

Representative John E. Swallow proposes to substitute the following bill:

UNEMPLOYMENT INSURANCE AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: John E. Swallow

AN ACT RELATING TO UNEMPLOYMENT INSURANCE; AMENDING THE UNEMPLOYMENT INSURANCE TAX RATE FORMULA TO FIX THE SOCIAL CONTRIBUTION RATE AT A SET AMOUNT AND TO PROVIDE AN ADMINISTRATIVE ADJUSTMENT FOR THE RESERVE FACTOR; AMENDING THE WEEKLY BENEFIT AMOUNT; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

35A-4-303, as last amended by Chapter 148, Laws of Utah 1997

35A-4-401, as renumbered and amended by Chapter 240, Laws of Utah 1996

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

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

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

(1) (a) On or before January 1 of each year beginning January 1, 1985, an employer's basic contribution rate will be the same as the employer's benefit ratio, determined by dividing the total benefit costs charged back to an employer during the immediately preceding four fiscal years by the total taxable wages of the employer for the same time period, calculated to four decimal places, disregarding the remaining fraction, if any.

(b) In calculating the basic contribution rate under Subsection (1)(a):

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

(ii) if three fiscal years of data are not available, the data of two fiscal years shall be

26 divided by the total taxable wages for the same time period; or

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

29 (2) (a) On or before January 1 of each year beginning with January 1, 1985, all social costs
30 as defined in Subsection 35A-4-307(1) applicable to the immediately preceding four fiscal years
31 shall be divided by the total taxable wages of all employers subject to contributions for the same
32 time period, calculated to four decimal places, disregarding the remaining fraction, if any.

33 (b) In calculating the social contribution rate under Subsection (2)(a):

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

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

38 [~~(c) The quotient under Subsections (2)(a) and (b) is the social contribution rate and shall
39 be added to each employer's basic contribution rate after the basic contribution rate has been
40 adjusted by the reserve factor, if there is a reserve factor for that year.]~~

41 (c) On or after January 1, 2000, the social contribution rate shall be:

42 (i) set at 0.0010 for any rate year in which the reserve factor established in Subsection
43 (3)(c) is equal to or less than 1.0000; or

44 (ii) calculated by dividing all social costs as defined in Subsection 35A-4-307(1)
45 applicable to the preceding four fiscal years by the total taxable wages of all employers subject to
46 contributions for the same time period, calculated to four decimal places, disregarding any
47 remaining fraction, for any rate year in which the reserve factor established in Subsection (3)(c)
48 is greater than 1.0000.

49 (3) (a) On or before January 1 of each year beginning with January 1, 1985, the reserve
50 factor shall be computed under Subsection (3)(b). For purposes of computing the reserve factor:

51 (i) the five-year average benefit cost rate is calculated by:

52 (A) determining the five highest benefit cost rates experienced in the 25 years ending
53 December 31 one year prior to the computation date;

54 (B) adding together the rates determined under Subsection (3)(a)(i)(A); and

55 (C) dividing the amount under Subsection (3)(a)(i)(B) by five, calculated to four decimal
56 places, disregarding the remaining fraction, if any;

- 57 (ii) the minimum adequate reserve fund balance is calculated by:
- 58 (A) multiplying the five-year average benefit cost rate by 1.5; and
- 59 (B) multiplying the amount under Subsection (3)(a)(ii)(A) by total wages of the fiscal year
- 60 ending prior to the computation date, rounded to the nearest dollar;
- 61 (iii) the maximum adequate reserve fund balance is calculated by:
- 62 (A) multiplying the five-year average benefit cost rate by 2.0; and
- 63 (B) multiplying the amount under Subsection (3)(a)(iii)(A) by the total wages used under
- 64 Subsection (3)(a)(ii)(B), rounded to the nearest dollar; and
- 65 (iv) the computation date is the January 1 on which the reserve factor is calculated.
- 66 (b) (i) The reserve factor is one if the actual reserve fund balance as of June 30 preceding
- 67 the computation date is:
- 68 (A) equal to or greater than the minimum adequate reserve fund balance; and
- 69 (B) equal to or less than the maximum adequate reserve fund balance.
- 70 (ii) If the actual reserve fund balance as of June 30 preceding the computation date is less
- 71 than the minimum adequate reserve fund balance, the reserve factor shall be the greater of:
- 72 (A) 2.0000 minus an amount equal to the actual reserve fund balance divided by the
- 73 minimum adequate reserve fund balance, calculated to four decimal places, disregarding the
- 74 remaining fraction, if any; or
- 75 (B) the reserve factor calculated in the prior year.
- 76 (iii) The reserve factor is 2.0000 if:
- 77 (A) the actual reserve fund balance as of June 30 preceding the computation date is:
- 78 (I) insolvent; or
- 79 (II) negative; or
- 80 (B) there is an outstanding loan from the Federal Unemployment Account.
- 81 (iv) If the actual reserve fund balance as of June 30 preceding the computation date is more
- 82 than the maximum adequate reserve fund balance, the reserve factor shall be calculated by:
- 83 (A) dividing the actual reserve fund balance by the maximum adequate reserve fund
- 84 balance, calculated to four decimal places, disregarding the remaining fraction, if any; and
- 85 (B) subtracting the amount under Subsection (3)(b)(iv)(A) from 2.0000.
- 86 (c) Beginning January 1, 2000, the division shall by administrative decision set the reserve
- 87 factor at a rate that shall sustain an adequate reserve. For the purpose of setting the reserve factor:

88 (i) the adequate reserve is defined as between 17 and 19 months of benefits at the average
89 of the five highest benefit cost rates in the last 25 years;

90 (ii) the reserve factor shall be 1.0000 if the actual reserve fund balance as of June 30
91 preceding the computation date is determined to be an adequate reserve;

92 (iii) the reserve factor will be set between 0.5000 and 1.0000 if the actual reserve fund
93 balance as of June 30 preceding the computation date is greater than the adequate reserve;

94 (iv) the reserve factor will be set between 1.0000 and 1.5000 if the actual reserve fund
95 balance as of June 30 prior to the computation date is less than the adequate reserve;

96 (v) if the actual reserve fund balance as of June 30 preceding the computation date is
97 insolvent or negative or if there is an outstanding loan from the Federal Unemployment Account,
98 the reserve factor will be set at 2.0000 until the actual reserve fund balance as of June 30 preceding
99 the computation date is determined to be an adequate reserve; and

100 (vi) the reserve factor will be set on or before January 1 of each year.

101 (4) (a) Until January 1, 1995, an employer's overall contribution rate is the employer's
102 basic contribution rate multiplied by the reserve factor, if there is a reserve factor, calculated to
103 four decimal places, disregarding any further fraction, plus the social contribution rate, and
104 rounded up to the next higher multiple of .10%, but not more than a maximum overall contribution
105 rate of 8.0% and not less than 1% for new employers.

106 (b) On or after January 1, 1995, an employer's overall contribution rate is the employer's
107 basic contribution rate multiplied by the reserve factor, calculated to four decimal places,
108 disregarding any further fraction, plus the social contribution rate, and rounded to three decimal
109 places, disregarding any further fraction, if the fourth decimal place is .0004 or less, or rounding
110 up to the next higher number, if the fourth decimal place is .0005 or more, but not more than a
111 maximum overall contribution rate of 8.0% and not less than 1% for new employers.

112 (c) On or after January 1, 2000, an employer's overall contribution rate is the employer's
113 basic contribution rate multiplied by the reserve factor established according to Subsection (3)(c),
114 calculated to four decimal places, disregarding the remaining fraction, plus the social contribution
115 rate established according to Subsection (2)(c), and calculated to three decimal places, disregarding
116 the remaining fraction, but not more than a maximum overall contribution rate of 8.0%, plus the
117 applicable social contribution rate and not less than 1.1% for new employers.

118 [(e)] (d) The overall contribution rate does not include the addition of any penalty

119 applicable to an employer as a result of delinquency in the payment of contributions as provided
120 in Subsection (10).

121 (5) Except as provided in Subsection (10), each new employer shall pay a contribution rate
122 based on the average benefit cost rate experienced by employers of the major industry as defined
123 by department rule to which the new employer belongs, the basic contribution rate to be
124 determined as follows:

125 (a) Except as provided in Subsection (5)(b), on or before January 1 of each year, the basic
126 contribution rate to be used in computing the employer's overall contribution rate is the benefit cost
127 rate which is the greater of:

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

132 (ii) 1%.

133 (b) If the major industrial classification assigned to a new employer is an industry for
134 which a benefit cost rate does not exist because the industry has not operated in the state or has not
135 been covered under this chapter, the employer's basic contribution rate shall be 5.4%. This basic
136 contribution rate is used in computing the employer's overall contribution rate.

137 (6) (a) A reopening employer's basic contribution rate is the average overall contribution
138 rate for all employers in the state, but not less than 1%, until such time as the reopening employer
139 becomes a qualified employer as defined in Section 35A-4-301.

140 (b) The average overall contribution rate for all employers in the state shall be defined by
141 rule.

142 (c) The reopening employer is an employer that is not substantially related to or affiliated
143 with the predecessor employer and that acquires, for the purpose of reopening, substantially all the
144 assets of a business or operating component of a business that has been closed or substantially
145 closed for 90 days or more of its normal operating period immediately prior to the acquisition.

146 (d) A business or operating component of a business has been substantially closed if:

147 (i) its normal production has been stopped;

148 (ii) a majority of its workers have been laid off; and

149 (iii) the services of remaining employees are devoted to the protection and disposition of

150 assets and inventory or administrative duties.

151 (7) Notwithstanding any other provision of this chapter, and except as provided in
152 Subsection (8), if an employing unit that moves into this state is declared to be a qualified
153 employer because it has sufficient payroll and benefit cost experience under another state, a rate
154 shall be computed on the same basis as a rate is computed for all other employers subject to this
155 chapter if that unit furnishes adequate records on which to compute the rate.

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

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

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

163 (c) required to have a contractor's license or similar qualification under Title 58, Chapter
164 55, Utah Construction Trades Licensing Act, or the equivalent in laws of another state.

165 (9) (a) If an employer, other than a reopening employer, acquires the business or all or
166 substantially all the assets of another employer and the other employer had discontinued operations
167 upon the acquisition:

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

171 (A) the filing of contribution reports;

172 (B) the payment of contributions; and

173 (C) after January 1, 1985, the benefit costs of both employers; and

174 (ii) the transferring employer shall be divested of the transferring employer's payroll
175 experience.

176 (b) Any employing unit or prospective employing unit that acquires the payroll experience
177 of an employer shall, for all purposes of this chapter, be an employer as of the date of acquisition.

178 (c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in
179 Subsection (9)(a), is divested of the employer's payroll experience by transferring all of the
180 employer's business to another and by ceasing operations as of the date of the transfer, the

181 transferring employer shall cease to be an employer, as defined by this chapter, as of the date of
182 transfer.

183 (10) (a) A rate of less than 8% shall be effective January 1 of any contribution year on or
184 after January 1, 1985, but before January 1, 1988, and a rate of less than the maximum overall
185 contribution rate on or after January 1, 1988, only with respect to new employers and to those
186 qualified employers who, except for amounts due under division determinations that have not
187 become final, paid all contributions prescribed by the division with respect to the four consecutive
188 calendar quarters in the fiscal year immediately preceding the computation date on or after January
189 1, 1985.

190 (b) Notwithstanding Subsections (1), (5), (6), (7), and (9), on or after January 1, 1988, any
191 employer who fails to pay all contributions prescribed by the division with respect to the four
192 consecutive calendar quarters in the fiscal year immediately preceding the computation date,
193 except for amounts due under determinations that have not become final, shall pay a contribution
194 rate equal to the overall contribution rate determined under the experience rating provisions of this
195 chapter, plus a surcharge of 1% of wages.

196 (c) Any employer who pays all required contributions shall, for the current contribution
197 year, be assigned a rate based upon the employer's own experience as provided under the
198 experience rating provisions of this chapter effective the first day of the calendar quarter in which
199 the payment was made.

200 (d) Delinquency in filing contribution reports shall not be the basis for denial of a rate less
201 than the maximum contribution rate.

202 Section 2. Section **35A-4-401** is amended to read:

203 **35A-4-401. Benefits -- Weekly benefit amount -- Computation of benefits --**
204 **Department to prescribe rules -- Notification of benefits -- Bonuses.**

205 (1) (a) Benefits are payable from the fund to any individual who is or becomes
206 unemployed and eligible for benefits.

207 (b) All benefits shall be paid through the employment offices or other agencies designated
208 by the division in accordance with the rules the department may prescribe.

209 (2) (a) An individual's "weekly benefit amount" is an amount equal to 1/26th, disregarding
210 any fraction of \$1, of his total wages for insured work paid during that quarter of his base period
211 in which the total wages were highest.

212 (b) The weekly benefit amount may not exceed the amount determined as follows:

213 (i) With respect to any individual whose benefit year commences on or after July 1, 1984,
214 but prior to January 3, 1988, 60% of the "insured average weekly wage," disregarding any fraction
215 of \$1, constitutes the maximum "weekly benefit amount" payable.

216 (ii) With respect to any individual whose benefit year commences on or after January 3,
217 1988, 60% of the "insured average fiscal year weekly wage" during the preceding fiscal year, e.g.,
218 fiscal year 1987 for individuals establishing benefit years in 1988, disregarding any fraction of \$1,
219 constitutes the maximum "weekly benefit amount" payable.

220 (iii) With respect to any individual whose benefit year commences on or after January 1,
221 2001, 65% of the "insured average fiscal year weekly wage" during the preceding fiscal year, e.g.,
222 fiscal year 2000 for individuals establishing benefit years in 2001, disregarding any fraction of \$1,
223 constitutes the maximum "weekly benefit amount" payable.

224 (c) The "weekly benefit amount" of an individual who is receiving, or who is eligible to
225 receive, based upon the individual's previous employment, a pension, which includes a
226 governmental, social security, or other pension, retirement or disability retirement pay, under a
227 plan maintained or contributed to by a base-period employer is the "weekly benefit amount" which
228 is computed under this section less 100% of such retirement benefits, that are attributable to a
229 week, disregarding any fraction of \$1.

230 (d) (i) The weekly benefit amount and the potential benefits payable to an individual who,
231 subsequent to the commencement of his benefit year, becomes or is determined to be eligible to
232 receive retirement benefits or increased retirement benefits, shall be recomputed effective with the
233 first calendar week during his benefit year with respect to which he is eligible to receive retirement
234 benefits or increased retirement benefits. The new weekly benefit amount shall be determined
235 under Subsection (2).

236 (ii) As recomputed the total benefits potentially payable, commencing with the effective
237 date of the recomputation, shall be equal to the recomputed weekly benefit amount times the
238 quotient obtained by dividing the potential benefits unpaid prior to the recomputation by the initial
239 weekly benefit amount, disregarding fractions.

240 (3) Each eligible individual who is unemployed in any week shall be paid with respect to
241 that week a benefit in an amount equal to the claimant's weekly benefit amount less that part of the
242 claimant's wage payable to the claimant with respect to that week that is in excess of 30% of the

243 claimant's weekly benefit amount. The resulting benefit payable shall disregard any fraction of \$1.
244 For the purpose of this subsection "wages" does not include grants, earned or otherwise, paid to
245 the claimant as public assistance.

246 (4) (a) Any otherwise eligible individual is entitled during any benefit year to a total
247 amount of benefits determined by multiplying his weekly benefit amount times his potential
248 duration.

249 (b) To determine an individual's potential duration, his total wages for insured work paid
250 during his base period is multiplied by 27%, disregarding any fraction of \$1, and divided by his
251 weekly benefit amount, disregarding any fraction, but not less than ten nor more than 26.

252 (5) (a) Notwithstanding any other provision of this chapter, the department in its discretion
253 may by rule prescribe:

254 (i) that the existence of unemployment, eligibility for benefits, and the amount of benefits
255 payable shall be determined in the case of any otherwise eligible claimant who, within a week or
256 other period of unemployment, is separated from or secures work on a regular attachment basis for
257 that portion of the week or other period of unemployment occurring before or after separation from
258 or securing of work; and

259 (ii) in the case of individuals working on a regular attachment basis, eligibility for benefits
260 and the amount of benefits payable for periods of unemployment longer than a week.

261 (b) The rules promulgated shall be reasonably calculated to secure general results
262 substantially similar to those provided by this chapter with respect to weeks of unemployment.

263 (6) The division shall, in all cases involving actual or potential disqualifying issues and
264 prior to the payment of benefits to an eligible individual, notify the individual's most recent
265 employer of the eligibility determination.

266 (7) Upon written request of an employee made under rules of the department, all
267 remuneration for insured work paid to an employee during his base period in the form of a bonus
268 or lump-sum payment shall, for benefit purposes, be apportioned to the calendar quarters in which
269 the remuneration was earned.