

1 UNEMPLOYMENT INSURANCE AMENDMENTS

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 Chief Sponsor: Jeremy A. Peterson

5 Senate Sponsor: \_\_\_\_\_

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7 LONG TITLE

8 Committee Note:

9 The Workforce Services and Community and Economic Development Interim  
10 Committee recommended this bill.

11 General Description:

12 This bill modifies the Employment Security Act by reducing the maximum  
13 unemployment insurance contribution rate for an employer beginning in calendar year  
14 2012 and capping the social unemployment insurance contribution rate for all  
15 employers for calendar year 2012 only.

16 Highlighted Provisions:

17 This bill:

18 ▶ reduces the maximum unemployment insurance contribution rate for an employer  
19 from 9% plus the social contribution rate to 7% plus the social contribution rate  
20 beginning in calendar year 2012;

21 ▶ caps the social unemployment insurance contribution rate for all employers at .4%  
22 for calendar year 2012 only;

23 ▶ provides that if the reserve fund is insolvent, the reserve factor is 2.0 until the  
24 reserve fund becomes solvent; and

25 ▶ makes technical changes.

26 Money Appropriated in this Bill:

27 None



28 **Other Special Clauses:**

29 This bill provides an immediate effective date.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **35A-4-303**, as last amended by Laws of Utah 2011, Chapters 297 and 342

33 **35A-4-304**, as last amended by Laws of Utah 2011, Chapter 297



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

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

37 **35A-4-303. Determination of contribution rates.**

38 (1) (a) An employer's basic contribution rate is the same as the employer's benefit  
39 ratio[;] and is determined by dividing the total benefit costs charged back to an employer  
40 during the immediately preceding four fiscal years by the total taxable wages of the employer  
41 for the same time period, calculated to four decimal places, disregarding [~~the~~] any remaining  
42 fraction[; ~~if any~~].

43 (b) In calculating the basic contribution rate under Subsection (1)(a)[; ~~(i)~~], if four fiscal  
44 years of data are not available[;]:

45 (i) the data of [~~three~~] the number of complete fiscal years that is available shall be  
46 divided by the total taxable wages for the same time period[;]; or

47 [(ii) ~~if three fiscal years of data are not available, the data of two fiscal years shall be~~  
48 ~~divided by the total taxable wages for the same time period; or~~]

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

51 [~~(2)(a) In calculating the social contribution rate under Subsection (2)(b) or (c):~~]

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

54 [(ii) ~~if three fiscal years of data are not available, the data of two fiscal years shall be~~  
55 ~~divided by the total taxable wages for the same time period.~~]

56 [(b) ~~Beginning January 1, 2005, the division shall calculate the social contribution rate~~  
57 ~~by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding~~  
58 ~~four fiscal years by the total taxable wages of all employers subject to contributions for the~~

59 ~~same period, calculated to four decimal places, disregarding any remaining fraction.]~~

60 ~~[(c) Beginning January 1, 2009]~~

61 (ii) if the employer is a new employer, the basic contribution rate shall be determined  
62 as described in Subsection (5).

63 (2) (a) Subject to Subsection (2)(b), the division shall [calculate] determine the social  
64 contribution rate by dividing all social costs as defined in Subsection 35A-4-307(1) applicable  
65 to the preceding four fiscal years by the total taxable wages of all employers subject to  
66 contributions for the same period, calculated to four decimal places, disregarding any  
67 remaining fraction, and [rounded] rounding the result to three decimal places[~~, disregarding any~~  
68 further fraction,] as follows:

69 (i) if the fourth decimal place is .0004 or less, [or rounding up to the next higher  
70 number,] the third decimal place does not change; or

71 (ii) if the fourth decimal place is .0005 or more, rounding the third decimal place up.

72 (b) For calendar year 2012 only, if the calculation of the social contribution rate under  
73 Subsection (2)(a) is greater than .004, the social contribution rate for calendar year 2012 is  
74 .004.

75 (3) (a) [Beginning January 1, 2000, the] The division shall [by administrative decision]  
76 set the reserve factor at a rate that [shall sustain] sustains an adequate reserve.

77 (b) For the purpose of setting the reserve factor:

78 [~~(i) (A) the adequate reserve is defined as between 17 and 19 months of benefits at the~~  
79 ~~average of the five highest benefit cost rates in the last 25 years;]~~

80 [~~(B) beginning January 1, 2009,]~~ (i) the adequate reserve is defined as between 18 and  
81 24 months of benefits at the average of the five highest benefit cost rates in the last 25 years;

82 (ii) the division shall set the reserve factor [shall be] at 1.0000 if the actual reserve fund  
83 balance as of June 30 preceding the computation date is determined to be an adequate reserve;

84 (iii) the division shall set the reserve factor [will be set] between 0.5000 and 1.0000 if  
85 the actual reserve fund balance as of June 30 preceding the computation date is greater than the  
86 adequate reserve;

87 (iv) the division shall set the reserve factor [will be set] between 1.0000 and 1.5000 if  
88 the actual reserve fund balance as of June 30 prior to the computation date is less than the  
89 adequate reserve;

90 (v) if the actual reserve fund balance as of June 30 preceding the computation date is  
91 insolvent or negative or if there is an outstanding loan from the Federal Unemployment  
92 Account[;] or other lending institution, the division shall set the reserve factor [~~will be set~~] at  
93 2.0000 until the actual reserve fund balance as of June 30 preceding the computation date is  
94 determined [~~to be an adequate reserve~~] by the division to be solvent or positive and there is no  
95 outstanding loan;

96 (vi) the division shall set the reserve factor [~~will be set~~] on or before January 1 of each  
97 year; and

98 (vii) money made available to the state under Section 903 of the Social Security Act,  
99 42 U.S.C. 1103, as amended, which is received on or after January 1, 2004, may not be  
100 considered in establishing the reserve factor under this section for the rate year 2005 or any  
101 [~~subsequent~~] following rate year.

102 [~~(4) (a) On or after January 1, 2004, an employer's overall contribution rate is the~~  
103 ~~employer's basic contribution rate multiplied by the reserve factor established according to~~  
104 ~~Subsection (3), calculated to four decimal places, disregarding the remaining fraction, plus the~~  
105 ~~social contribution rate established according to Subsection (2), and calculated to three~~  
106 ~~decimal places, disregarding the remaining fraction, but not more than a maximum overall~~  
107 ~~contribution rate of 9.0%, plus the applicable social contribution rate and not less than 1.1% for~~  
108 ~~new employers.;~~]

109 [~~(b)~~] (4) (a) Beginning January 1, 2009, an employer's overall contribution rate is:

110 (i) except as provided in Subsection (4)(a)(ii) or (iii), the employer's basic contribution  
111 rate multiplied by the reserve factor established [~~according to~~] under Subsection (3)(b),  
112 calculated to four decimal places, disregarding [~~the~~] any remaining fraction, plus the social  
113 contribution rate established [~~according to~~] under Subsection (2), and the result calculated to  
114 three decimal places, disregarding [~~the~~] any remaining fraction[~~, but not more than a maximum~~  
115 ~~overall contribution rate of 9%, plus the applicable social contribution rate and not less than~~  
116 ~~1.1% for new employers.;~~];

117 (ii) if under Subsection (4)(a)(i) the overall contribution rate calculation for an  
118 employer is greater than 9% plus the applicable social contribution rate, the overall  
119 contribution rate for the employer shall be reduced to 9% plus the applicable social  
120 contribution rate; or

121 (iii) if under Subsection (4)(a)(i) the overall contribution rate calculation for a new  
 122 employer is less than 1.1%, the overall contribution rate for the new employer shall be  
 123 increased to 1.1%.

124 (b) Beginning January 1, 2012, an employer's overall contribution rate is:

125 (i) except as provided in Subsection (4)(b)(ii) or (iii), the employer's basic contribution  
 126 rate multiplied by the reserve factor established under Subsection (3)(b), calculated to four  
 127 decimal places, disregarding any remaining fraction, plus the social contribution rate  
 128 established under Subsection (2), and the result calculated to three decimal places, disregarding  
 129 any remaining fraction;

130 (ii) if under Subsection (4)(b)(i) the overall contribution rate calculation for an  
 131 employer is greater than 7% plus the applicable social contribution rate, the overall  
 132 contribution rate for the employer shall be reduced to 7% plus the applicable social  
 133 contribution rate; or

134 (iii) if under Subsection (4)(b)(i) the overall contribution rate calculation for a new  
 135 employer is less than 1.1%, the overall contribution rate for the new employer shall be  
 136 increased to 1.1%.

137 (c) The overall contribution rate described under this Subsection (4) does not include  
 138 the addition of any penalty applicable to an employer;

139 (i) as a result of delinquency in the payment of contributions as provided in Subsection  
 140 (9)[-]; or

141 [~~(d) The overall contribution rate does not include the addition of any penalty~~  
 142 ~~applicable to an employer]~~

143 (ii) that is assessed a penalty rate under Subsection 35A-4-304(5)(a).

144 (5) (a) Except as otherwise provided in [~~Subsection (9), each new employer shall pay a~~  
 145 ~~contribution rate]~~ this section, the basic contribution rate for a new employer is based on the  
 146 average benefit cost rate experienced by employers of the major industry, as defined by  
 147 department rule, to which the new employer belongs[, ~~the basic contribution rate to be~~  
 148 ~~determined as follows:];~~

149 [~~(a)~~] (b) Except as provided in Subsection (5)[~~(b)~~](c), by January 1 of each year, the  
 150 basic contribution rate to be used in computing [~~the~~] a new employer's overall contribution rate  
 151 under Subsection (4) is the benefit cost rate [~~which~~] that is the greater of:

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

156 (ii) 1%.

157 ~~(b)~~ (c) If the major industrial classification assigned to a new employer is an industry  
158 for which a benefit cost rate does not exist because the industry has not operated in the state or  
159 has not been covered under this chapter, the employer's basic contribution rate ~~shall be~~ is  
160 5.4%. This basic contribution rate is used in computing the employer's overall contribution  
161 rate under Subsection (4).

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

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

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

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

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

176 (8) (a) If an employer acquires the business or all or substantially all the assets of  
177 another employer and the other employer had discontinued operations upon the acquisition or  
178 transfers its trade or business, or a portion of its trade or business, under Subsection  
179 35A-4-304(3)(a):

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

- 183 (A) the filing of contribution reports;
- 184 (B) the payment of contributions; and
- 185 (C) [~~after January 1, 1985,~~] the benefit costs of both employers;
- 186 (ii) the transferring employer shall be divested of the transferring employer's
- 187 unemployment experience provided the transferring employer had discontinued operations, but
- 188 only to the extent as defined under Subsection 35A-4-304(3)(c); and
- 189 (iii) if an employer transfers its trade or business, or a portion of its trade or business,
- 190 as defined under Subsection 35A-4-304(3), the transferring employer may not be divested of its
- 191 employer's unemployment experience.
- 192 (b) An employing unit or prospective employing unit that acquires the unemployment
- 193 experience of an employer shall, for all purposes of this chapter, be an employer as of the date
- 194 of acquisition.
- 195 (c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in
- 196 Subsection (8)(a), is divested of the employer's unemployment experience by transferring all of
- 197 the employer's business to another and by ceasing operations as of the date of the transfer, the
- 198 transferring employer shall cease to be an employer, as defined by this chapter, as of the date of
- 199 transfer.
- 200 (9) (a) [~~A rate of less than 8% shall be effective January 1 of any contribution year on~~
- 201 ~~or after January 1, 1985, but before January 1, 1988, and a] A rate of less than the maximum~~
- 202 overall contribution rate [~~on or after January 1, 1988,~~] is effective only [~~with respect to] for~~
- 203 new employers and to those qualified employers who, except for amounts due under division
- 204 determinations that have not become final, paid all contributions prescribed by the division
- 205 [~~with respect to] for~~ the four consecutive calendar quarters in the fiscal year immediately
- 206 preceding the computation date [~~on or after January 1, 1985~~].
- 207 (b) Notwithstanding Subsections (1), (5), (6), and (8), [~~on or after January 1, 1988,~~] an
- 208 employer who fails to pay all contributions prescribed by the division [~~with respect to] for~~ the
- 209 four consecutive calendar quarters in the fiscal year immediately preceding the computation
- 210 date, except for amounts due under determinations that have not become final, shall pay a
- 211 contribution rate equal to the overall contribution rate determined under the experience rating
- 212 provisions of this chapter, plus a surcharge of 1% of wages.
- 213 (c) An employer who pays all required contributions shall, for the current contribution

214 year, be assigned a rate based upon the employer's own experience as provided under the  
215 experience rating provisions of this chapter effective the first day of the calendar quarter in  
216 which the payment was made.

217 (d) Delinquency in filing contribution reports may not be the basis for denial of a rate  
218 less than the maximum contribution rate.

219 (10) If an employer makes a contribution payment based on the overall contribution  
220 rate in effect at the time the payment was made and a provision of this section retroactively  
221 reduces the overall contribution rate for that payment, the division:

222 (a) may not directly refund the difference between what the employer paid and what  
223 the employer would have paid under the new rate; and

224 (b) shall allow the employer to make an adjustment to a future contribution payment to  
225 offset the difference between what the employer paid and what the employer would have paid  
226 under the new rate.

227 Section 2. Section **35A-4-304** is amended to read:

228 **35A-4-304. Special provisions regarding transfers of unemployment experience**  
229 **and assignment rates.**

230 (1) As used in this section:

231 (a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance  
232 or reckless disregard for the prohibition involved.

233 (b) "Person" has the meaning given that term by Section 7701(a)(1) of the Internal  
234 Revenue Code of 1986.

235 (c) "Trade or business" includes the employer's workforce.

236 (d) "Violate or attempt to violate" includes intent to evade, misrepresentation, or  
237 willful nondisclosure.

238 (2) Notwithstanding any other provision of this chapter, Subsections (3) and (4) shall  
239 apply regarding assignment of rates and transfers of unemployment experience.

240 (3) (a) If an employer transfers its trade or business, or a portion of its trade or  
241 business, to another employer and, at the time of the transfer, there is common ownership,  
242 management, or control of the employers, then the unemployment experience attributable to  
243 each employer shall be combined into a common experience rate calculation.

244 (b) The contribution rates of the employers shall be recalculated and made effective



245 upon the date of the transfer of trade or business as determined by division rule in accordance  
246 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

247 (c) (i) If one or more of the employers is a qualified employer at the time of the  
248 transfer, then all employing units that are party to a transfer described in Subsection (3)(a) of  
249 this section shall be assigned an overall contribution rate under Subsection 35A-4-303(4)~~(c)~~,  
250 using combined unemployment experience rating factors, for the rate year during which the  
251 transfer occurred and for the subsequent three rate years.

252 (ii) If none of the employing units is a qualified employer at the time of the transfer,  
253 then all employing units that are party to the transfer described in Subsection (3)(a) shall be  
254 assigned the highest overall contribution rate applicable at the time of the transfer to any  
255 employer who is party to the acquisition for the rate year during which the transfer occurred  
256 and for subsequent rate years until the time when one or more of the employing units is a  
257 qualified employer.

258 (iii) Once one or more employing units described in Subsection (3)(c)(ii) is a qualified  
259 employer, all the employing units shall be assigned an overall rate under Subsection  
260 35A-4-303(4)~~(c)~~, using combined unemployment experience rating factors for subsequent  
261 rate years, not to exceed three years following the year of the transfer.

262 (d) The transfer of some or all of an employer's workforce to another employer shall be  
263 considered a transfer of its trade or business when, as the result of the transfer, the transferring  
264 employer no longer performs trade or business with respect to the transferred workforce, and  
265 the trade or business is now performed by the employer to whom the workforce is transferred.

266 (4) (a) Whenever a person is not an employer under this chapter at the time it acquires  
267 the trade or business of an employer, the unemployment experience of the acquired business  
268 may not be transferred to that person if the division finds that the person acquired the business  
269 solely or primarily for the purpose of obtaining a lower rate of contributions.

270 (b) The person shall be assigned the applicable new employer rate under Subsection  
271 35A-4-303(5).

272 (c) In determining whether the business was acquired solely or primarily for the  
273 purpose of obtaining a lower rate of contributions, the division shall use objective factors  
274 which may include:

275 (i) the cost of acquiring the business;

276 (ii) whether the person continued the business enterprise of the acquired business;  
277 (iii) how long the business enterprise was continued; or  
278 (iv) whether a substantial number of new employees were hired for performance of  
279 duties unrelated to the business activity conducted prior to acquisition.

280 (5) (a) If a person knowingly violates or attempts to violate Subsection (3) or (4) or any  
281 other provision of this chapter related to determining the assignment of a contribution rate, or if  
282 a person knowingly advises another person in a way that results in a violation of any of those  
283 subsections or provisions, the person is subject to the following penalties:

284 (i) (A) If the person is an employer, then the employer shall be assigned an overall  
285 contribution rate of 5.4% for the rate year during which the violation or attempted violation  
286 occurred and for the subsequent rate year.

287 (B) If the person's business is already at 5.4% for any year, or if the amount of increase  
288 in the person's rate would be less than 2% for that year, then a penalty surcharge of  
289 contributions of 2% of taxable wages shall be imposed for the rate year during which the  
290 violation or attempted violation occurred and for the subsequent rate year.

291 (ii) (A) If the person is not an employer, the person shall be subject to a civil penalty of  
292 not more than \$5,000.

293 (B) The fine shall be deposited in the penalty and interest account established under  
294 Section 35A-4-506.

295 (b) (i) In addition to the penalty imposed by Subsection (5)(a), a violation of this  
296 section may be prosecuted as unemployment insurance fraud.

297 (ii) The determination of the degree of an offense shall be measured by the total value  
298 of all contributions avoided or reduced or contributions sought to be avoided or reduced by the  
299 unlawful conduct as applied to the degrees listed under Subsection 76-8-1301(2)(a).

300 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
301 division shall make rules to identify the transfer or acquisition of a business for purposes of this  
302 section.

303 (7) This section shall be interpreted and applied in a manner that meets the minimum  
304 requirements contained in any guidance or regulations issued by the United States Department  
305 of Labor.

306 Section 3. **Effective date.**

307 If approved by two-thirds of all the members elected to each house, this bill takes effect  
308 upon approval by the governor, or the day following the constitutional time limit of Utah  
309 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
310 the date of veto override.

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**Legislative Review Note**  
**as of 11-17-11 11:41 AM**

**Office of Legislative Research and General Counsel**