

1 **EMPLOYMENT SECURITY ACT AMENDMENTS**

2 2007 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Steven R. Mascaro**

5 Senate Sponsor: John W. Hickman

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions of the Employment Security Act related to the collection
10 of unemployment tax contributions by employers.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ authorizes the Unemployment Insurance Division to prescribe rules providing
14 standards for determining which contribution reports must be filed on electronic
15 media;
- 16 ▶ provides that the division may not require an employer to file contribution reports
17 on magnetic or electronic media unless the employer is an authorized employer
18 representative who files quarterly tax reports on behalf of 100 or more employers
19 during any calendar quarter; and
- 20 ▶ makes certain technical changes.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **35A-4-305**, as last amended by Chapter 22, Laws of Utah 2006

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

30 Section 1. Section **35A-4-305** is amended to read:

31 **35A-4-305. Collection of contributions -- Unpaid contributions to bear interest.**

32 (1) (a) Contributions unpaid on the date on which they are due and payable, as
33 prescribed by the division, shall bear interest at the rate of 1% per month from and after that
34 date until payment plus accrued interest is received by the division.

35 (b) (i) Contribution reports not made and filed by the date on which they are due as
36 prescribed by the division are subject to a penalty to be assessed and collected in the same
37 manner as contributions due under this section equal to 5% of the contribution due if the failure
38 to file on time was not more than 15 days, with an additional 5% for each additional 15 days or
39 fraction thereof during which the failure continued, but not to exceed 25% in the aggregate and
40 not less than \$25 with respect to each reporting period.

41 (ii) If a report is filed after the required time and it is shown to the satisfaction of the
42 division or its authorized representative that the failure to file was due to a reasonable cause
43 and not to willful neglect, no addition shall be made to the contribution.

44 (c) (i) If contributions are unpaid after ten days from the date of the mailing or personal
45 delivery by the division or its authorized representative, of a written demand for payment, there
46 shall attach to the contribution, to be assessed and collected in the same manner as
47 contributions due under this section, a penalty equal to 5% of the contribution due.

48 (ii) A penalty may not attach if within ten days after the mailing or personal delivery,
49 arrangements for payment have been made with the division, or its authorized representative,
50 and payment is made in accordance with those arrangements.

51 (d) The division shall assess as a penalty a service charge, in addition to any other
52 penalties that may apply, in an amount not to exceed the service charge imposed by Section
53 7-15-1 for dishonored instruments if:

54 (i) any amount due the division for contributions, interest, other penalties or benefit
55 overpayments is paid by check, draft, order, or other instrument; and

56 (ii) the instrument is dishonored or not paid by the institution against which it is drawn.

57 (e) Except for benefit overpayments under Subsection 35A-4-405(5), benefit

58 overpayments, contributions, interest, penalties, and assessed costs, uncollected three years
59 after they become due, may be charged as [~~uncollectable~~] uncollectible and removed from the
60 records of the division if:

- 61 (i) no assets belonging to the liable person and subject to attachment can be found; and
- 62 (ii) in the opinion of the division there is no likelihood of collection at a future date.

63 (f) Interest and penalties collected in accordance with this section shall be paid into the
64 Special Administrative Expense Fund.

65 (g) Action required for the collection of sums due under this chapter is subject to the
66 applicable limitations of actions under Title 78, Chapter 12, Limitation of Actions.

67 (2) (a) If an employer fails to file a report when prescribed by the division for the
68 purpose of determining the amount of the employer's contribution due under this chapter, or if
69 the report when filed is incorrect or insufficient or is not satisfactory to the division, the
70 division may determine the amount of wages paid for employment during the period or periods
71 with respect to which the reports were or should have been made and the amount of
72 contribution due from the employer on the basis of any information it may be able to obtain.

73 (b) The division shall give written notice of the determination to the employer.

74 (c) The determination is considered correct unless:

75 (i) the employer, within ten days after mailing or personal delivery of notice of the
76 determination, applies to the division for a review of the determination as provided in Section
77 35A-4-508; or

78 (ii) unless the division or its authorized representative of its own motion reviews the
79 determination.

80 (d) The amount of contribution determined under Subsection (2)(a) is subject to
81 penalties and interest as provided in Subsection (1).

82 (3) (a) If, after due notice, an employer defaults in the payment of contributions,
83 interest, or penalties on the contributions, or a claimant defaults in a repayment of benefit
84 overpayments and penalties on the overpayments, the amount due shall be collectible by civil
85 action in the name of the division, and the employer adjudged in default shall pay the costs of

86 the action.

87 (b) Civil actions brought under this section to collect contributions, interest, or
88 penalties from an employer, or benefit overpayments and penalties from a claimant shall be:

89 (i) heard by the court at the earliest possible date; and

90 (ii) entitled to preference upon the calendar of the court over all other civil actions

91 except:

92 (A) petitions for judicial review under this chapter; and

93 (B) cases arising under the workers' compensation law of this state.

94 (c) (i) (A) To collect contributions, interest, or penalties, or benefit overpayments and
95 penalties due from employers or claimants located outside Utah, the division may employ
96 private collectors providing debt collection services outside Utah.

97 (B) Accounts may be placed with private collectors only after the employer or claimant
98 has been given a final notice that the division intends to place the account with a private
99 collector for further collection action.

100 (C) The notice shall advise the employer or claimant of the employer's or claimant's
101 rights under this chapter and the applicable rules of the department.

102 (ii) (A) A private collector may receive as compensation up to 25% of the lesser of the
103 amount collected or the amount due, plus the costs and fees of any civil action or postjudgment
104 remedy instituted by the private collector with the approval of the division.

105 (B) The employer or claimant shall be liable to pay the compensation of the collector,
106 costs, and fees in addition to the original amount due.

107 (iii) A private collector is subject to the federal Fair Debt Collection Practices Act, 15
108 U.S.C. Sec. 1692 et seq.

109 (iv) (A) A civil action may not be maintained by ~~any~~ a private collector without
110 specific prior written approval of the division.

111 (B) When division approval is given for civil action against an employer or claimant,
112 the division may cooperate with the private collector to the extent necessary to effect the civil
113 action.

114 (d) (i) Notwithstanding Section 35A-4-312, the division may disclose the contribution,
115 interest, penalties or benefit overpayments and penalties, costs due, the name of the employer
116 or claimant, and the employer's or claimant's address and telephone number when any
117 collection matter is referred to a private collector under Subsection (3)(c).

118 (ii) A private collector is subject to the confidentiality requirements and penalty
119 provisions provided in Section 35A-4-312 and Subsection 76-8-1301(4), except to the extent
120 disclosure is necessary in ~~[any]~~ a civil action to enforce collection of the amounts due.

121 (e) An action taken by the division under this section may not be construed to be an
122 election to forego other collection procedures by the division.

123 (4) (a) In the event of a distribution of an employer's assets under an order of a court
124 under the laws of Utah, including a receivership, assignment for benefits of creditors,
125 adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter
126 due shall be paid in full prior to all other claims except taxes and claims for wages of not more
127 than \$400 to each claimant, earned within five months of the commencement of the
128 proceeding.

129 (b) If an employer commences a proceeding in the Federal Bankruptcy Court under a
130 chapter of ~~[the Bankruptcy Reform Act of 1978,]~~ 11 U.S.C. 101 et seq., as amended by the
131 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, contributions, interest,
132 and penalties then or thereafter due shall be entitled to the priority provided for taxes, interest,
133 and penalties in the Bankruptcy ~~[Reform Act of 1978]~~ Abuse Prevention and Consumer
134 Protection Act of 2005.

135 (5) (a) In addition and as an alternative to any other remedy provided by this chapter
136 and provided that no appeal or other proceeding for review provided by this chapter is then
137 pending and the time for taking it has expired, the division may issue a warrant in duplicate,
138 under its official seal, directed to the sheriff of any county of the state, commanding the sheriff
139 to levy upon and sell the real and personal property of a delinquent employer or claimant found
140 within the sheriff's county for the payment of the contributions due ~~[thereon]~~, with the added
141 penalties, interest, or benefit overpayment and penalties, and costs, and to return the warrant to

142 the division and pay into the fund the money collected by virtue of the warrant by a time to be
143 specified in the warrant, not more than 60 days from the date of the warrant.

144 (b) (i) Immediately upon receipt of the warrant in duplicate, the sheriff shall file the
145 duplicate with the clerk of the district court in the sheriff's county.

146 (ii) The clerk shall enter in the judgment docket, in the column for judgment debtors,
147 the name of the delinquent employer or claimant mentioned in the warrant, and in appropriate
148 columns the amount of the contribution, penalties, interest, or benefit overpayment and
149 penalties, and costs, for which the warrant is issued and the date when the duplicate is filed.

150 (c) The amount of the docketed warrant shall:

151 (i) have the force and effect of an execution against all personal property of the
152 delinquent employer; and

153 (ii) become a lien upon the real property of the delinquent employer or claimant in the
154 same manner and to the same extent as a judgment duly rendered by a district court and
155 docketed in the office of the clerk.

156 (d) After docketing, the sheriff shall:

157 (i) proceed in the same manner as is prescribed by law with respect to execution issued
158 against property upon judgments of a court of record; and

159 (ii) be entitled to the same fees for the sheriff's services in executing the warrant, to be
160 collected in the same manner.

161 (6) (a) Contributions imposed by this chapter are a lien upon the property of an
162 employer liable for the contribution required to be collected under this section who shall sell
163 out the employer's business or stock of goods or shall quit business, if the employer fails to
164 make a final report and payment on the date subsequent to the date of selling or quitting
165 business on which they are due and payable as prescribed by rule.

166 (b) (i) An employer's successor, successors, or assigns, if any, are required to withhold
167 sufficient of the purchase money to cover the amount of the contributions and interest or
168 penalties due and payable until the former owner produces a receipt from the division showing
169 that they have been paid or a certificate stating that no amount is due.

170 (ii) If the purchaser of a business or stock of goods fails to withhold sufficient purchase
171 money, the purchaser is personally liable for the payment of the amount of the contributions
172 required to be paid by the former owner, interest and penalties accrued and unpaid by the
173 former owner, owners, or assignors.

174 (7) (a) If an employer is delinquent in the payment of a contribution, the division may
175 give notice of the amount of the delinquency by registered mail to all persons having in their
176 possession or under their control, any credits or other personal property belonging to the
177 employer, or owing any debts to the employer at the time of the receipt by them of the notice.

178 (b) A person notified under Subsection (7)(a) shall neither transfer nor make any other
179 disposition of the credits, other personal property, or debts until:

180 (i) the division has consented to a transfer or disposition; or

181 (ii) 20 days after the receipt of the notice.

182 (c) All persons notified under Subsection (7)(a) shall, within five days after receipt of
183 the notice, advise the division of credits, other personal property, or other debts in their
184 possession, under their control or owing by them, as the case may be.

185 (8) (a) (i) Each employer shall furnish the division necessary information for the proper
186 administration of this chapter and shall include wage information for each employee, for each
187 calendar quarter.

188 (ii) The information shall be furnished at a time, in the form, and to those individuals
189 as the department may by rule require.

190 (b) (i) Each employer shall furnish each individual worker who is separated that
191 information as the department may by rule require, and shall furnish within 48 hours of the
192 receipt of a request from the division a report of the earnings of any individual during the
193 individual's base-period.

194 (ii) The report shall be on a form prescribed by the division and contain all information
195 prescribed by the division.

196 (c) (i) For each failure by an employer to conform to this Subsection (8) the division
197 shall, unless good cause is shown, assess a \$50 penalty if the filing was not more than 15 days

198 late.

199 (ii) If the filing is more than 15 days late, the division shall assess an additional penalty
200 of \$50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed \$250
201 per filing.

202 (iii) The penalty is to be collected in the same manner as contributions due under this
203 chapter.

204 (d) (i) The division shall prescribe rules providing standards for determining which
205 contribution reports must be filed on magnetic or electronic media or in other machine-readable
206 form.

207 (ii) In prescribing these rules, the division:

208 [(†)] (A) may not require [any] an employer to file contribution reports on magnetic or
209 electronic media unless [that] the employer is required to file wage data on at least 250
210 employees during any calendar quarter or is an authorized employer representative who files
211 quarterly tax reports on behalf of 100 or more employers during any calendar quarter;

212 [(†)] (B) shall take into account, among other relevant factors, the ability of the
213 employer to comply at reasonable cost with the requirements of the rules; and

214 [(††)] (C) may require an employer to post a bond for failure to comply with the rules
215 required by this Subsection (8)(d).

216 (9) (a) (i) An employer liable for payments in lieu of contributions shall file
217 Reimbursable Employment and Wage Reports.

218 (ii) The reports are due on the last day of the month that follows the end of each
219 calendar quarter unless the division, after giving notice, changes the due date.

220 (iii) A report postmarked on or before the due date is considered timely.

221 (b) (i) Unless the employer can show good cause, the division shall assess a \$50
222 penalty against an employer who does not file Reimbursable Employment and Wage Reports
223 within the time limits set out in Subsection (9)(a) if the filing was not more than 15 days late.

224 (ii) If the filing is more than 15 days late, the division shall assess an additional penalty
225 of \$50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed \$250

226 per filing.

227 (iii) The division shall assess and collect the penalties referred to in this Subsection
228 (9)(b) in the same manner as prescribed in Sections 35A-4-309 and 35A-4-311.

229 (10) If a person liable to pay a contribution or benefit overpayment imposed by this
230 chapter neglects or refuses to pay it after demand, the amount, including any interest, additional
231 amount, addition to contributions, or assessable penalty, together with any additional accruable
232 costs, shall be a lien in favor of the division upon all property and rights to property, whether
233 real or personal belonging to the person.

234 (11) (a) The lien imposed by Subsection (10) arises at the time the assessment, as
235 defined in the department rules, is made and continues until the liability for the amount
236 assessed, or a judgment against the taxpayer arising out of the liability, is satisfied.

237 (b) (i) The lien imposed by Subsection (10) is not valid as against ~~any~~ a purchaser,
238 holder of a security interest, mechanics' lien holder, or judgment lien creditor until the division
239 files a warrant with the clerk of the district court.

240 (ii) For the purposes of this Subsection (11)(b):

241 ~~(i)~~ (A) "Judgment lien creditor" means a person who obtains a valid judgment of a
242 court of record for recovery of specific property or a sum certain of money, and who in the case
243 of a recovery of money, has a perfected lien under the judgment on the property involved. A
244 judgment lien does not include inchoate liens such as attachment or garnishment liens until
245 they ripen into a judgment. A judgment lien does not include the determination or assessment
246 of a quasi-judicial authority, such as a state or federal taxing authority.

247 ~~(ii)~~ (B) "Mechanics' lien holder" means any person who has a lien on real property, or
248 on the proceeds of a contract relating to real property, for services, labor, or materials furnished
249 in connection with the construction or improvement of the property. A person has a lien on the
250 earliest date the lien becomes valid against subsequent purchasers without actual notice, but not
251 before the person begins to furnish the services, labor, or materials.

252 ~~(iii)~~ (C) "Person" means:

253 ~~(A)~~ (D) an individual;

- 254 [~~(B)~~] (II) a trust;
- 255 [~~(C)~~] (III) an estate;
- 256 [~~(D)~~] (IV) a partnership;
- 257 [~~(E)~~] (V) an association;
- 258 [~~(F)~~] (VI) a company;
- 259 [~~(G)~~] (VII) a limited liability company;
- 260 [~~(H)~~] (VIII) a limited liability partnership; or
- 261 [~~(I)~~] (IX) a corporation.

262 [~~(iv)~~] (D) "Purchaser" means a person who, for adequate and full consideration in
263 money or money's worth, acquires an interest, other than a lien or security interest, in property
264 which is valid under state law against subsequent purchasers without actual notice.

265 [~~(v)~~] (E) "Security interest" means any interest in property acquired by contract for the
266 purpose of securing payment or performance of an obligation or indemnifying against loss or
267 liability. A security interest exists at any time:

268 [~~(A)~~] (I) the property is in existence and the interest has become protected under the
269 law against a subsequent judgment lien arising out of an unsecured obligation; and

270 [~~(B)~~] (II) to the extent that, at that time, the holder has parted with money or money's
271 worth.