the wages of the worker used for the determination of his benefit rights shall not include any wages he earned from the employer involved in the strike.

~~[(5) (a) For each week with respect to which the claimant willfully made a false statement or representation or knowingly failed to report a material fact to obtain any benefit under the provisions of this chapter, and an additional 13 weeks for the first week the statement or representation was made or fact withheld and six weeks for each week thereafter, the additional weeks not to exceed 49 weeks.]~~

~~[(b) The additional period shall commence on the Sunday following the issuance of a determination finding the claimant in violation of Subsection (5).]~~

(5) (a) For that portion of benefits or credit for which the individual was not eligible, but received as a result of wilfully making a false statement or representation of, or knowingly failing to report, a material fact in seeking benefits or credit under this chapter.

~~[(c) Each]~~ (b) An individual found in violation of Subsection (5)(a) shall repay to the division ~~[the amount of benefits the~~

~~claimant actually received and, as]:~~

(i) that portion of benefits that the individual received under Subsection (5)(a) as a result of a false statement, representation, or omission; and

(ii) a civil penalty[;] that is the lesser of:

(A) an amount equal to [the benefits the claimant received by direct reason of his fraud:] that imposed by Subsection (5)(b)(i); or
(B) 50% of the individual's weekly benefit amount for each week in which some portion of the benefit was received as a result of a false statement, representation, or omission.

(c) The division may not provide benefits or waiting week credit, or otherwise take into account any earned wage credits for the purpose of paying benefits to an individual to whom Subsection (5)(a) applies, until that individual has repaid to the division the amount required under Subsection (5)(b).

(d) The [penalty] amount [shall be regarded as any other penalty under this chapter. These amounts shall] imposed by Subsection (5)(b) may be [collectible] collected by civil action or warrant in the manner provided in [Subsections] Section 35A-4-305[(3) and (5)].

~~[(d) A claimant is ineligible for future benefits or waiting week credit, and any wage credits earned by the claimant shall be unavailable for purposes of paying benefits, if any amount owed under Subsection (5) remains unpaid.]~~

(e) Determinations under this Subsection (5) shall be [made only upon a sworn written admission of the claimant or after due notice and recorded hearing. If a claimant waives the recorded hearing, a determination shall be made based upon all the facts that the division, exercising due diligence, has obtained. Determinations by the division are] appealable in the same manner provided by this chapter for appeals from other benefit determinations.

(6) For any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another state or the United States. If the appropriate agency of the other state or of the United States finally determines that he is not entitled to those unemployment benefits, this disqualification does not apply.

(7) (a) For any week with respect to which he is receiving, has received, or is entitled to receive remuneration in the form of:

- (i) wages in lieu of notice, or a dismissal or separation payment; or
- (ii) accrued vacation or terminal leave payment.

(b) If the remuneration is less than the benefits that would otherwise be due, he is entitled to receive for that week, if otherwise eligible, benefits reduced as provided in Subsection 35A-4-401(3).

(8) (a) For any week in which the individual's benefits are based on service for an educational institution in an instructional, research, or principal administrative capacity and that begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual performs services in the first of those academic years or terms and if there is a contract or reasonable assurance that the individual will perform services in that capacity for an educational institution in the second of the academic years or terms.

(b) For any week in which the individual's benefits are based on service in any other capacity for an educational institution, and that week begins during a period between two successive academic years or terms if the individual performs those services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms. If compensation is denied to any individual under this subsection and the individual was not offered an opportunity to perform the services for the educational institution for the second of the academic years or terms, the individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subsection.

(c) With respect to any services described in Subsection (8)(a) or (b), compensation payable on the basis of those services shall be denied to an individual for any week that commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

(d) With respect to services described in Subsection (8)(a) or (b), compensation payable on the basis of those services as provided in Subsection (8)(a), (b), or (c) shall be denied to an individual who performed those services in an educational institution while in the

employ of an educational service agency. For purposes of Subsection (8)(d), "educational service agency" means a governmental agency or entity established and operated exclusively for the purpose of providing the services described in Subsection (8)(a) or (b) to an educational institution.

(e) Benefits based on service in employment, defined in Subsections 35A-4-204(2)(d) and (e) are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter.

(9) For any week that commences during the period between two successive sport seasons or similar periods if the individual performed any services, substantially all of which consists of participating in sports or athletic events or training or preparing to participate in the first of those seasons or similar periods and there is a reasonable assurance that individual will perform those services in the later of the seasons or similar periods.

(10) (a) For any week in which the benefits are based upon services performed by an alien, unless the alien is an individual who has been lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services or, was permanently residing in the United States under color of law at the time the services were performed, including an alien who is lawfully present in the United States as a result of the application of Subsection 212 (d)(5) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5)(A).

(b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of his alien status shall be made except upon a preponderance of the evidence."

5. Page 7, Line 210:

After line 210 insert:

"Section 11. **Effective date.**

This act takes effect on July 1, 1999."

Renumber remaining sections accordingly.