

## **Title 35A. Utah Workforce Services Code**

### **Chapter 1 Department of Workforce Services**

#### **Part 1 General Provisions**

##### **35A-1-101 Title.**

This title is known as the "Utah Workforce Services Code."

Enacted by Chapter 240, 1996 General Session

##### **35A-1-102 Definitions.**

Unless otherwise specified, as used in this title:

- (1) "Client" means an individual who the department has determined to be eligible for services or benefits under:
  - (a) Chapter 3, Employment Support Act; and
  - (b) Chapter 5, Training and Workforce Improvement Act.
- (2) "Department" means the Department of Workforce Services created in Section 35A-1-103.
- (3) "Economic service area" means an economic service area established in accordance with Chapter 2, Economic Service Areas.
- (4) "Employment assistance" means services or benefits provided by the department under:
  - (a) Chapter 3, Employment Support Act; and
  - (b) Chapter 5, Training and Workforce Improvement Act.
- (5) "Employment center" is a location in an economic service area where the services provided by an economic service area under Section 35A-2-201 may be accessed by a client.
- (6) "Employment counselor" means an individual responsible for developing an employment plan and coordinating the services and benefits under this title in accordance with Chapter 2, Economic Service Areas.
- (7) "Employment plan" means a written agreement between the department and a client that describes:
  - (a) the relationship between the department and the client;
  - (b) the obligations of the department and the client; and
  - (c) the result if an obligation is not fulfilled by the department or the client.
- (8) "Executive director" means the executive director of the department appointed under Section 35A-1-201.
- (9) "Government entity" means the state or any county, municipality, local district, special service district, or other political subdivision or administrative unit of the state, a state institution of higher education as defined in Section 53B-2-101, or a local education agency as defined in Section 53G-7-401.
- (10) "Public assistance" means:
  - (a) services or benefits provided under Chapter 3, Employment Support Act;
  - (b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;
  - (c) foster care maintenance payments provided from the General Fund or under Title IV-E of the Social Security Act;
  - (d) SNAP benefits; and

- (e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.
- (11) "SNAP" means the federal "Supplemental Nutrition Assistance Program" under Title 7, U.S.C. Chapter 51, Supplemental Nutrition Assistance Program, formerly known as the federal Food Stamp Program.
- (12) "SNAP benefit" or "SNAP benefits" means a financial benefit, coupon, or privilege available under SNAP.
- (13) "Stabilization" means addressing the basic living, family care, and social or psychological needs of the client so that the client may take advantage of training or employment opportunities provided under this title or through other agencies or institutions.
- (14) "Vulnerable populations" means children or adults with a life situation that substantially affects that individual's ability to:
  - (a) provide personal protection;
  - (b) provide necessities such as food, shelter, clothing, or mental or other health care;
  - (c) obtain services necessary for health, safety, or welfare;
  - (d) carry out the activities of daily living;
  - (e) manage the adult's own financial resources; or
  - (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

Amended by Chapter 415, 2018 General Session

Amended by Chapter 427, 2018 General Session

**35A-1-103 Department of Workforce Services -- Creation -- Seal.**

- (1) There is created the Department of Workforce Services, which has all of the policymaking functions, regulatory and enforcement powers, rights, duties, and responsibilities outlined in this title.
- (2) For purposes of this title, the department shall have an official seal that shall be judicially noticed.

Amended by Chapter 375, 1997 General Session

**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 63G, Chapter 3, 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 63G, Chapter 4, 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) administer oaths, certify to official acts, issue subpoenas to compel witnesses and the production of books, accounts, documents, and other records necessary as evidence;
- (7) acquire, manage, and dispose of any real or personal property needed or owned by the department, not inconsistent with state law;

- (8) receive gifts, grants, devises, and donations or their proceeds, 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) accept and employ volunteer labor or services;
- (10) reimburse volunteers for necessary expenses, when the department considers that reimbursement to be appropriate;
- (11) carry out the responsibility assigned by the State Workforce Services Plan developed by the State Workforce Development Board;
- (12)
  - (a) provide training and educational opportunities for the department's staff; and
  - (b) ensure that any training or educational opportunity described in Subsection (12)(a) complies with Title 63G, Chapter 22, State Training and Certification Requirements;
- (13) 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) accept and administer grants from the federal government and from other sources, public or private;
- (15) 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) establish and conduct free employment agencies, and bring together employers seeking employees and working people seeking employment, and make known the opportunities for employment in this state;
- (17) 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) encourage the expansion and use of apprenticeship programs meeting state or federal standards for apprenticeship programs;
- (19) develop processes to ensure that the department responds to the full range of employee and employer clients;
- (20) carry out the responsibilities assigned to it by statute; and
- (21) administer the Safety Net Initiative as described in Section 35A-3-802.

Amended by Chapter 200, 2018 General Session

**35A-1-104.1 Background checks for employees.**

- (1) As used in this section, "bureau" means the Bureau of Criminal Identification created in Section 53-10-201.
- (2) Beginning July 1, 2018, the department may require current employees in, and all applicants for, the following positions to submit to a fingerprint-based local, regional, and national criminal history background check and ongoing monitoring as a condition of employment:
  - (a) employees that access or may access federal tax information; and
  - (b) employees serving or interacting with vulnerable populations as defined in Section 35A-1-102.
- (3) Each individual in a position listed in Subsection (2) shall provide a completed fingerprint card to the department upon request.
- (4) The department shall require that an individual required to submit to a background check under Subsection (3) provide a signed waiver on a form provided by the department that meets the requirements of Subsection 53-10-108(4).
- (5) For a noncriminal justice background search and registration in accordance with Subsection 53-10-108(13), the department shall submit to the bureau:

- (a) the applicant's personal identifying information and fingerprints for a criminal history search of applicable local, regional, and national databases; and
  - (b) a request for all information received as a result of the local, regional, and nationwide background check.
- (6) The department is responsible for the payment of all fees required by Subsection 53-10-108(15) and any fees required to be submitted to the Federal Bureau of Investigation by the bureau.
- (7) The department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:
- (a) determine how the department will assess the employment status of an individual upon receipt of background information; and
  - (b) identify the appropriate privacy risk mitigation strategy to be used in accordance with Subsection 53-10-108(13)(b).

Enacted by Chapter 427, 2018 General Session

**35A-1-104.5 Other department duties -- Strategic plan for health system reform -- Reporting suspected misuse of a Social Security number.**

- (1) The department shall work with the Department of Health, the Insurance Department, the Governor's Office of Economic Development, and the Legislature to develop the health system reform in accordance with Title 63N, Chapter 11, Health System Reform Act.
- (2) In the process of determining an individual's eligibility for a public benefit or service under this title or under federal law, if the department determines that a valid Social Security number is being used by an unauthorized individual, the department shall:
- (a) inform the individual who the department determines to be the likely actual owner of the Social Security number or, if the likely actual owner is a minor, the minor's parent or guardian, of the suspected misuse; and
  - (b) subject to federal law, provide information of the suspected misuse to an appropriate law enforcement agency responsible for investigating identity fraud.
- (3) If the department learns or determines that providing information under Subsection (2)(b) is prohibited by federal law, the department shall notify the Legislative Management Committee.

Amended by Chapter 283, 2015 General Session

**35A-1-105 Department budget -- Reports from divisions.**

- (1) The department shall prepare and submit to the governor for inclusion in the governor's budget to be submitted to the Legislature, a budget of the department's financial requirements needed to carry out its responsibilities as provided by law during the fiscal year following the Legislature's next annual general session.
- (2) The executive director shall require a report from each of the divisions and offices of the department, to aid in preparation of the departmental budget.

Enacted by Chapter 240, 1996 General Session

**35A-1-106 Fees.**

- (1) Unless otherwise provided by statute, the department may adopt a schedule of fees assessed for services provided by the department by following the procedures and requirements of Section 63J-1-504.

- (2) The department shall submit each fee established under this section to the Legislature for its approval as part of the department's annual appropriations request.

Amended by Chapter 183, 2009 General Session

**35A-1-108 Participants in work experience or training programs funded by the department -- Status -- Receipt of workers' compensation medical benefits.**

- (1) A client or applicant who is directed to participate in a work experience or training program funded by the department is considered to be a volunteer government worker of the department, as provided in Title 67, Chapter 20, Volunteer Government Workers Act, solely for the purpose of receiving workers' compensation medical benefits.
- (2) Receipt of medical benefits by a client or applicant under Subsection (1) is the exclusive remedy against the agency and the cooperating employer for all injuries and occupational diseases as provided under Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act.

Amended by Chapter 54, 2007 General Session

**35A-1-109 Annual report -- Content -- Format.**

- (1) The department shall prepare and submit to the governor and the Legislature, by October 1 of each year, an annual written report of the operations, activities, programs, and services of the department, including its divisions, offices, boards, commissions, councils, and committees, for the preceding fiscal year.
- (2) For each operation, activity, program, or service provided by the department, the annual report shall include:
  - (a) a description of the operation, activity, program, or service;
  - (b) data and metrics:
    - (i) selected and used by the department to measure progress, performance, effectiveness, and scope of the operation, activity, program, or service, including summary data; and
    - (ii) that are consistent and comparable for each state operation, activity, program, or service that primarily involves employment training or placement as determined by the executive directors of the department, the Governor's Office of Economic Development, and the Governor's Office of Management and Budget;
  - (c) budget data, including the amount and source of funding, expenses, and allocation of full-time employees for the operation, activity, program, or service;
  - (d) historical data from previous years for comparison with data reported under Subsections (2) (b) and (c);
  - (e) goals, challenges, and achievements related to the operation, activity, program, or service;
  - (f) relevant federal and state statutory references and requirements;
  - (g) contact information of officials knowledgeable and responsible for each operation, activity, program, or service; and
  - (h) other information determined by the department that:
    - (i) may be needed, useful, or of historical significance; or
    - (ii) promotes accountability and transparency for each operation, activity, program, or service with the public and elected officials.
- (3) The annual report shall be designed to provide clear, accurate, and accessible information to the public, the governor, and the Legislature.
- (4) The department shall:

- (a) submit the annual report in accordance with Section 68-3-14;
- (b) make the annual report, and previous annual reports, accessible to the public by placing a link to the reports on the department's website; and
- (c) provide the data and metrics described in Subsection (2)(b) to the Talent Ready Utah Board created in Section 63N-12-503.

Amended by Chapter 423, 2018 General Session

## **Part 2 Organization**

### **35A-1-201 Executive director -- Appointment -- Removal -- Compensation -- Qualifications -- Responsibilities -- Deputy directors.**

- (1)
  - (a) The chief administrative officer of the department is the executive director, who is appointed by the governor with the consent of the Senate.
  - (b) The executive director serves at the pleasure of the governor.
  - (c) The executive director shall receive a salary established by the governor within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.
  - (d) The executive director shall be experienced in administration, management, and coordination of complex organizations.
- (2) The executive director shall:
  - (a) administer and supervise the department in compliance with Title 67, Chapter 19, Utah State Personnel Management Act;
  - (b) supervise and coordinate between the economic service areas and directors created under Chapter 2, Economic Service Areas;
  - (c) coordinate policies and program activities conducted through the divisions and economic service areas of the department;
  - (d) approve the proposed budget of each division, the Workforce Appeals Board, and each economic service area within the department;
  - (e) approve all applications for federal grants or assistance in support of any department program;
  - (f) coordinate with the executive directors of the Governor's Office of Economic Development and the Governor's Office of Management and Budget to review data and metrics to be reported to the Legislature as described in Subsection 35A-1-109(2)(b); and
  - (g) fulfill such other duties as assigned by the Legislature or as assigned by the governor that are not inconsistent with this title.
- (3) The executive director may appoint deputy or assistant directors to assist the executive director in carrying out the department's responsibilities.
- (4) The executive director shall at least annually provide for the sharing of information between the advisory councils established under this title.

Amended by Chapter 423, 2018 General Session

### **35A-1-202 Divisions -- Creation -- Duties -- Workforce Appeals Board, councils, Child Care Advisory Committee, and economic service areas.**

- (1) There is created within the department the following divisions:
  - (a) the Workforce Development Division to administer the development and implementation of employment assistance programs;
  - (b) the Workforce Research and Analysis Division;
  - (c) the Unemployment Insurance Division to administer Chapter 4, Employment Security Act;
  - (d) the Eligibility Services Division to administer public assistance eligibility;
  - (e) the Division of Adjudication to adjudicate claims or actions in accordance with this title;
  - (f) the Housing and Community Development Division, described in Sections 35A-8-201 and 35A-8-202; and
  - (g) the Utah State Office of Rehabilitation, which is described in Section 35A-13-103.
- (2) In addition to the divisions created under Subsection (1), within the department are the following:
  - (a) the Workforce Appeals Board created in Section 35A-1-205;
  - (b) the State Workforce Development Board created in Section 35A-1-206;
  - (c) the Employment Advisory Council created in Section 35A-4-502;
  - (d) the Child Care Advisory Committee created in Section 35A-3-205; and
  - (e) the economic service areas created in accordance with Chapter 2, Economic Service Areas.

Amended by Chapter 271, 2016 General Session

**35A-1-203 Executive director -- Jurisdiction over division and economic service area directors -- No jurisdiction over Workforce Appeals Board -- Authority.**

- (1) The executive director has administrative jurisdiction over each division and economic service area.
- (2) To effectuate greater statewide efficiency and local flexibility in the implementation of programs, the executive director shall coordinate with the directors of the divisions and the directors of the economic service areas.
- (3) To effectuate greater efficiency and economy in the operations of the department, the executive director may:
  - (a) make changes in personnel and service functions in the divisions and economic service areas under the executive director's administrative jurisdiction; and
  - (b) authorize designees to perform appropriate responsibilities.
- (4)
  - (a) The executive director has no jurisdiction over the Workforce Appeals Board except as provided in Subsection (4)(b).
  - (b) The executive director shall:
    - (i) approve the budget of the Workforce Appeals Board;
    - (ii) provide the necessary staff support to the Workforce Appeals Board; and
    - (iii) make rules necessary for the operations of the Workforce Appeals Board and the efficiency of the adjudicative process as a whole in accordance with Section 35A-1-303.
- (5) To facilitate management of the department, the executive director may establish offices necessary to implement this title or to perform functions such as budgeting, planning, data processing, and personnel administration.

Amended by Chapter 188, 2011 General Session

**35A-1-204 Division directors -- Appointment -- Compensation -- Qualifications.**

- (1) The chief officer of each division within the department shall be a director, who shall serve as the executive and administrative head of the division.
- (2) A director shall be appointed by the executive director with the concurrence of the governor and may be removed from that position at the will of the executive director.
- (3) A director of a division shall receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.
- (4)
  - (a) A director of a division shall be experienced in administration and possess such additional qualifications as determined by the executive director.
  - (b) In addition to the requirements of Subsection (4)(a), the director of the Division of Adjudication shall be admitted to the practice of law in Utah.

Amended by Chapter 375, 1997 General Session

**35A-1-205 Workforce Appeals Board -- Chair -- Appointment -- Compensation -- Qualifications.**

- (1) There is created the Workforce Appeals Board within the department consisting of one or more panels to hear and decide appeals from the decision of an administrative law judge.
- (2)
  - (a) A panel shall consist of three impartial members appointed by the governor as follows:
    - (i) the board chair, appointed in accordance with Subsection (5);
    - (ii) one member appointed to represent employers; and in making this appointment, the governor shall consider nominations from employer organizations; and
    - (iii) one member appointed to represent employees; and in making this appointment, the governor shall consider nominations from employee organizations.
  - (b) No more than two members of a panel may belong to the same political party.
- (3)
  - (a)
    - (i) The term of a member shall be six years beginning on March 1 of the year the member is appointed, except as otherwise provided in Subsection (3)(a)(ii).
    - (ii) The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members are staggered so that approximately one third of the members are appointed every two years.
  - (b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
  - (c) The governor may remove a member for inefficiency, neglect of duty, malfeasance or misfeasance in office, or other good and sufficient cause.
  - (d) A member shall hold office until a successor is appointed and has qualified.
- (4)
  - (a) Except as provided in Subsection (4)(b), a member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
    - (i) Section 63A-3-106;
    - (ii) Section 63A-3-107; and
    - (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
  - (b) The member appointed as board chair in accordance with Subsection (5) shall be compensated at an hourly rate determined by the Department of Human Resource Management in accordance with Title 67, Chapter 19, Utah State Personnel Management Act.



- (5)
  - (a) The chief officer of the board shall be the chair, who shall serve as the executive and administrative head of the board.
  - (b) The chair shall be appointed by the governor to represent the public and may be removed from that position at the will of the governor.
  - (c) The chair shall be experienced in administration and possess any additional qualifications determined by the governor.
- (6)
  - (a) The chair shall designate an alternate from a panel appointed under this section:
    - (i) in the absence of a regular member or the chair; or
    - (ii) if the regular member or the chair has a conflict of interest.
  - (b) Each case shall be decided by a full three-member panel.
- (7) The department shall provide the Workforce Appeals Board necessary staff support, except, the board may employ, retain, or appoint legal counsel.

Amended by Chapter 286, 2010 General Session

**35A-1-206 State Workforce Development Board -- Appointment -- Membership -- Terms of members -- Compensation.**

- (1) There is created within the department the State Workforce Development Board in accordance with the provisions of the Workforce Innovation and Opportunity Act, 29 U.S.C. Sec. 3101 et seq.
- (2) The board shall consist of the following 39 members:
  - (a) the governor or the governor's designee;
  - (b) one member of the Senate, appointed by the president of the Senate;
  - (c) one representative of the House of Representatives, appointed by the speaker of the House of Representatives;
  - (d) the executive director or the executive director's designee;
  - (e) the executive director of the Department of Human Services or the executive director's designee;
  - (f) the director of the Utah State Office of Rehabilitation or the director's designee;
  - (g) the state superintendent of public instruction or the superintendent's designee;
  - (h) the commissioner of higher education or the commissioner's designee;
  - (i) the Utah System of Technical Colleges commissioner of technical education or the commissioner of technical education's designee;
  - (j) the executive director of the Governor's Office of Economic Development or the executive director's designee;
  - (k) the executive director of the Department of Veterans and Military Affairs or the executive director's designee; and
  - (l) the following members appointed by the governor:
    - (i) 20 representatives of business in the state, selected among the following:
      - (A) owners of businesses, chief executive or operating officers of businesses, or other business executives or employers with policymaking or hiring authority;
      - (B) representatives of businesses, including small businesses, that provide employment opportunities that include high-quality, work-relevant training and development in in-demand industry sectors or occupations in the state; and
      - (C) representatives of businesses appointed from among individuals nominated by state business organizations or business trade associations;

- (ii) six representatives of the workforce within the state, which:
    - (A) shall include at least two representatives of labor organizations who have been nominated by state labor federations;
    - (B) shall include at least one representative from a registered apprentice program;
    - (C) may include one or more representatives from a community-based organization that has demonstrated experience and expertise in addressing the employment, training, or educational needs of individuals with barriers to employment; and
    - (D) may include one or more representatives from an organization that has demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including organizations that serve out of school youth; and
  - (iii) two elected officials that represent a city or a county.
- (3)
- (a) The governor shall appoint one of the appointed business representatives as chair of the board.
  - (b) The chair shall serve at the pleasure of the governor.
- (4)
- (a) The governor shall ensure that members appointed to the board represent diverse geographic areas of the state, including urban, suburban, and rural areas.
  - (b) A member appointed by the governor shall serve a term of four years and may be reappointed to one additional term.
  - (c) A member shall continue to serve until the member's successor has been appointed and qualified.
  - (d) Except as provided in Subsection (4)(e), as terms of board members expire, the governor shall appoint each new member or reappointed member to a four-year term.
  - (e) Notwithstanding the requirements of Subsection (4)(d), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately one half of the board is appointed every two years.
  - (f) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
  - (g) The executive director shall terminate the term of any governor-appointed member of the board if the member leaves the position that qualified the member for the appointment.
- (5) A majority of members constitutes a quorum for the transaction of business.
- (6)
- (a) A member of the board who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
    - (i) Section 63A-3-106;
    - (ii) Section 63A-3-107; and
    - (iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
  - (b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.
- (7) The department shall provide staff and administrative support to the board at the direction of the executive director.
- (8) The board has the duties, responsibilities, and powers described in 29 U.S.C. Sec. 3111, including:
- (a) identifying opportunities to align initiatives in education, training, workforce development, and economic development;

- (b) developing and implementing the state workforce services plan described in Section 35A-1-207;
- (c) utilizing strategic partners to ensure the needs of industry are met, including the development of expanded strategies for partnerships for in-demand occupations and understanding and adapting to economic changes;
- (d) developing strategies for staff training;
- (e) developing and improving employment centers; and
- (f) performing other responsibilities within the scope of workforce services as requested by:
  - (i) the Legislature;
  - (ii) the governor; or
  - (iii) the executive director.

Amended by Chapter 39, 2018 General Session

**35A-1-207 State workforce services plan -- Economic service area plans.**

The State Workforce Development Board shall annually maintain and update a state workforce services plan that includes:

- (1) a four-year strategy, as described in 29 U.S.C. Sec. 3112, for the following core programs:
  - (a) youth services;
  - (b) adult employment and training services;
  - (c) dislocated worker employment and training services;
  - (d) adult education and literacy activities;
  - (e) employment services; and
  - (f) vocational rehabilitation services;
- (2) a strategy for aligning and coordinating the core programs;
- (3) a strategy for coordinating the workforce needs of job seekers and employers in the various regions of the state;
- (4) planning to ensure that employment centers address the requirements of the special employment needs population, including:
  - (a) individuals who have special employment needs based on factors such as race, gender, age, disability, economic status, education, language skills, or work history; and
  - (b) an "individual with a barrier to employment" as that term is defined in 29 U.S.C. Sec. 3102;
- (5) a mechanism for getting consumer and public feedback on department programs;
- (6) projected analysis of the workforce needs of employers and clients;
- (7) state outcome-based standards for measuring program performance to ensure equitable service to all clients;
- (8) strategies to ensure program responsiveness, universal access, and unified case management;
- (9) strategies to eliminate unnecessary barriers to access services; and
- (10) strategies to provide assistance to employees facing employment dislocation and their employers.

Amended by Chapter 296, 2016 General Session

**Part 3**  
**Adjudicative Proceedings**

**35A-1-301 Presiding officers for adjudicative proceedings -- Subpoenas -- Independent judgment -- Consolidation -- Record -- Notice of order.**

- (1)
  - (a) The executive director shall authorize the Division of Adjudication to call, assign a presiding officer, and conduct hearings and adjudicative proceedings when an application for a proceeding is filed with the Division of Adjudication under this title.
  - (b) The director of the Division of Adjudication or the director's designee may issue subpoenas. Failure to respond to a properly issued subpoena may result in a contempt citation and offenders may be punished as provided in Section 78B-6-313.
  - (c) Witnesses subpoenaed under this section are allowed fees as provided by law for witnesses in the district court of the state. The fees shall be paid as follows:
    - (i) The witness fees shall be paid by the state unless the witness is subpoenaed at the instance of a party other than the department.
    - (ii) Notwithstanding Subsection (1)(c)(i), if the subpoena is issued under Chapter 4, Employment Security Act, the fees are part of the expense of administering that chapter.
  - (d) A presiding officer assigned under this section may not participate in any case in which the presiding officer is an interested party. Each decision of a presiding officer shall represent the presiding officer's independent judgment.
- (2) In the judgment of the presiding officer having jurisdiction of the proceedings the consolidation would not be prejudicial to any party, when the same or substantially similar evidence is relevant and material to the matters in issue in more than one proceeding:
  - (a) the presiding officer may fix the same time and place for considering each matter;
  - (b) jointly conduct hearings;
  - (c) make a single record of the proceedings; and
  - (d) consider evidence introduced with respect to one proceeding as introduced in the others.
- (3)
  - (a) The director shall keep a full and complete record of all adjudicative proceedings in connection with a disputed matter.
  - (b) All testimony at any hearing shall be recorded but need not be transcribed unless the disputed matter is appealed. If a party requests transcription, the transcription shall be provided at the party's expense.
  - (c) All records on appeals shall be maintained in the offices of the Division of Adjudication. The records shall include an appeal docket showing the receipt and disposition of the appeals.
- (4) A party in interest shall be given notice of the entry of a presiding officer's order or any order or award of the department. The mailing of the copy of the order or award to the last-known address in the files of the department of a party in interest and to the attorneys or agents of record in the case, if any, is considered to be notice of the order.
- (5) In any formal adjudication proceeding, the presiding officer may take any action permitted under Section 63G-4-206.

Amended by Chapter 3, 2008 General Session

Amended by Chapter 382, 2008 General Session

**35A-1-302 Review of administrative order -- Finality of Workforce Appeals Board's order.**

- (1) An order entered by an administrative law judge under this title is the final decision of the department unless a further appeal is initiated under this title and in accordance with the rules of the department governing the review.

- (2) The order of the Workforce Appeals Board on review is final, unless set aside by the court of appeals.
- (3) If an order is appealed to the court of appeals after the party appealing the order has exhausted all administrative appeals, the court of appeals has jurisdiction to review, reverse, or annul any order of the Workforce Appeals Board, or to suspend or delay the operation or execution of the order of the Workforce Appeals Board being appealed.

Amended by Chapter 375, 1997 General Session

**35A-1-303 Rulemaking.**

- (1)
  - (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules governing adjudicative procedures including the forms of notices and the manner of serving notice in all claims.
  - (b) Except as provided in this title and Title 63G, Chapter 4, Administrative Procedures Act, the rules made under this section are not required to conform to common law or statutory rules of evidence or other technical rules of procedure.
- (2) The rules made under this section shall include procedures to dispose of cases informally, or to expedite claims adjudication, narrow issues, and simplify the methods of proof at hearings.
- (3) Any rule made concerning proceedings before the Workforce Appeals Board shall be made in consultation with the Workforce Appeals Board.

Amended by Chapter 382, 2008 General Session

**35A-1-304 Review authority of the Workforce Appeals Board.**

- (1)
  - (a) In accordance with this title and Title 63G, Chapter 4, Administrative Procedures Act, the Workforce Appeals Board may allow an appeal from a decision of an administrative law judge if a motion for review is filed with the Division of Adjudication within the designated time by any party entitled to the notice of the administrative law judge's decision.
  - (b) An appeal filed by the party shall be allowed as of right if the decision of the administrative law judge did not affirm the department's prior decision.
  - (c) If the Workforce Appeals Board denies an application for appeal from the decision of an administrative law judge, the decision of the administrative law judge is considered a decision of the Workforce Appeals Board for purposes of judicial review and is subject to judicial review if further appeal is initiated under this title.
- (2) On appeal, the Workforce Appeals Board may on the basis of the evidence previously submitted in the case, or upon the basis of any additional evidence it requires:
  - (a) affirm the decision of the administrative law judge;
  - (b) modify the decision of the administrative law judge; or
  - (c) reverse the findings, conclusions, and decision of the administrative law judge.
- (3) The Workforce Appeals Board shall promptly notify the parties to any proceedings before it of its decision, including its findings and conclusions, and the decision is a final order of the department unless within 30 days after the date the decision of the Workforce Appeals Board is issued, further appeal is initiated under this title.

Amended by Chapter 116, 1998 General Session

**35A-1-305 Independence of Workforce Appeals Board.**

A member of the Workforce Appeals Board may not participate in any case in which the member is an interested party. Each decision of a member of the Workforce Appeals Board shall represent the member's independent judgment.

Amended by Chapter 375, 1997 General Session

**35A-1-306 Electronic or similar methods.**

The department may by rule permit hearings or other adjudicative hearings to be conducted, recorded, or published by means of electronic devices or other similar methods.

Enacted by Chapter 240, 1996 General Session

**35A-1-307 Scope of part.**

This part does not apply to adjudication under:  
(1) Chapter 3, Employment Support Act; or  
(2) Chapter 5, Part 1, Job Training Coordination Act.

Repealed and Re-enacted by Chapter 375, 1997 General Session

**Part 4  
Reserved**

**Part 5  
Assistance Fraud**

**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 17-18a-202 and 17-18a-203, 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.

Amended by Chapter 237, 2013 General Session

**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:
- (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;
  - (b) 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.

- (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 (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.

Amended by Chapter 132, 1999 General Session

## **Chapter 2 Economic Service Areas**

### **Part 1 Organization**

#### **35A-2-101 Economic service areas -- Creation.**

- (1)
  - (a) The executive director shall establish economic service areas to furnish the services described in Section 35A-2-201.
  - (b) In establishing economic service areas, the executive director shall seek input from the State Workforce Development Board.
- (2) In establishing the economic service areas, the executive director may consider:
  - (a) areas comprised of multiple counties;
  - (b) the alignment of transportation and other infrastructure or services;
  - (c) the interdependence of the economy within a geographic area;
  - (d) the ability to develop regional marketing and economic development programs;
  - (e) the labor market areas;
  - (f) the population of the area, as established in the most recent estimate by the Utah Population Committee;
  - (g) the number of individuals in the previous year receiving:
    - (i) services under Chapter 3, Employment Support Act; and
    - (ii) benefits under Chapter 4, Employment Security Act; and
  - (h) other factors that relate to the management of the programs administered or that relate to the delivery of services provided under this title.

Amended by Chapter 330, 2018 General Session

#### **35A-2-102 Directors of economic service areas -- Appointment.**

- (1) The executive director shall appoint a director to oversee each economic service area.
- (2) A director appointed under this section may be removed from that position at the will of the executive director.
- (3) A director shall be experienced in administration and possess additional qualifications as determined by the executive director, and as provided by law.
- (4) The director shall report on a regular basis to the State Workforce Development Board on the delivery of services in the economic service area.

Amended by Chapter 296, 2016 General Session

## **Part 2 Service Delivery**

### **35A-2-201 Services provided in economic service areas.**

Economic service areas shall:

- (1) through their employment centers, be the primary provider of services and support under Chapter 3, Employment Support Act; and
- (2) provide access to and assess eligibility for services or training under Chapter 5, Training and Workforce Improvement Act.

Amended by Chapter 296, 2016 General Session

### **35A-2-202 Employment counselors -- Specialization -- Employment plan.**

- (1) One or more employment counselors shall be employed at each employment center of an economic service area established under Section 35A-2-101.
- (2) A client shall be assigned one employment counselor unless a client:
  - (a) needs only limited services under this title for which expedited procedures are appropriate; or
  - (b) receives diversion assistance under Section 35A-3-303.
- (3) An employment counselor shall:
  - (a) develop an employment plan jointly with the client; and
  - (b) coordinate any services provided, brokered, or contracted for by the department to that client.
- (4) The employment counselor assigned to a client may be selected because of the employment counselor's experience or knowledge in the benefits or services available under the title that best meet the specific needs of the client and the employment counselor's skills in working with groups of clients to develop plans leading to self-sufficiency.
- (5)
  - (a) An employment counselor shall be:
    - (i) trained in the requirements of and benefits or services provided through employment centers in at least one of the following:
      - (A) Chapter 3, Employment Support Act; and
      - (B) Chapter 5, Training and Workforce Improvement Act;
    - (ii) capable of:
      - (A) conducting an effective assessment;
      - (B) negotiating an employment plan; and
      - (C) providing the necessary encouragement and support to a client; and
    - (iii) knowledgeable of:
      - (A) department policies;
      - (B) relevant law;
      - (C) current labor market conditions;
      - (D) education and training programs for adults; and
      - (E) services and supports available in the community.
  - (b) At the discretion of the director of an economic service area, an employment counselor may receive special training in the requirements of or providing services under the statutes listed in Subsection (5)(a)(i).



- (6)
  - (a) A client employment plan may include:
    - (i) services and support necessary for stabilization;
    - (ii) assessment and training; and
    - (iii) placement.
  - (b) The client employment plan shall consider the job opportunities available to the client based on the job market.
  - (c) The client employment plan shall be outcome-focused.
- (7) If a client seeks cash assistance under Chapter 3, Employment Support Act, the assignment of an employment counselor and the creation and implementation of an employment plan shall be consistent with Section 35A-3-304.

Amended by Chapter 188, 2011 General Session

**35A-2-203 Employment centers.**

- (1) In each county within an economic service area, the executive director shall:
  - (a) designate the location of one or more employment centers, as defined in Section 35A-1-102, in which the services are provided by the department; or
  - (b) coordinate with the department to establish access to the services provided by the department by means other than an employment center.
- (2) An employment center shall provide a comprehensive program of employment services including job placement, job development, stabilization, assessment, and job training through its employment counselors as part of a system of unified case management.
- (3) The department may make services that are provided through employment centers under this section accessible through electronic linkage.
- (4) The department shall develop and maintain a website dedicated to providing information regarding employment opportunities available throughout the state.
- (5)
  - (a) Except when filling a job vacancy with a current employee, a government entity shall list each public job posting on the department's website.
  - (b) Information regarding job vacancies with private contractors that have contracted with an executive branch procurement unit shall be made available to the department for posting on the department's website by the department. Posted information shall include the name and contact information for job inquiries. This information shall be available for the duration of the contract.
  - (c) Faculty related job vacancies and job vacancies for part-time wage related jobs typically filled by students at state institutions of higher education are exempt from the requirements of Subsection (5)(a).
  - (d) Subsection (5)(a) does not apply to school districts.

Amended by Chapter 179, 2014 General Session

**Chapter 3  
Employment Support Act**

## Part 1 Basic Services and Support

### **35A-3-101 Title.**

This chapter is known as the "Employment Support Act."

Amended by Chapter 221, 2015 General Session

### **35A-3-102 Definitions.**

As used in this chapter:

- (1) "Adjudicative proceeding" has the same meaning as defined in Section 63G-4-103.
- (2) "Administrative order" means an order issued by the department that addresses an overpayment of public assistance.
- (3) "Applicant" means a person who requests assistance under this chapter.
- (4) "Approved self-reliance training" means an educational class, training session, or counseling session:
  - (a) approved by the department;
  - (b) described in Section 35A-3-118; and
  - (c) provided at no cost to a client.
- (5) "Assignment of support" means the transfer to the state of a recipient's right to receive support from another person that accrues during the period the recipient receives public assistance, including a right to receive support on behalf of any family member for whom the recipient is applying for or receiving assistance.
- (6) "Average monthly number of families" means the average number of families who received cash assistance on a monthly basis during the previous federal fiscal year.
- (7) "Cash assistance" means the monthly dollar amount a recipient is eligible to receive under the Family Employment Program under Section 35A-3-302.
- (8) "Child care services" means care of a child by a responsible person who is not the child's parent or legal guardian, for a portion of the day that is less than 24 hours in a qualified setting, as defined by rules made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (9)
  - (a) "Civic organization" means an organization that provides services to its community.
  - (b) "Civic organization" includes a community service club or organization, a charitable health care or service organization, a fraternal organization, a labor union, a minority or ethnic organization, a commercial or industrial organization, a commerce or business club, a private nonprofit organization, a private nonprofit corporation that provides funding to a community service organization, an organization that advocates or provides for the needs of persons with low incomes, a religious organization, and an organization that fosters strong neighborhoods and communities.
- (10) "Core programs" means the following activities as described in 29 U.S.C. Sec. 3102:
  - (a) youth services;
  - (b) adult employment and training services;
  - (c) dislocated worker employment and training services;
  - (d) adult education and literacy activities;
  - (e) employment services; and
  - (f) vocational rehabilitation services.

- (11) "Court order" means a judgment or order of a court of this state, another state, or the federal government that addresses an overpayment of public assistance.
- (12) "Date of enrollment" means the date on which the applicant was approved as eligible for cash assistance.
- (13) "Director" means the director of the division assigned by the department to administer a program.
- (14) "Diversion" or "diversion payment" means a one-time cash assistance payment under Section 35A-3-303 to a recipient who is eligible for cash assistance, but does not require extended cash assistance under Part 3, Family Employment Program.
- (15) "Education or training" means education or training in accordance with 29 U.S.C. Sec. 3174 and includes:
  - (a) basic remedial education;
  - (b) adult education;
  - (c) high school education;
  - (d) education to obtain the equivalent of a high school diploma;
  - (e) education to learn English as a second language;
  - (f) applied technology training;
  - (g) employment or occupational skills training;
  - (h) on-the-job training;
  - (i) incumbent worker training;
  - (j) programs that combine workplace training with related instruction, which may include cooperative education programs;
  - (k) training programs operated by the private sector;
  - (l) skills upgrading and retraining;
  - (m) entrepreneurial training; or
  - (n) customized training conducted with a commitment by an employer to employ an individual upon successful completion of the training.
- (16) "Full-time education or training" means training on a full-time basis as defined by the educational institution attended by the parent recipient.
- (17) "General assistance" means financial assistance provided to a person under Part 4, General Assistance.
- (18) "Licensed clinical therapist" means an individual licensed by the state under:
  - (a) Title 58, Chapter 60, Part 2, Social Worker Licensing Act;
  - (b) Title 58, Chapter 60, Part 3, Marriage and Family Therapist Licensing Act;
  - (c) Title 58, Chapter 60, Part 4, Clinical Mental Health Counselor Licensing Act; or
  - (d) Title 58, Chapter 61, Psychologist Licensing Act.
- (19) "Notice of agency action" means the notice required to commence an adjudicative proceeding as described in Section 63G-4-201.
- (20) "Obligor" means an individual:
  - (a) who is liable to the state under Section 35A-3-603 and applicable federal statutes and regulations; or
  - (b) against whom an administrative or judicial order determining overpayment has been obtained.
- (21)
  - (a) "Overpayment" means money, public assistance, or another item of value provided under a state or federally funded benefit program to a person that is not entitled to receive it or is not entitled to receive it at the level provided.

- (b) "Overpayment" includes money paid to a provider under this title in connection with public assistance or another publicly funded assistance program to the extent that the provider receives payment:
  - (i) for goods or services not provided; or
  - (ii) in excess of the amount to which the provider is entitled.
- (22) "Parent recipient" means a person who enters into an employment plan with the department to qualify for cash assistance under Part 3, Family Employment Program.
- (23) "Performance goals" means a target level of performance that will be compared to actual performance.
- (24) "Performance indicators" means actual performance information regarding a program or activity.
- (25) "Performance monitoring system" means a process to regularly collect and analyze performance information, including performance indicators and performance goals.
- (26) "Plan" or "state plan" means the state plan submitted to the Secretary of the United States Department of Health and Human Services to receive funding from the United States through the Temporary Assistance for Needy Families Block Grant in accordance with 42 U.S.C. Sec. 602.
- (27) "Recipient" means a person who is qualified to receive, is receiving, or has received assistance under this chapter.
- (28) "Single minor parent" means a person under 18 years of age who is not married and has a minor child in the person's care and custody.
- (29) "Transitional cash assistance" means assistance provided to a recipient to stabilize employment and reduce the future use of cash assistance provided under Part 3, Family Employment Program.

Amended by Chapter 105, 2016 General Session

Amended by Chapter 296, 2016 General Session

Amended by Chapter 297, 2016 General Session

### **35A-3-103 Department responsibilities.**

The department shall:

- (1) administer public assistance programs assigned by the Legislature and the governor;
- (2) determine eligibility for public assistance programs in accordance with the requirements of this chapter;
- (3) cooperate with the federal government in the administration of public assistance programs;
- (4) administer state employment services;
- (5) provide for the compilation of necessary or desirable information, statistics, and reports;
- (6) perform other duties and functions required by law;
- (7) monitor the application of eligibility policy;
- (8) develop personnel training programs for effective and efficient operation of the programs administered by the department;
- (9) provide refugee resettlement services in accordance with Section 35A-3-701;
- (10) provide child care assistance for children in accordance with Part 2, Office of Child Care; and
- (11) provide services that enable an applicant or recipient to qualify for affordable housing in cooperation with:
  - (a) the Utah Housing Corporation;
  - (b) the Housing and Community Development Division; and
  - (c) local housing authorities.

Amended by Chapter 296, 2016 General Session  
Amended by Chapter 348, 2016 General Session

**35A-3-103.5 Employment and the provision of services for the disabled.**

- (1) As used in this section, "recipient" means an individual who:
  - (a) has a disability;
  - (b) suffers from a mental illness; or
  - (c) is undergoing treatment for a substance abuse problem.
- (2) Subject to funds made available for this purpose and subject to federal and state law, when providing services to a recipient in the programs provided under this chapter, the department shall give priority to providing services that assist an eligible recipient in obtaining and retaining meaningful and gainful employment that enables the recipient to earn sufficient income to:
  - (a) purchase goods and services;
  - (b) establish self-sufficiency; and
  - (c) exercise economic control of the recipient's life.
- (3) The department shall develop a written plan to implement the policy described in Subsection (2) that includes:
  - (a) assessing the strengths and needs of a recipient;
  - (b) customizing strength-based approaches to obtaining employment;
  - (c) expecting, encouraging, providing, and rewarding employment:
    - (i) integrated employment in the workplace at competitive wages and benefits; and
    - (ii) self-employment;
  - (d) developing partnerships with potential employers;
  - (e) maximizing appropriate employment training opportunities;
  - (f) coordinating services with other government agencies and community resources;
  - (g) to the extent possible, eliminating practices and policies that interfere with the policy described in Subsection (2); and
  - (h) arranging sub-minimum wage work or volunteer work for an eligible recipient when employment at market rates cannot be obtained.
- (4) The department shall, on an annual basis:
  - (a) set goals to implement the policy described in Subsection (2) and the plan described in Subsection (3);
  - (b) determine whether the goals for the previous year have been met; and
  - (c) modify the plan described in Subsection (3) as needed.

Amended by Chapter 221, 2015 General Session

**35A-3-104 Contracts for administration and provision of public assistance.**

The department may contract with other public or private agencies to assist in the administration and provision of public assistance.

Amended by Chapter 221, 2015 General Session

**35A-3-105 Determination of eligibility and responsibility -- Information from State Tax Commission.**

- (1) The department may have access to relevant information contained in the income tax returns of an applicant, a recipient, or a person who has a duty to support an applicant or recipient, in determining:
  - (a) eligibility for public assistance;
  - (b) payment responsibilities for institutional care; or
  - (c) any other administrative purpose consistent with this chapter.
- (2) The information requested by the department shall be:
  - (a) provided by the State Tax Commission on forms furnished by the department; and
  - (b) treated by the department as a private record under Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 221, 2015 General Session

**35A-3-106 Residency requirements.**

- (1) An applicant is only eligible for public assistance under this chapter if the applicant is living in Utah voluntarily with the intention of making the state the applicant's place of residence.
- (2) An applicant is not eligible for public assistance under this chapter if the applicant is living in Utah for a temporary purpose.

Amended by Chapter 221, 2015 General Session

**35A-3-108 Assignment of support.**

- (1)
  - (a) An applicant shall provide an assignment of support to the department regardless of whether the payment is court ordered.
  - (b) Upon the receipt of public assistance, any right of the recipient to receive support from another person passes to the state, including a right to support on behalf of any family member for whom the recipient is applying for or receiving assistance, even if the recipient has not executed and delivered an assignment of support to the department as required by Subsection (1)(a).
- (2) An assignment of support, or a right to receive support passed to the state, includes payments ordered, decreed, or adjudged by a court within this state, another state, or a territory of the United States and is not in lieu of, and does not supersede or alter, any other court order, decree, or judgment.
- (3) When an assignment of support is executed or the right to support passes to the state under this section, the recipient is eligible to regular monthly assistance and the support paid to the state is a refund.
- (4) All money refunded under this section shall be deposited into the General Fund, except any amount which is required to be credited to the federal government.
- (5) On and after the date a recipient stops receiving cash assistance, an assignment of support under this section does not apply to support that accrued before the recipient received the cash assistance if:
  - (a) the state has not collected the support by the date the recipient stops receiving cash assistance; and
  - (b) the assignment was executed on or after October 1, 1998.
- (6) The state shall distribute arrearages to a recipient in accordance with the requirements of the Social Security Act, 42 U.S.C. Sec. 657.

- (7) When an assignment of support includes child support, the total amount of child support assigned to the state and collected under this section may not exceed the total amount of cash assistance received by the recipient.

Amended by Chapter 221, 2015 General Session

**35A-3-109 Assistance provided to guardian or other caretaker -- Periodic review.**

- (1) At the discretion of the department, the department may pay the public assistance to the legal guardian of a recipient.
- (2) The department may only provide cash assistance on behalf of an eligible recipient under Part 3, Family Employment Program, to another individual interested in or concerned with the welfare of the recipient if:
  - (a) by reason of the recipient's physical or mental condition, the recipient is unable to manage funds;
  - (b) the provision of cash assistance directly to the recipient would be contrary to the recipient's welfare; or
  - (c) the department is acting according to federal requirements.
- (3) The department shall:
  - (a) undertake or contract with other state agencies to make special efforts to protect the welfare of a recipient and improve the recipient's capacity for self-care; and
  - (b) periodically review a recipient's condition to determine whether, in the best interest of the recipient:
    - (i) cash assistance that is provided to an individual other than the recipient should be discontinued; or
    - (ii) a legal guardian should be appointed.

Amended by Chapter 221, 2015 General Session

**35A-3-110 Third party obligation -- Interest.**

- (1) If the department expends public assistance on behalf of a recipient for services or supplies, for which another person is obligated to reimburse the department, the department shall notify the person of the obligation to make the reimbursement.
- (2) Upon receiving notification under Subsection (1), the notified person shall make the reimbursement within 60 days.
- (3) After the time period established under Subsection (2), the department shall charge interest on any unpaid balance at the rate of 8% per annum unless an extension is granted by the department.

Amended by Chapter 221, 2015 General Session

**35A-3-111 Collection of overpayments.**

- (1) The department shall recover overpayments as described in Section 35A-3-603.
- (2) An excess property lien that is required by a department program, but is not transferred to the federal government, remains a condition of eligibility in public assistance programs.
- (3) A recipient may appeal an initial department determination that there has been an overpayment under rules made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 221, 2015 General Session

**35A-3-112 Assistance not assignable -- Exemption from execution, garnishment, bankruptcy, or insolvency proceedings.**

- (1) Public assistance provided under this chapter is not assignable at law or in equity.
- (2) None of the money paid or payable under this chapter is subject to:
  - (a) execution, levy, attachment, garnishment, or other legal process; or
  - (b) the operation of bankruptcy or insolvency law.

Amended by Chapter 221, 2015 General Session

**35A-3-113 Prohibition of charges or fees for representing applicants or recipients.**

Except for criminal proceedings, a person may not charge or receive a fee for representing an applicant or recipient in a proceeding under this chapter, or with respect to an application, in an amount greater than the amount determined by the court or body before whom an applicant or recipient has been represented regardless of who pays the charge or fee.

Amended by Chapter 221, 2015 General Session

**35A-3-118 Self-reliance training.**

- (1) If the department determines that it is not prohibited under federal law or regulation, a client who is at least 21 years old, but who is younger than 65 years old, and who is receiving public assistance under this chapter, shall complete at least two hours of approved self-reliance training within 90 days of the first day of receiving public assistance.
- (2) If the department determines that federal law or regulation regarding a specific service or benefit under this chapter prohibits requiring a client to complete at least two hours of self-reliance training within 90 days of first receiving public assistance, the department shall:
  - (a) seek a waiver from the appropriate federal agency to allow requiring the training; and
  - (b) inform the client about the option of completing self-reliance training.
- (3) The department shall ensure that approved self-reliance training:
  - (a) is designed to help clients learn to become financially stable and less dependent on government assistance;
  - (b) teaches skills and knowledge that will assist clients in becoming self-reliant;
  - (c) is available at sufficient times and places to enable clients to reasonably complete the training;
  - (d) is offered at no cost to clients;
  - (e) includes an option for online training; and
  - (f) is provided and taught in a manner that is sensitive to the specific needs and challenges of clients, including:
    - (i) employment situations and work schedules;
    - (ii) health or disability related employment issues;
    - (iii) family care responsibilities and schedules; and
    - (iv) transportation issues.
- (4) Approved self-reliance training may be offered by the department or any of the following if approved by the department:
  - (a) a civic organization as defined in Section 35A-3-102;
  - (b) a for-profit entity;
  - (c) an educational institution; or



- (d) any state or local entity.
- (5) The director may contract with a civic organization to provide approved self-reliance training, if the director follows the procedures for contracting with a civic organization for the provision of social capital as described in Section 35A-3-507.
- (6) As part of the annual written report described in Section 35A-1-109, the department shall:
  - (a) describe what entities are providing approved self-reliance training;
  - (b) provide the number of clients who have completed at least two hours of approved self-reliance training;
  - (c) describe any services or benefits under this chapter that may not be conditioned on the completion of self-reliance training because of federal law or regulation; and
  - (d) describe the response to any waiver request described in Subsection (2)(a).
- (7) A client's completion of the approved self-reliance training described in Subsection (1) is not a condition of the client continuing to receive public assistance.

Enacted by Chapter 297, 2016 General Session

## **Part 2 Office of Child Care**

### **35A-3-201 Definitions.**

As used in this part:

- (1) "Child care" means the child care services defined in Section 35A-3-102 for:
  - (a) children age 12 or younger; and
  - (b) children with disabilities age 18 or younger.
- (2) "Child care provider association" means an association:
  - (a) that has functioned as a child care provider association in the state for at least three years; and
  - (b) is affiliated with a national child care provider association.
- (3) "Committee" means the Child Care Advisory Committee created in Section 35A-3-205.
- (4) "Director" means the director of the Office of Child Care.
- (5) "Office" means the Office of Child Care created in Section 35A-3-202.

Amended by Chapter 221, 2015 General Session

### **35A-3-202 Creation.**

- (1) There is created within the Department of Workforce Services an Office of Child Care.
- (2) The office shall be administered by a director who shall be appointed by the executive director and who may be removed from that position at the will of the executive director.

Amended by Chapter 221, 2015 General Session

### **35A-3-203 Functions and duties of office -- Annual report.**

The office shall:

- (1) assess critical child care needs throughout the state on an ongoing basis and focus its activities on helping to meet the most critical needs;

- (2) provide child care subsidy services for income-eligible children through age 12 and for income-eligible children with disabilities through age 18;
- (3) provide information:
  - (a) to employers for the development of options for child care in the work place; and
  - (b) for educating the public in obtaining quality child care;
- (4) coordinate services for quality child care training and child care resource and referral core services;
- (5) apply for, accept, or expend gifts or donations from public or private sources;
- (6) provide administrative support services to the committee;
- (7) work collaboratively with the following for the delivery of quality child care, early childhood programs, and school age programs throughout the state:
  - (a) the State Board of Education; and
  - (b) the Department of Health;
- (8) research child care programs and public policy to improve the quality and accessibility of child care, early childhood programs, and school age programs in the state;
- (9) provide planning and technical assistance for the development and implementation of programs in communities that lack child care, early childhood programs, and school age programs;
- (10) provide organizational support for the establishment of nonprofit organizations approved by the Child Care Advisory Committee, created in Section 35A-3-205;
- (11) coordinate with the department to include in the annual written report described in Section 35A-1-109 information regarding the status of child care in Utah; and
- (12) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with state and federal law, establishing the eligibility requirements for a child care provider to receive a grant or subsidy, including for the following:
  - (a) providing child care for an income-eligible child age 12 or younger;
  - (b) providing child care for an income-eligible child with disabilities age 18 or younger; and
  - (c) qualifying for an award from the High Quality School Readiness Grant Program created in Section 53F-6-305.

Amended by Chapter 89, 2019 General Session

**35A-3-204 Duties of director.**

The director shall:

- (1) enforce rules made by the department regulating the use of services provided by the office;
- (2) supervise office staff and prepare an annual work plan; and
- (3) apply for, accept, and expend donations from public or private sources to assist the office in fulfilling its statutory obligations.

Amended by Chapter 221, 2015 General Session

**35A-3-205 Creation of committee.**

- (1) There is created a Child Care Advisory Committee.
- (2) The committee shall counsel and advise the office in fulfilling its statutory obligations, including:
  - (a) reviewing and providing recommendations on the office's annual budget;
  - (b) providing recommendations on how the office might best respond to child care needs throughout the state; and
  - (c) providing recommendations on the use of money in the Child Care Fund and other money that comes into the office.

- (3) The committee is composed of the following members, with special attention given to insure diversity and representation from both urban and rural groups:
  - (a) one expert in early childhood development;
  - (b) one child care provider who operates a center;
  - (c) one child care provider who operates a family child care business;
  - (d) one parent who is representative of households receiving a child care subsidy from the office;
  - (e) one representative from the public at-large;
  - (f) one representative selected by the State Board of Education;
  - (g) one representative of the Department of Health;
  - (h) one representative of the Department of Human Services;
  - (i) two representatives from the corporate community, one who is a recent "Family Friendly" award winner and who received the award because of efforts related to child care;
  - (j) two representatives from the small business community;
  - (k) one representative from child care advocacy groups;
  - (l) one representative of children with disabilities;
  - (m) one representative from the state Head Start Association appointed by the association;
  - (n) one representative from each child care provider association; and
  - (o) one representative of a child care resource and referral center appointed by the organization representing child care resource and referral agencies.
- (4)
  - (a) The executive director shall appoint the members designated in Subsections (3)(a) through (e) and (j) through (n).
  - (b) The head of the respective departments shall appoint the members referred to in Subsections (3)(f) through (i).
  - (c) Each child care provider association shall appoint its respective member referred to in Subsection (3)(o).
- (5)
  - (a) Except as required by Subsection (5)(b), as terms of current committee members expire, the appointing authority shall appoint each new member or reappointed member to a four-year term.
  - (b) Notwithstanding the requirements of Subsection (5)(a), the appointing authority shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.
- (6) When a vacancy occurs in the membership for any reason, including missing three consecutive meetings where the member has not been excused by the chair prior to or during the meeting, the replacement shall be appointed for the unexpired term.
- (7) A majority of the members constitutes a quorum for the transaction of business.
- (8)
  - (a) The executive director shall select a chair from the committee membership.
  - (b) A chair may serve no more than two one-year terms as chair.
- (9) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 144, 2016 General Session

**35A-3-206 Child Care Fund -- Use of money -- Committee and director duties -- Restrictions.**

- (1) There is created an expendable special revenue fund known as the "Child Care Fund."
- (2) The director of the office shall administer the fund under the direction of the committee.
- (3)
  - (a) The office may form nonprofit corporations or foundations controlled by the director of the office and the committee to aid and assist the office in attaining its charitable, research, and educational objectives.
  - (b) The nonprofit corporations or foundations may receive and administer legislative appropriations, government grants, contracts, and private gifts to carry out their public purposes.
  - (c) Money collected by a nonprofit corporation or foundation described in this Subsection (3) may be deposited in the Child Care Fund.
  - (d) A nonprofit foundation controlled by the director of the office and the committee shall submit to the Division of Finance, within 60 days after the close of the foundation's fiscal year, a financial report summarizing the foundation's financial position and results of operations of the most recent fiscal year.
- (4)
  - (a) Money may be deposited into the fund from a variety of sources, including grants, private foundations, and individual donors.
  - (b) The fund shall be used to accept money designated for child care initiatives that will improve the quality, affordability, or accessibility of child care.
- (5) The money in the fund that is not restricted to a specific use under federal law or by donors may not be expended without approval of the committee.
- (6) The state treasurer shall invest the money in the fund under Title 51, Chapter 7, State Money Management Act, except that all interest or other earnings derived from money in the fund shall be deposited in the fund.
- (7) The money in the fund may not be used for administrative expenses of the office provided for by legislative appropriation.
- (8) The committee shall:
  - (a) advise the director of the office on child care needs in the state and on relevant operational aspects of any grant, loan, or revenue collection program established under this part;
  - (b) recommend specific child care projects to the director of the office;
  - (c) recommend policy and procedures for administering the fund;
  - (d) make recommendations on grants, loans, or contracts from the fund for any of the child care activities authorized under this part;
  - (e) establish the criteria by which loans and grants will be made;
  - (f) determine the order in which approved child care projects will be funded;
  - (g) make recommendations regarding the distribution of money from the fund in accordance with the procedures, conditions, and restrictions placed on the money by the donors; and
  - (h) have joint responsibility with the office to solicit public and private funding for the fund.
- (9) Fund money shall be used for the following activities:
  - (a) training of child care providers;
  - (b) scholarships and grants for child care providers' professional development;
  - (c) child care public awareness and consumer education services;
  - (d) child care provider recruitment;
  - (e) Office of Child Care sponsored activities;
  - (f) matching money for obtaining grants; or

- (g) other activities that will assist in the improvement of child care quality, affordability, or accessibility.
- (10) The director of the office, with the consent of the committee and the executive director, may grant, lend, or contract money from the fund for child care purposes to:
  - (a) local governments;
  - (b) nonprofit community, charitable, or neighborhood-based organizations;
  - (c) regional or statewide nonprofit organizations; or
  - (d) child care providers.
- (11) Preference may be given, but awards may not be limited to, entities that apply for money from the fund and that demonstrate the following:
  - (a) programmatic or financial need;
  - (b) diversity of beneficiaries or geographic location; or
  - (c) coordination with or enhancement of existing services.
- (12) The executive director or the executive director's designee shall monitor on an annual basis the activities of the entities that receive grants, loans, or contracts issued from the fund to ensure compliance with the terms and conditions imposed on the entities by the fund.
- (13) Each entity receiving a grant, loan, or contract shall provide the director of the office with an annual accounting of how the money the entity received from the fund has been spent.
- (14)
  - (a) The director of the office shall make an annual report to the committee regarding the status of the fund and the programs and services funded by the fund.
  - (b) The report shall be included in the annual written report described in Section 35A-1-109.

Amended by Chapter 221, 2015 General Session

**35A-3-207 Community-based prevention programs.**

- (1) As used in this section:
  - (a) "political subdivision" means a town, city, county, or school district;
  - (b) "qualified sponsor" means a:
    - (i) political subdivision;
    - (ii) community nonprofit, religious, or charitable organization;
    - (iii) regional or statewide nonprofit organization; or
    - (iv) private for profit or nonprofit child care organization with experience and expertise in operating community-based prevention programs described in Subsection (2) and that are licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities.
- (2) Within appropriations from the Legislature, the department may provide grants to qualified sponsors for community-based prevention programs that:
  - (a) support parents in their primary care giving role to children;
  - (b) provide positive alternatives to idleness for school-aged children when school is not in session; and
  - (c) support other community-based prevention programs.
- (3) In awarding a grant under this section, the department shall:
  - (a) request proposals for funding from potential qualified sponsors; and
  - (b) ensure that each dollar of funds from political subdivisions or private funds is matched for each dollar received from the department.
- (4) In meeting the matching requirements under Subsection (3), the department may consider the value of in-kind contributions, including materials, supplies, paid labor, volunteer labor, and the

incremental increase in building maintenance and operation expenses incurred attributable to the prevention program.

- (5) In awarding a grant under this section, the department shall consider:
  - (a) the cash portion of the proposed match in relation to the financial resources of the qualified sponsor; and
  - (b) the extent to which the qualified sponsor has:
    - (i) consulted and collaborated with parents of children who are likely to participate, local parent-teacher organizations, and other parent organizations;
    - (ii) identified at-risk factors that will be addressed through the proposed prevention program;
    - (iii) identified protective factors and developmental assets that will be supported and strengthened through the proposed prevention program; and
    - (iv) encouraged the financial support of parents and the organizations described in Subsection (5)(b)(i).
- (6) The department shall award at least 50% of the grants under this section to organizations described in Subsection (1)(b)(iv).
- (7) The department may not allow the use of federal funds as matching funds under this act.

Amended by Chapter 221, 2015 General Session

**35A-3-208 Early childhood services study.**

- (1) The department and the office shall complete a one-time study and analysis of:
  - (a) the services and resources currently available in the state for children five years old and younger and their families; and
  - (b) the beneficial services and resources not readily available or affordable for children five years old and younger and their families.
- (2) The study and analysis of the services and resources currently available for children five years old and younger and their families shall include:
  - (a) an inventory of current services and resources available from the department, other government agencies and entities, and, subject to the discretion of the department and the office, private entities;
  - (b) an analysis of the sources and uses of money that fund the current services and resources;
  - (c) an analysis of the coordination and communication between providers of the services and resources, including identifying potential opportunities to increase coordination between providers, better align services, and more efficiently use resources; and
  - (d) a description of where information regarding services and resources currently available for children five years old and younger and their families is located, including recommendations for potentially improving access to and awareness of the availability of such services and resources.
- (3) The study and analysis described in this section shall include a needs assessment for children five years old and younger and their families with an emphasis on:
  - (a) what services and resources at-risk children need to successfully overcome problems associated with poverty, hunger, trauma, and lack of educational opportunities, including recommendations for potential improvements in providing access to such services and resources; and
  - (b) describing the different needs, challenges, and any suggested improvements related to the availability of services to at-risk children living in areas with various demographic characteristics, including at-risk children in both urban and rural counties.

- (4) The department shall obtain information from and cooperate with other state agencies to complete the study and analysis, including the:
  - (a) Department of Health;
  - (b) Department of Human Services;
  - (c) State Board of Education; and
  - (d) state system of higher education.
- (5) Subject to other provisions of state or federal law, if contacted by the department, other state agencies, including those listed in Subsection (4), shall share information and cooperate with the department to assist the department in completing the study and analysis.
- (6) The department may obtain information from and cooperate with federal and nonprofit entities to complete the study and analysis, including the:
  - (a) 2-1-1 program; and
  - (b) Head Start program.
- (7) On or before October 31, 2017, the department shall complete the data gathering and research for the study and analysis described in this section and provide a preliminary report to the:
  - (a) Economic Development and Workforce Services Interim Committee; and
  - (b) Education Interim Committee.
- (8) On or before January 1, 2018, the department shall provide a final version of the study and analysis described in this section to the:
  - (a) Economic Development and Workforce Services Interim Committee; and
  - (b) Education Interim Committee.

Enacted by Chapter 420, 2017 General Session

### **Part 3 Family Employment Program**

#### **35A-3-301 Purpose -- Legislative findings.**

- (1) The Legislature finds that:
  - (a) employment improves the quality of life for parents, children, and individuals by increasing family income, developing job skills, and improving self-esteem; and
  - (b) the purpose of the cash assistance provided under this part is to assist a parent recipient to obtain employment that is sufficient to sustain a family, to ensure the dignity of those receiving assistance, to prevent families with children from becoming homeless, and to strengthen families.
- (2) The Legislature recognizes that even with assistance, some recipients may be unable to attain complete self-sufficiency.

Amended by Chapter 407, 2017 General Session

#### **35A-3-302 Eligibility requirements.**

- (1) There is created the "Family Employment Program" to provide cash assistance under this part.
- (2)
  - (a) The department shall submit a state plan to the Secretary of the United States Department of Health and Human Services to obtain funding under the federal Temporary Assistance for Needy Families Block Grant.

- (b) The department shall make the state plan consistent with this part and federal law.
- (c) If a discrepancy exists between a provision of the state plan and this part, this part supersedes the provision in the state plan.
- (3) The services provided under this part are for both one-parent and two-parent families.
- (4) To be eligible for cash assistance under this part, a family shall:
  - (a) have at least one minor dependent child; or
  - (b) have a parent who is in the third trimester of a pregnancy.
- (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules for eligibility and the amount of cash assistance a family is eligible to receive under this part based on:
  - (a) family size;
  - (b) family income;
  - (c) income disregards;
  - (d) other relevant factors; and
  - (e) if the applicant has met the eligibility requirements under Subsections (5)(a) through (d), the assessment and other requirements described in Sections 35A-3-304 and 35A-3-304.5.
- (6) To determine eligibility, the department may not consider money on deposit in an Individual Development Account established under Section 35A-3-312.
- (7) The department shall provide for an appeal of a determination of eligibility in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (8)
  - (a) The department shall make a report to the Social Services Appropriations Subcommittee on any proposed rule change made under Subsection (5) that would modify the:
    - (i) eligibility requirements for cash assistance; or
    - (ii) amount of cash assistance a family is eligible to receive.
  - (b) The department shall submit the report under Subsection (8)(a) prior to implementing the proposed rule change.
  - (c) The report under Subsection (8)(a) shall include:
    - (i) a description of the department's current practice or policy that it is proposing to change;
    - (ii) an explanation of why the department is proposing the change;
    - (iii) the effect of an increase or decrease in cash benefits on families; and
    - (iv) the fiscal impact of the proposed change.
  - (d) The department may use the Notice of Proposed Rule Amendment form filed with the Office of Administrative Rules as its report if the notice contains the information required under Subsection (8)(c).
- (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules to ensure that:
  - (a) a recipient of assistance from the Family Employment Program:
    - (i) has adequate access to the assistance;
    - (ii) has the ability to use and withdraw assistance with minimal fees or surcharges, including the opportunity to obtain assistance with no fees or surcharges;
    - (iii) is provided information regarding fees and surcharges that may apply to assistance accessed through an electronic fund transaction; and
    - (iv) is provided information explaining the restrictions on accessing assistance described in Subsection (10); and
  - (b) information regarding fees and surcharges that may apply when accessing assistance from the Family Employment Program through an electronic fund transaction is available to the public.



- (10) An individual receiving assistance under this section may not access the assistance through an electronic benefit transfer, including through an automated teller machine or point-of-sale device, in an establishment in the state that:
- (a) exclusively or primarily sells intoxicating liquor;
  - (b) allows gambling or gaming; or
  - (c) provides adult-oriented entertainment where performers disrobe or perform unclothed.
- (11) An establishment described under Subsection (10)(a), (b), or (c) may not allow an individual to access the assistance under this section on the establishment's premises through an electronic benefit transfer, including through an automated teller machine or point-of-sale device.
- (12) In accordance with federal requirements and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules to prevent individuals from accessing assistance in a manner prohibited by Subsections (10) and (11), which rules may include enforcement provisions that impose sanctions that temporarily or permanently disqualify an individual from receiving assistance.

Amended by Chapter 193, 2016 General Session

Amended by Chapter 222, 2016 General Session

**35A-3-303 Diversion.**

- (1)
- (a) When an applicant applies for cash assistance under this part, the department shall assess whether the applicant should be helped by:
    - (i) diversion to avoid extended cash assistance; or
    - (ii) normal cash assistance under this part.
  - (b) In completing the assessment under this section, the department may consider the following:
    - (i) the applicant's employment history;
    - (ii) the likelihood of the applicant obtaining immediate full-time employment;
    - (iii) the applicant's general prospect for obtaining full-time employment;
    - (iv) the applicant's need for cash assistance to pay for housing or substantial and unforeseen expenses or work-related expenses;
    - (v) housing stability; and
    - (vi) the adequacy of the applicant's child care arrangements, if applicable.
- (2) If the department determines that the applicant should be helped by diversion and the applicant agrees with this determination, the department shall provide a single payment of cash assistance up to three times the maximum monthly amount of cash assistance that the applicant would be otherwise qualified to receive based on household size.
- (3) If the department determines that diversion is not appropriate, an applicant may receive cash assistance as provided in this part.

Amended by Chapter 221, 2015 General Session

**35A-3-304 Assessment -- Participation requirements and limitations -- Employment plan -- Mentors.**

- (1)
- (a) Within 30 business days of the date of enrollment, the department shall provide that a parent recipient:
    - (i) is assigned an employment counselor; and
    - (ii) completes an assessment provided by the department regarding the parent recipient's:

- (A) prior work experience;
  - (B) ability to become employable; and
  - (C) skills.
- (b) The assessment provided under Subsection (1)(a)(ii) shall include a survey to be completed by the parent recipient with the assistance of the department.
- (2)
- (a) Within 15 business days of a parent recipient completing an assessment:
- (i) the department and the parent recipient shall enter into an employment plan; and
  - (ii) the parent recipient shall complete a written questionnaire, provided by the department, designed to accurately determine the likelihood of the parent recipient having a substance use disorder involving the misuse of a controlled substance.
- (b) The employment plan shall have a target date for entry into employment.
- (c) The department shall provide a copy of the employment plan to the parent recipient.
- (d) For the parent recipient, the employment plan may include:
- (i) job searching requirements;
  - (ii) if the parent recipient does not have a high school diploma, participation in an educational program to obtain a high school diploma, or its equivalent;
  - (iii) education or training necessary to obtain employment;
  - (iv) a combination of work and education or training; and
  - (v) assisting the Office of Recovery Services in good faith to:
    - (A) establish the paternity of a minor child; and
    - (B) establish or enforce a child support order.
- (e) If the parent recipient tests positive for the unlawful use of a controlled substance after taking a drug test under Section 35A-3-304.5, the employment plan shall include an agreement by the parent recipient to:
- (i) participate in treatment for a substance use disorder; and
  - (ii) meet the other requirements of Section 35A-3-304.5.
- (f) The department's responsibilities under the employment plan may include:
- (i) providing cash and other types of public and employment assistance, including child care;
  - (ii) assisting the parent recipient to obtain education or training necessary for employment;
  - (iii) assisting the parent recipient to set up and follow a household budget; and
  - (iv) assisting the parent recipient to obtain employment.
- (g) The department may amend the employment plan to reflect new information or changed circumstances.
- (h) If immediate employment is an activity in the employment plan, the parent recipient shall:
- (i) promptly commence a search for employment for a specified number of hours each week; and
  - (ii) regularly submit a report to the department on:
    - (A) how time was spent in search for a job;
    - (B) the number of job applications completed;
    - (C) the interviews attended;
    - (D) the offers of employment extended; and
    - (E) other related information required by the department.
- (i)
- (i) If full-time education or training to secure employment is an activity in an employment plan, the parent recipient shall promptly undertake a full-time education or training program.
  - (ii) The employment plan may describe courses, education or training goals, and classroom hours.

- (j)
  - (i) The department may only provide cash assistance under this part if the parent recipient agrees in writing to make a good faith effort to comply with the parent recipient's employment plan.
  - (ii) The department shall establish a process to reconcile disputes between a parent recipient and the department as to whether:
    - (A) the parent recipient has made a good faith effort to comply with the employment plan; or
    - (B) the department has complied with the employment plan.
  - (iii) If a parent recipient consistently fails to show good faith in complying with the employment plan, the department may seek to terminate all or part of the cash assistance services provided under this part.
- (3) The department may only provide cash assistance on behalf of a minor child under this part if the minor child is:
  - (a) enrolled in and attending school in compliance with Sections 53G-6-202 and 53G-6-203; or
  - (b) exempt from school attendance under Section 53G-6-204.
- (4) This section does not apply to a person who has received diversion assistance under Section 35A-3-303.
- (5)
  - (a) The department may recruit and train volunteers to serve as mentors for parent recipients.
  - (b) A mentor may advocate on behalf of a parent recipient and help a parent recipient:
    - (i) develop life skills;
    - (ii) implement an employment plan; or
    - (iii) obtain services and support from:
      - (A) the volunteer mentor;
      - (B) the department; or
      - (C) civic organizations.

Amended by Chapter 415, 2018 General Session

### **35A-3-304.5 Drug testing requirements.**

- (1)
  - (a) If the results of the written questionnaire described in Subsection 35A-3-304(2) indicate a reasonable likelihood that a parent recipient may have a substance use disorder involving the misuse of a controlled substance, the department shall require the parent recipient to meet with a licensed clinical therapist and be evaluated for a potential substance use disorder involving the misuse of a controlled substance.
  - (b) If the licensed clinical therapist determines that there is a reasonable likelihood that the parent recipient may have a substance use disorder involving the misuse of a controlled substance, the department shall require the parent applicant to take a drug test at the department's expense in order to continue to receive cash assistance under this part.
- (2) If a parent recipient refuses to meet with a licensed clinical therapist or take a drug test if required under Subsection (1), the department shall terminate cash assistance under this part and the parent recipient may not reapply for cash assistance under this part for:
  - (a) 90 days after a first refusal to meet with a licensed clinical therapist or take a drug test; or
  - (b) one year after a second refusal to meet with a licensed clinical therapist or take a drug test within one year.
- (3) A drug test given under this section shall be administered with due regard to the privacy and dignity of the person being tested.

- (4) Before taking a drug test under this section, a parent recipient may advise the person administering the test regarding any prescription or over-the-counter medication the parent recipient is taking.
- (5) The result of a drug test given under this section is a private record in accordance with Section 63G-2-302 and disclosure to a third party is prohibited except as provided under Title 63G, Chapter 2, Government Records Access and Management Act.
- (6) If a parent recipient tests negative for the unlawful use of a controlled substance after taking a drug test under Subsection (1), the parent recipient is eligible for cash assistance, subject to the other eligibility requirements of this part.
- (7) If a parent recipient tests positive for the unlawful use of a controlled substance after taking a drug test under Subsection (1), the parent recipient:
  - (a) shall be given a list of approved substance use disorder treatment providers that are available in the area in which the individual resides; and
  - (b) may continue to receive benefits if the parent recipient enters into and follows the requirements of the parent recipient's employment plan, including:
    - (i) receiving treatment, at the department's expense, from an approved substance use disorder treatment provider for at least 60 days;
    - (ii) testing negative for the unlawful use of a controlled substance:
      - (A) in each subsequent drug test required by department rule during treatment; and
      - (B) in an additional drug test given at the conclusion of treatment; and
    - (iii) meeting the other requirements of receiving cash assistance under this part.
- (8)
  - (a) The department shall terminate cash assistance under this part, if a parent recipient:
    - (i) declines to enter into an employment plan required by Subsection (7); or
    - (ii) enters into, but fails to meet, a requirement of an employment plan under Subsection (7), including if the parent recipient refuses to take a drug test required by the employment plan or tests positive for the unlawful use of a controlled substance in a drug test required by the employment plan.
  - (b) A parent recipient whose cash assistance has been terminated under Subsection (8)(a) may not reapply for cash assistance under this part for:
    - (i) except as provided in Subsection (8)(b)(ii), 90 days after the day on which the department determines, under this Subsection (8), that the parent recipient is no longer eligible for cash assistance; or
    - (ii) one year after the day on which the department determines, under this Subsection (8), that the parent recipient is no longer eligible for cash assistance, if the department has previously determined on at least one other occasion in the past year that the parent recipient is no longer eligible for cash assistance under this Subsection (8).

Amended by Chapter 105, 2016 General Session

**35A-3-306 Limits on eligibility -- Transitional cash assistance.**

- (1) As used in this section, "battered or subjected to extreme cruelty" has the same meaning as defined in The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. Sec. 608(a)(7)(C)(iii).
- (2) Except as provided in Subsection (4), the department may not provide cash assistance to a family who has received cash assistance for 36 months or more.
- (3)

- (a) The department shall count toward the time limit described in Subsection (2) any time after January 1, 1997, during which:
  - (i) the parent recipient received cash assistance in this or another state; and
  - (ii) the parent recipient is disqualified from receiving cash assistance and the parent recipient's income and assets are counted in determining eligibility for the family in this or another state.
- (b) The department may not count toward the time limit described in Subsection (2) or the time period described in Subsection (4) any time during which:
  - (i) a person 18 years of age or older received cash assistance as a minor child and not as a parent; or
  - (ii) a parent recipient received transitional cash assistance under Subsection (5).
- (4)
  - (a) The department may provide cash assistance to a family for up to 24 months beyond the time limit described in Subsection (2) if during the previous two months the parent recipient was employed for at least 20 hours per week.
  - (b) Notwithstanding the time limit described in Subsection (2), the department may provide cash assistance to a family beyond the time limit in Subsection (2):
    - (i) by reason of a hardship;
    - (ii) if the family includes an individual who has been battered or subjected to extreme cruelty; or
    - (iii) if a parent volunteers to fully participate in a department-approved employment and training activity as prescribed by rules made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (c) Notwithstanding the time limit established in Subsection (4)(a), the department may provide cash assistance to a family beyond the additional time period in Subsection (4)(a):
    - (i) by reason of a hardship; or
    - (ii) if the family includes an individual who has been battered or subjected to extreme cruelty.
  - (d) The department may only provide the additional cash assistance described in Subsections (4)(b) and (c) for up to 20% of the average monthly number of families who receive cash assistance under this part.
  - (e) Except as provided in Subsections (4)(b) and (c), the department may not provide cash assistance to a family who has received 60 months of cash assistance after October 1, 1996.
- (5)
  - (a) The department may provide transitional cash assistance to a parent recipient:
    - (i) if the department determines the transitional cash assistance is necessary to stabilize employment and prevent recidivism of a recipient;
    - (ii) who was previously receiving cash assistance under the Family Employment Program but who becomes ineligible due to earned or unearned income; and
    - (iii) for a maximum of three months if the parent recipient is employed an average of 30 hours per week during the transitional period.
  - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules for the provision of transitional cash assistance under this section.

Amended by Chapter 221, 2015 General Session

**35A-3-307 Cash assistance to a single minor parent.**

- (1) The department may provide cash assistance to a single minor parent in accordance with this section.
- (2) A single minor parent who receives cash assistance under this part shall:

- (a) except as provided under Subsection (3), reside in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent;
  - (b) participate in education for parenting and life skills;
  - (c) participate in infant and child wellness programs approved by the department; and
  - (d) for at least 20 hours per week:
    - (i) if the single minor parent does not have a high school diploma, attend high school or an alternative to high school;
    - (ii) participate in education or training; or
    - (iii) participate in a combination of employment and education or training.
- (3)
- (a) If the department determines that the requirements of Subsection (2)(a) are not appropriate for a single minor parent, the department may assist the single minor parent to obtain suitable living arrangements, including an adult-supervised living arrangement.
  - (b) The department may only provide cash assistance to a single minor parent who is exempt from the requirements of Subsection (2)(a) if the single minor parent resides in a living arrangement that is approved by the department.
  - (c) The approval by the department of a living arrangement under Subsection (3)(b):
    - (i) is a means of safeguarding the use of state and federal funds; and
    - (ii) is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.
- (4)
- (a) If a single minor parent resides with a parent, the department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for services under this part.
  - (b) If a single minor parent receives services under this chapter but does not reside with a parent, the department shall seek an order under Title 78B, Chapter 12, Utah Child Support Act, requiring the parent of the single minor parent to financially support the single minor parent.
- (5) The requirements of this section shall be included in a single minor parent's employment plan under Section 35A-3-304.

Amended by Chapter 221, 2015 General Session

**35A-3-308 Adoption services -- Printed information -- Supports provided.**

- (1) The department may provide assistance under this section to an applicant who is pregnant and is not receiving cash assistance at the beginning of the third trimester of pregnancy.
- (2) For a pregnant applicant, the department shall:
  - (a) refer the applicant for appropriate prenatal medical care, including maternal health services provided under Title 26, Chapter 10, Family Health Services;
  - (b) inform the applicant of free counseling about adoption from licensed child placement agencies and licensed attorneys; and
  - (c) offer the applicant the adoption information packet described in Subsection (3).
- (3) The department shall publish an adoption information packet that:
  - (a) is easy to understand;
  - (b) contains geographically indexed materials on the public and private organizations that provide adoption assistance;
  - (c) lists the names, addresses, and telephone numbers of licensed child placement agencies and licensed attorneys who place children for adoption;

- (d) explains that private adoption is legal and that the law permits adoptive parents to reimburse the costs of prenatal care, childbirth, neonatal care, and other expenses related to pregnancy; and
  - (e) describes the services available to the applicant under this section.
- (4)
- (a) A recipient remains eligible for assistance under this section, even though the recipient relinquishes a child for adoption, if the adoption is in accordance with Sections 78B-6-120 through 78B-6-122.
  - (b) The assistance provided under this section may include:
    - (i) reimbursement for expenses associated with care and confinement during pregnancy as provided in Subsection (5); and
    - (ii) for a maximum of 12 months from the date of relinquishment, coordination of services to assist the recipient in:
      - (A) receiving appropriate educational and occupational assessment and planning;
      - (B) enrolling in appropriate education or training programs, including high school completion and adult education programs;
      - (C) enrolling in programs that provide assistance with job readiness, employment counseling, finding employment, and work skills;
      - (D) finding suitable housing;
      - (E) receiving medical assistance, under Title 26, Chapter 18, Medical Assistance Act, if the recipient is otherwise eligible; and
      - (F) receiving counseling and other mental health services.
- (5)
- (a) Except as provided in Subsection (5)(b), a recipient under this section is eligible to receive an amount equal to the maximum monthly amount of cash assistance paid under this part to one person for up to 12 consecutive months from the date of relinquishment.
  - (b) If a recipient is otherwise eligible to receive cash assistance under this part, the recipient is eligible to receive an amount equal to the increase in cash assistance the recipient would have received but for the relinquishment for up to 12 consecutive months from the date of relinquishment.
- (6)
- (a) To remain eligible for assistance under this section, a recipient shall:
    - (i) with the cooperation of the department, develop and implement an employment plan that includes goals for achieving self-sufficiency and that describes the action the recipient will take concerning education and training to achieve full-time employment;
    - (ii) if the recipient does not have a high school diploma, enroll in high school or an alternative to high school and demonstrate progress toward graduation; and
    - (iii) make a good faith effort to meet the goals of the employment plan as described in Section 35A-3-304.
  - (b) Cash assistance provided to a recipient before the recipient relinquishes a child for adoption is part of the state plan.
  - (c) Assistance provided under Subsection (5):
    - (i) shall be provided for with state funds; and
    - (ii) may not be counted when determining subsequent eligibility for cash assistance under this chapter.
  - (d) The time limit provisions of Section 35A-3-306 apply to cash assistance provided under the state plan.
  - (e) The department shall monitor a recipient's compliance with this section.

- (f) Except for Subsection (6)(b), Subsections (2) through (6) are excluded from the state plan.

Amended by Chapter 221, 2015 General Session

**35A-3-309 Information regarding home ownership.**

- (1) The department shall provide information and service coordination to assist an applicant in obtaining affordable housing.
- (2) The information and services may include:
  - (a) information from the Utah Housing Corporation and the Housing and Community Development Division regarding special housing programs, including programs for first-time home buyers and individuals with low and moderate incomes and the eligibility requirements for those programs;
  - (b) referrals to programs operated by volunteers from the real estate industry that assist applicants in obtaining affordable housing, including information on home ownership, down payments, closing costs, and credit requirements; and
  - (c) referrals to housing programs operated by municipalities, counties, local housing authorities, and nonprofit housing organizations that assist individuals in obtaining affordable housing, including first-time home ownership.

Amended by Chapter 221, 2015 General Session

**35A-3-310 Child care services -- Rules.**

- (1) An applicant may receive assistance for child care under this part for a minor child in the care and custody of the parent recipient, unless the other parent in a two-parent family:
  - (a) is capable of caring for the family's child;
  - (b) is not employed; and
  - (c) has not entered into an employment plan with the department.
- (2) The department shall encourage a parent recipient to obtain child care at no cost from a parent, sibling, relative, or other suitable provider.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules governing eligibility for child care services for a minor child in the care and custody of a parent who does not receive cash assistance under this part.

Amended by Chapter 221, 2015 General Session

**35A-3-310.5 Child care providers -- Criminal background checks -- Payment of costs -- Prohibitions -- Department rules.**

- (1) This section applies to a child care provider who:
  - (a)
    - (i) is selected by a recipient of a child care assistance payment; or
    - (ii) is a recipient of a child care assistance payment;
  - (b) is not required to undergo a criminal background check with the Department of Health, Bureau of Child Care Licensing;
  - (c) is not a license exempt child care center or program; and
  - (d) is an eligible child care provider in accordance with department rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2)



- (a) A child care provider identified under Subsection (1) shall submit to the department the name and other identifying information, including a set of fingerprints, of:
    - (i) existing, new, and proposed individuals who provide or may provide child care; and
    - (ii) individuals who are at least 18 years of age and reside in the premises where the child care is provided.
  - (b) The Criminal Investigation and Technical Services Division created within the Department of Public Safety under Section 53-10-103 shall:
    - (i) process and conduct background checks on all individuals as requested by the department; and
    - (ii) submit required fingerprints to the U.S. Federal Bureau of Investigation for a national criminal history background check of the individual.
  - (c) The child care provider shall pay the cost of the history background check provided under Subsection (2)(b).
- (3)
- (a) A child care provider identified under Subsection (1) shall submit to the department the name and other identifying information of an individual, age 12 through 17, who resides in the premises where the child care is provided.
  - (b) The department or its representative shall access juvenile court records to determine whether an individual described in Subsection (2) or (3)(a) has been adjudicated in juvenile court of committing an act which, if committed by an adult, would be a felony or misdemeanor if:
    - (i) the individual described in Subsection (2) is under the age of 28; or
    - (ii) the individual described in Subsection (2):
      - (A) is age 28 or older; and
      - (B) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.
- (4) Except as provided in Subsection (5), a child care provider under this section may not permit an individual described under Subsection (3)(b) to:
- (a) provide subsidized child care; or
  - (b) reside at the premises where subsidized child care is provided.
- (5)
- (a) The department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to exempt the following from the restrictions of Subsection (4):
    - (i) a specific misdemeanor;
    - (ii) a specific act adjudicated in juvenile court, which if committed by an adult would be a misdemeanor; and
    - (iii) background checks of individuals other than the provider who are residing at the premises where subsidized child care is provided if that child care is provided in the child's home.
  - (b) In accordance with criteria established by department rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the executive director or the director's designee may consider and exempt individual cases, not otherwise exempt under Subsection (5)(a), from the restrictions of Subsection (4).
- (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules to determine:
- (a) whether a child care subsidy payment should be made prior to the completion of a background check, particularly in the case of a delay in making or completing the background check; and
  - (b) if, and how often, a child care provider shall resubmit the information required under Subsections (2) and (3).

Amended by Chapter 296, 2016 General Session

**35A-3-311 Cash assistance to noncitizen legal residents and drug dependent persons.**

- (1) If barred from using federal funds under federal law, the department may provide cash assistance to a legal resident who is not a citizen of the United States using funds appropriated from the General Fund.
- (2)
  - (a) The State exercises the opt out provision in Section 115 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193.
  - (b) Consistent with Subsection (2)(a), the department may provide cash assistance and SNAP benefits to a person who has been convicted of a felony involving a controlled substance, as defined in Section 58-37-2.
  - (c) As a condition for receiving cash assistance under this part, a drug dependant person, as defined in Section 58-37-2, shall:
    - (i) receive available treatment for the dependency; and
    - (ii) make progress toward overcoming the dependency.
  - (d) The department may only refer a recipient who is a drug dependent person to a treatment provider for treating drug dependency if the provider has achieved an objective level of success, as defined by department rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 221, 2015 General Session

**35A-3-312 Individual development accounts.**

- (1) As used in this section:
  - (a) "Individual development account" means a trust account funded through periodic contributions by a recipient and matched by or through a not-for-profit organization organized under Section 501(c)(3), Internal Revenue Code.
  - (b) "Qualified acquisition costs" means the costs of acquiring, constructing, or reconstructing a residence, including settlement and closing costs.
  - (c) "Qualified businesses capitalization expenses" means expenditures for capital, plant, equipment, working capital, and inventory.
- (2) An individual development account may be established by or on behalf of a recipient to enable the recipient to accumulate funds for the following purposes:
  - (a) postsecondary educational expenses, including tuition, fees, books, supplies, and transportation costs, if:
    - (i) the recipient has terminated cash assistance under this chapter; and
    - (ii) the expenses are paid from the individual development account directly to an educational institution that the recipient is attending as part of an employment plan;
  - (b) qualified acquisition costs associated with a first-time home purchase if paid from the individual development account directly to a person to whom the amount is due;
  - (c) amounts paid from an individual development account directly to a business capitalization account that is established in a federally insured financial institution and used solely for qualified business capitalization expenses; or
  - (d) the purchase of assistive technologies, vehicle modifications, or home improvements to allow a recipient with a disability to participate in work-related activities.

- (3) A recipient may only deposit earned income and funds received from a not-for-profit organization into an individual development account.

Amended by Chapter 221, 2015 General Session

**35A-3-313 Performance goals.**

- (1) The department shall establish a performance monitoring system for cash assistance provided under this part.
- (2) The department shall establish the performance indicators and performance goals that will be used in the performance monitoring system for cash assistance under this part.
- (3)
  - (a) The department shall include in the annual written report described in Section 35A-1-109, a description of the difference between actual performance and performance goals for the second, third, and fourth quarters of the prior fiscal year and the first quarter of the current fiscal year.
  - (b)
    - (i) The legislative fiscal analyst or the analyst's designee shall convey the information described in Subsection (3)(a) to the appropriation subcommittee that has oversight responsibilities for the Department of Workforce Services during the general session of the Legislature that follows the submission of the report.
    - (ii) The subcommittee may consider the information in its deliberations regarding the budget for services under this chapter.

Amended by Chapter 221, 2015 General Session

**Part 4  
General Assistance**

**35A-3-401 General Assistance.**

- (1)
  - (a) The department may provide General Assistance to individuals who are:
    - (i) not receiving cash assistance under Part 3, Family Employment Program, or Supplemental Security Income; and
    - (ii) unemployable according to standards established by the department.
  - (b)
    - (i) General Assistance described in Subsection (1)(a) may include payment in cash or in kind.
    - (ii) The department may provide General Assistance up to an amount that is no more than the existing payment level for an otherwise similarly situated recipient receiving cash assistance under Part 3, Family Employment Program.
    - (iii) Funding for General Assistance is nonlapsing.
  - (c) The department shall establish asset limitations for a General Assistance applicant.
  - (d)
    - (i) General Assistance may be granted to meet special nonrecurrent needs of an applicant for the federal Supplemental Security Income for the Aged, Blind, and Disabled program provided under 20 C.F.R. Sec. 416, if the applicant agrees to reimburse the department for

assistance advanced to the applicant while awaiting the determination of eligibility by the Social Security Administration.

(ii)

(A) Reimbursements to the department described in Subsection (1)(d)(i) up to and including \$250,000 collected in a fiscal year shall be used by the department to administer the General Assistance program and provide General Assistance to eligible applicants.

(B) Reimbursements to the department described in Subsection (1)(d)(i) over \$250,000 collected in a fiscal year shall be deposited into the General Fund.

(iii) General Assistance payments may not be made to a recipient currently receiving:

(A) cash assistance; or

(B) Supplemental Security Income for the Aged, Blind, and Disabled.

(e)

(i) General Assistance may be used for the reasonable cost of burial for a recipient if heirs or relatives are not financially able to assume this expense.

(ii) Notwithstanding Subsection (1)(e)(i), if the body of a person is unclaimed, Section 26-4-25 applies.

(iii) The department shall fix the cost of a reasonable burial and conditions under which burial expenditures may be made.

(2) The department may cooperate with any governmental unit or agency, or any private nonprofit agency, in establishing work projects to provide employment for employable persons.

Amended by Chapter 72, 2015 General Session

Amended by Chapter 189, 2015 General Session

Amended by Chapter 221, 2015 General Session

### **35A-3-402 Calculation of General Assistance grants.**

The department shall provide grants for General Assistance under Section 35A-3-401 on an ongoing basis for individuals who are unemployable:

(1) within amounts appropriated by the Legislature; and

(2) calculated in a manner substantially similar to cash assistance as provided in Section 35A-3-302.

Amended by Chapter 221, 2015 General Session

## **Part 5 Social Capital Formation Act**

### **35A-3-501 Title.**

This part is known as the "Social Capital Formation Act."

Renumbered and Amended by Chapter 174, 1997 General Session

### **35A-3-502 Definitions of social capital.**

(1) As used in this part, "social capital" means the value provided to the state by a civic organization, including values, cooperation, strength to families and neighborhoods, and ensuring livable communities and nurturing environments.

- (2) Social capital links society together by:
  - (a) creating opportunities for service and giving;
  - (b) facilitating trust and cooperation; and
  - (c) enhancing investments in physical and human capital.

Amended by Chapter 221, 2015 General Session

**35A-3-503 Purpose -- Limitations.**

- (1) Using social capital, an applicant for services under this chapter may receive a wide array of services that cannot be provided by state government alone.
- (2) The Legislature recognizes:
  - (a) the constitutional limits of state government to sustain civic institutions that provide social capital;
  - (b) that the state does not create nor can it replace civic institutions; and
  - (c) that state government should respect, recognize, and, wherever possible, constitutionally encourage strong civic institutions that sustain a sense of community.

Amended by Chapter 221, 2015 General Session

**35A-3-504 Relationship of civic and state services.**

- (1)
  - (a) Services and supports provided by a civic organization under this part are in addition to, and not in lieu of, any service provided by the department to a recipient.
  - (b) Receipt of services from a civic organization may not diminish a recipient's eligibility for services from the department.
- (2) An applicant or recipient is under no obligation to receive services from a civic organization.
- (3) A civic organization is under no obligation to provide services to a person, except as provided in a contract between the organization and the department under Section 35A-3-507.

Amended by Chapter 221, 2015 General Session

**35A-3-505 Application -- Referral to civic organizations.**

- (1) The department:
  - (a) shall assess whether an applicant is receptive to and would benefit from a service provided by a civic organization; and
  - (b) may inform the applicant of the availability of services provided by civic organizations.
- (2)
  - (a) If an applicant chooses to receive services from a civic organization, the department shall facilitate the applicant's referral to one or more appropriate civic organizations.
  - (b) If an applicant chooses not to receive the services of a civic organization or requests services available under this chapter in addition to the services of a civic organization, the department shall process the application as provided under this chapter.

Amended by Chapter 221, 2015 General Session

**35A-3-506 Diversion payment -- Referral to civic organizations.**

If a recipient receives a diversion payment under Section 35A-3-303, the department:

- (1) shall assess whether the recipient is receptive to and would benefit from services from a civic organization; and
- (2) may inform the recipient of the services that civic organizations provide.

Amended by Chapter 221, 2015 General Session

**35A-3-507 Request for proposals from civic organizations -- Contract requirements.**

- (1)
  - (a) The director or the director's designee may issue a request for proposals to civic organizations for the purpose of contracting with the department for the provision of social capital.
  - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall establish by rule:
    - (i) specifications for proposals;
    - (ii) deadlines for submissions;
    - (iii) contents of proposals;
    - (iv) the criteria upon which proposals will be accepted; and
    - (v) the amount of available funding.
- (2) Within appropriations from the Legislature, the director may enter into a contract with a civic organization, which shall include:
  - (a) the funding, if any, to be provided to the civic organization by the department;
  - (b) the geographical boundary within which the civic organization is to provide services to individuals referred by the department;
  - (c) a description of the services to be provided by the civic organization to an applicant or recipient;
  - (d) the performance monitoring system to be used by the civic organization to evaluate the effectiveness of the services that it provides; and
  - (e) other provisions that the department and civic organization consider appropriate.
- (3)
  - (a) A contract between the department and a civic organization under this section is for a defined period of time and a fixed funding amount.
  - (b) If a contract provides public funds, the civic organization is required to comply with all applicable state and federal law with respect to those funds, including any audit, recordkeeping, and financial accounting requirements.
- (4) The services provided by civic organizations under this section do not include eligibility determinations, cash assistance, SNAP benefits, or quality assurance related to these functions.

Amended by Chapter 221, 2015 General Session

**35A-3-508 Inventory of civic organizations.**

- (1) The department, in cooperation with the coalition described in Section 35A-3-510, shall complete a statewide inventory of interested civic organizations, which inventory shall include for each participating civic organization:
  - (a) a description of the services provided;
  - (b) the geographical locations served;
  - (c) methods of accessing services; and
  - (d) eligibility requirements for services.

- (2) The inventory shall be maintained, updated annually, and made available in a usable form as a resource directory for employment counselors in the department.

Amended by Chapter 221, 2015 General Session

**35A-3-510 Coalition of civic and other organizations.**

- (1) The director shall convene a coalition of civic organizations, representatives of the department, representatives of state and local agencies, advocacy organizations, public officials, community leaders, members of the Legislature, and other persons and organizations as determined by the executive director.
- (2) The coalition shall offer advice to the director on issues relevant to this part.

Amended by Chapter 221, 2015 General Session

**Part 6**  
**Administrative Determination of Overpayment Act**

**35A-3-601 Title.**

This part is known as the "Administrative Determination of Overpayments Act."

Amended by Chapter 221, 2015 General Session

**35A-3-603 Civil liability for overpayment.**

- (1) A provider, recipient, 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 before receiving notice.
- (2)
  - (a) Except as provided under Subsection (2)(b), interest on the unreturned balance of the overpayment shall accrue at the rate of 1% a month.
  - (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 federal law and rules made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, an overpayment may be recovered through deductions from cash assistance, General Assistance, SNAP benefits, other cash-related assistance provided to a recipient under this chapter, or other means provided by federal law.
- (3) A person who knowingly assists a recipient, provider, or other person in obtaining an overpayment is jointly and severally liable for the overpayment.
- (4)
  - (a) In proving civil liability for overpayment under this section, or Section 35A-3-605, when fault is alleged, the department shall prove by clear and convincing evidence that the overpayment was obtained intentionally, knowingly, recklessly as "intentionally, knowingly, and recklessly" are defined in Section 76-2-103, by false statement, misrepresentation, impersonation, or other fraudulent means, including committing any of the acts or omissions described in Sections 76-8-1203, 76-8-1204, or 76-8-1205.

- (b) If fault is established under Subsection (4)(a), Section 35A-3-605, or Title 76, Chapter 8, Part 12, Public Assistance Fraud, a person who obtained or helped another obtain an overpayment is subject to:
  - (i) a civil penalty of 10% of the amount of the overpayment; and
  - (ii) disqualification from receiving cash assistance from the Family Employment Program created in Section 35A-3-302 and the General Assistance program under Section 35A-3-401, if the overpayment was obtained from either of those programs, for the period described in Subsection (4)(c); or
  - (iii) disqualification from SNAP, if the overpayment was received from SNAP, for the period described in Subsection (4)(c).
- (c) Unless otherwise provided by federal law, the period of a disqualification under Subsection (4)(b)(ii) and (iii) is for:
  - (i) 12 months for a first offense;
  - (ii) 24 months for a second offense; and
  - (iii) permanently for a third offense.
- (5)
  - (a) Except as provided under Subsection (5)(b), if an action is filed, the department may recover, in addition to the principal sum plus interest, reasonable attorney fees and costs.
  - (b) If the repayment obligation arose from an administrative error by the department, the department may not recover attorney fees and costs.
- (6) 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.
- (7) A criminal action for public assistance fraud is governed by Title 76, Chapter 8, Part 12, Public Assistance Fraud.
- (8) Jurisdiction over benefits is continuous.
- (9) This chapter does not preclude the Department of Health from carrying out its responsibilities under Title 26, Chapter 19, Medical Benefits Recovery Act, and Chapter 20, Utah False Claims Act.

Amended by Chapter 221, 2015 General Session

**35A-3-604 Obligor presumed to have notice of department's rights -- Authority to administer oaths, issue subpoenas, and compel witnesses and production of documents -- Recovery of attorney fees, costs, and interest -- Rulemaking authority -- Administrative procedures.**

- (1) An obligor is presumed to have received notice of the rights of the department under this part upon engaging in this state in any of the acts described in Subsections 35A-3-603(3) and (4) or Section 76-8-1203, 76-8-1204, or 76-8-1205.
- (2) For the purposes of this part, the department may administer oaths and certify official acts, issue subpoenas, and compel witnesses and the production of business records, documents, and evidence.
- (3)
  - (a) Except when an overpayment results from administrative error, the department may recover from the obligor:
    - (i) reasonable attorneys' fees;
    - (ii) costs incurred in pursuing administrative remedies under this part; and
    - (iii) interest at the rate of 1% a month accruing from the date an administrative or judicial order is issued determining the amount due under this part.



- (b) The department may recover interest, attorney fees, and costs, if notice of the assessment has been included in a notice of agency action issued in compliance with Title 63G, Chapter 4, Administrative Procedures Act.
- (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make, amend, and enforce rules to carry out the provisions of this part.
- (5) Service of all notices and orders under this part shall comply with:
  - (a) Title 63G, Chapter 4, Administrative Procedures Act;
  - (b) Utah Rules of Civil Procedure; or
  - (c) rules made by the department under this part in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that meet standards required by due process.

Amended by Chapter 221, 2015 General Session

**35A-3-605 Issuance or modification of administrative order -- Voluntary acknowledgment of overpayment -- Court orders supersede administrative orders -- Notification requirement.**

- (1)
  - (a) Through an adjudicative proceeding, the department may issue or modify an administrative order that:
    - (i) determines whether an overpayment was made, the amount of the overpayment, and whether benefits were obtained by an intentional program violation;
    - (ii) reduces the overpayment determined by an administrative judgment; or
    - (iii) renews an administrative judgment.
  - (b) The department shall commence an adjudicative proceeding to renew a judgment by serving notice of agency action on the obligor before the judgment is barred by the applicable statute of limitations.
- (2) The department may accept voluntary acknowledgment of an overpayment obligation and enter into stipulated agreements to issue orders and judgments.
- (3)
  - (a) A provision of an administrative order is enforceable against an obligor, unless it is in direct conflict with or is superseded by a provision of a court order.
  - (b) To the extent of any conflict, the court order governs.
- (4) After being properly served with a notice of agency action under this part, an obligor shall notify the department of any subsequent change of address or employment.

Amended by Chapter 221, 2015 General Session

**35A-3-606 Docketing abstract of final administrative order -- Real property and personal property liens -- Effect of order -- Execution.**

- (1)
  - (a) An abstract of a final administrative order may be docketed in the district court of any county in the state.
  - (b) The time of receipt of the abstract shall be noted by the clerk on the abstract and entered in the docket.
- (2)
  - (a) From the time the abstract is docketed in the judgment docket of a district court, any administrative judgment included in the order abstracted constitutes a lien upon the real property of the obligor situated in that county.
  - (b) Unless satisfied, the lien is for a period of eight years from the date the order is entered.

- (3) The final administrative order fixing the liability of the obligor shall have the same effect as any other money judgment entered in a district court.
- (4)
  - (a) Except as provided under Subsection (4)(b), an attachment, garnishment, or execution on a judgment included in or accruing under an administrative order filed and docketed under this section shall be in the same manner and with the same effect as an attachment, garnishment, or execution on a judgment of a district court.
  - (b) A writ of garnishment on earnings shall continue to operate and require the garnishee to withhold the nonexempt portion of the earnings at each succeeding earnings disbursement interval until released in writing by the department or by court order.
- (5) The lien and enforcement remedies provided by this section are in addition to any other lien or remedy provided by law.

Amended by Chapter 221, 2015 General Session

**35A-3-607 Property subject to execution or lien -- Restriction on transfer or conveyance -- Release of excess amount above liability to obligor.**

- (1)
  - (a) Unless released under Subsection (1)(b), after receiving notice that an abstract has been docketed and a lien established under this part, a person in possession of property that may be subject to execution or lien may not pay over, release, sell, transfer, encumber, or convey that property to a person other than the department.
  - (b) The restrictions under Subsection (1)(a) do not apply if the person in possession first receives a release or waiver from the department, or a court order releasing the lien or stating that the liability does not exist or has been satisfied.
- (2) If a person has in his possession earnings, deposits, accounts, or balances owed to the obligor in excess of \$100 over the amount of the liability claimed by the department, the person may, without liability under this part, release the excess to the obligor.

Amended by Chapter 221, 2015 General Session

**35A-3-608 Schedule of payments to be paid upon liability -- Establishment -- Cancellation.**

- (1) The department may at any time:
  - (a) consistent with the income, earning capacity, and resources of the obligor, set or reset the level and schedule of payments to be paid upon the liability; and
  - (b) cancel the schedule of payments and demand immediate payment in full.
- (2) The department may recover an overpayment through deductions from cash assistance or SNAP benefits under Section 35A-3-603.

Amended by Chapter 221, 2015 General Session

**35A-3-609 Statute of limitation -- Enforcement of lien or order.**

The department may not take action for the enforcement of an order or lien issued under this part unless the action is commenced within eight years of the date of the order.

Amended by Chapter 221, 2015 General Session

**35A-3-610 Legal representation at hearings.**

- (1) A party may be represented by legal counsel at a hearing held under this part.
- (2) At the request of the department, the attorney general or the county attorney shall represent the department in a proceeding commenced under this part.

Amended by Chapter 221, 2015 General Session

## **Part 7 Refugee Services**

### **35A-3-701 Refugee services fund -- Use of money -- Committee and director duties -- Restrictions.**

- (1) There is created an expendable special revenue fund, known as the "Refugee Services Fund."
- (2) The director shall administer the fund with input from the department and any advisory committee involved with the provision of refugee services within the department.
- (3)
  - (a) Money shall be deposited into the fund from legislative appropriations, federal grants, private foundations, and individual donors.
  - (b) The director shall encourage a refugee who receives services funded under Subsection (8) to be a donor to the fund when the refugee's financial situation improves sufficiently to make a donation.
- (4) Except for money restricted to a specific use under federal law or by a donor, the director may not spend money from the fund without the input described in Subsection (2).
- (5) The state treasurer shall invest the money in the fund under Title 51, Chapter 7, State Money Management Act, and all interest or other earnings derived from the fund money shall be deposited in the fund.
- (6) Money in the fund may not be used by the director for administrative expenses.
- (7) If the department establishes a refugee services advisory committee referenced in Subsection (2), the committee may:
  - (a) advise the director on refugee services needs in the state and on relevant operational aspects of any grant or revenue collection program established under this part;
  - (b) recommend specific refugee projects to the director;
  - (c) recommend policies and procedures for administering the fund;
  - (d) make recommendations on grants made from the fund for refugee services activities authorized under this section;
  - (e) advise the director on the criteria by which grants from the fund shall be made;
  - (f) recommend the order approved projects should be funded;
  - (g) make recommendations regarding the distribution of money from the fund in accordance with federal or donor restrictions; and
  - (h) have joint responsibility to solicit public and private funding for the fund.
- (8) The director may use fund money to:
  - (a) train an existing refugee organization to develop its capacity to operate professionally and effectively and to become an independent, viable organization; or
  - (b) provide grants to refugee organizations and other entities identified in Subsection (9) to assist them:
    - (i) with case management;
    - (ii) in meeting emergency housing needs for refugees;

- (iii) in providing English language services;
  - (iv) in providing interpretive services;
  - (v) in finding and maintaining employment for refugees;
  - (vi) in collaborating with the state's public education system to improve the involvement of refugee parents in assimilating their children into public schools;
  - (vii) in meeting the health and mental health needs of refugees;
  - (viii) in providing or arranging for child care services; or
  - (ix) in administering refugee services.
- (9) The director, with the input described in Subsection (2), may grant fund money for refugee services outlined in Subsection (8) through a request for proposal process to:
- (a) local governments;
  - (b) nonprofit community, charitable, or neighborhood-based organizations or private for-profit organizations involved with providing or arranging for the provision of refugee services; or
  - (c) regional or statewide nonprofit organizations.
- (10)
- (a) The director shall enter into a written agreement with each entity that successfully applies for a grant.
  - (b) The agreement shall include specific terms for each grant consistent with the provisions of this section, including the structure, amount, and nature of the grant.
- (11) The director shall monitor the activities of the recipients of grants issued from the fund on an annual basis to ensure compliance with the terms and conditions imposed on the recipient by the fund.
- (12) The director shall require an entity that receives a grant under this section to provide periodic accounting of how the money was used.
- (13) As part of the annual written report described in Section 35A-1-109, the director shall report the status of the fund, including programs and services funded by the fund.

Renumbered and Amended by Chapter 221, 2015 General Session

**35A-3-702 Continuation of refugee services.**

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules to provide for the administration and coordination of services to refugees beyond the time period refugee assistance is provided or funded by the federal government, including the provision of:
- (a) services to address emergency needs;
  - (b) English language training; and
  - (c) services for victims of domestic violence.
- (2) The director shall administer and coordinate services under this section:
- (a) with input from the department and any office or advisory committee involved with the provision of refugee services within the department; and
  - (b) in accordance with any state and federal requirements related to the provision of services to refugees.

Renumbered and Amended by Chapter 221, 2015 General Session

**Part 8**

## Safety Net Initiative

### **35A-3-801 Title.**

This part is known as the "Safety Net Initiative."

Enacted by Chapter 133, 2016 General Session

### **35A-3-802 Safety Net Initiative -- Staff.**

- (1) As used in this section, "individuals in underserved communities" means individuals living in culturally isolated communities in the state who may lack access to public assistance and other government services.
- (2) There is created within the department the Safety Net Initiative to:
  - (a) implement strategies to increase awareness and reduce risk factors in order to improve the safety and well-being of individuals in underserved communities;
  - (b) coordinate with government agencies, nonprofit organizations, and interested individuals to provide open communication with individuals in underserved communities; and
  - (c) coordinate efforts to give individuals in underserved communities needed access to public assistance and other government services.
- (3) The department may employ or contract with individuals, entities, and support staff as necessary to administer the duties required by this section.

Renumbered and Amended by Chapter 133, 2016 General Session

## Chapter 4 Employment Security Act

### Part 1 General Provisions

### **35A-4-101 Title.**

This chapter is known as the "Employment Security Act."

Renumbered and Amended by Chapter 240, 1996 General Session

### **35A-4-102 Public policy -- General welfare requires creation of unemployment reserves -- Employment offices.**

As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Unemployment is therefore a subject of general interest and concern that requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This objective can be furthered by operating free public employment offices in affiliation with a nation-wide system of employment services, by devising appropriate methods for reducing the volume of unemployment and by the systematic accumulation of funds

during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of unemployment. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police power of the state, for the establishment and maintenance of free public employment offices and for the compulsory setting aside of unemployment reserves to be used for the benefit of unemployed persons.

Renumbered and Amended by Chapter 240, 1996 General Session

**35A-4-103 Void agreements -- Child support obligations -- Penalties.**

- (1)
- (a) Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter is void.
  - (b) Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from the employer, is void.
  - (c) An employer may not directly or indirectly:
    - (i) make, require, or accept any deduction from wages to finance the employer's contributions required from the employer;
    - (ii) require or accept any waiver of any right under this chapter by any individual in the employer's employ;
    - (iii) discriminate in regard to the hiring or tenure of work on any term or condition of work of any individual on account of the individual claiming benefits under this chapter; or
    - (iv) in any manner obstruct or impede the filing of claims for benefits.
  - (d)
    - (i) Any employer or officer or agent of an employer who violates Subsection (1)(c) is, for each offense, guilty of a class B misdemeanor.
    - (ii) Notwithstanding Sections 76-3-204 and 76-3-301, a fine imposed under this Subsection (1) shall be not less than \$100, and a penalty of imprisonment shall be not more than six months.
- (2) An individual claiming benefits may not be charged fees or costs of any kind in any proceeding under this chapter by the department or its representatives, or by any court or any officer of the court.
- (3)
- (a) Any individual claiming benefits in any proceeding before the department or its representatives or a court may be represented by counsel or any other authorized agent.
  - (b) An authorized agent, who is not an attorney, may not charge or receive for the authorized agent's services more than an amount approved by the division or administrative law judge in accordance with rules made by the department.
- (4) Except as provided for in Subsection (5):
- (a) any assignment, pledge, or encumbrance of any right to benefits that are or may become due or payable under this chapter is void;
  - (b) rights to benefits are exempt from levy, execution, attachment, or any other remedy provided for the collection of debt;
  - (c) benefits received by any individual, so long as they are not mingled with other funds of the recipient, are exempt from any remedy for the collection of all debts except debts incurred for necessities furnished to the individual or the individual's spouse or dependents during the time when the individual was unemployed; and

(d) any waiver of any exemption provided for in Subsection (4) is void.

(5)

(a) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether or not the individual owes:

- (i) child support obligations; or
- (ii) an uncollected overissuance of SNAP benefits.

(b) If the individual owes child support obligations, and is determined to be eligible for unemployment compensation, the division shall notify the state or local child support agency charged with enforcing that obligation that the individual is eligible for unemployment compensation.

(c) The division shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations:

- (i) any amount required to be deducted and withheld from unemployment compensation under legal process, as defined in the Social Security Act, 42 U.S.C. Sec. 659(i), properly served upon the department;
- (ii) the amount determined under an agreement submitted to the division under Subsection 454 (19)(B)(i) of the Social Security Act, 42 U.S.C. Sec. 654, by the state or local child support enforcement agency, except if Subsection (5)(c)(i) is applicable; or
- (iii) the amount specified by the claimant to the division if neither Subsection (5)(c)(i) nor (ii) is applicable.

(d) The division shall notify the state SNAP agency that an individual is eligible for unemployment compensation if the individual:

- (i) owes an uncollected overissuance of SNAP benefits; and
- (ii) is determined to be eligible for unemployment compensation.

(e) The division shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance of SNAP benefits:

- (i) the amount specified by the individual to the division to be deducted and withheld under this Subsection (5)(e);
- (ii) the amount, if any, determined pursuant to an agreement submitted to the state SNAP agency under Section 13(c)(3)(B) of the Food and Nutrition Act of 2008; or
- (iii) any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to Section 13(c)(3)(B) of the Food and Nutrition Act of 2008.

(f) Any amount deducted and withheld under Subsection (5)(c) or (e) shall:

- (i) be paid by the department to the appropriate:
  - (A) state or local child support enforcement agency; or
  - (B) state SNAP agency; and
- (ii) for all purposes, be treated as if it was paid to the individual as unemployment compensation and then paid by the individual to the appropriate:
  - (A) state or local child support enforcement agency in satisfaction of the individual's child support obligation; or
  - (B) state SNAP agency in satisfaction of the individual's uncollected overissuance.

(g) For purposes of this Subsection (5):

- (i) "Child support obligation" means obligations that are enforced under a plan described in Section 454 of the Social Security Act, 42 U.S.C. Sec. 654, that has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651 et seq.
- (ii) "State SNAP agency" means the Department of Workforce Services or its designee responsible for the collection of uncollected overissuances.

- (iii) "State or local child support enforcement agency" means any agency or political subdivision of the state operating under a plan described in this Subsection (5).
- (iv) "Uncollected overissuance" is as defined in Section 13(c)(1) of the Food and Nutrition Act of 2008.
- (v) "Unemployment compensation" means any compensation payable under this chapter, including amounts payable under an agreement directed by federal law that provides compensation assistance or allowances for unemployment.
- (h) This Subsection (5) is applicable only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency or state SNAP agency for the administrative costs of the department under this Subsection (5) that are directly related to the enforcement of child support obligations or the repayment of uncollected overissuance of SNAP benefits.

Amended by Chapter 223, 2017 General Session

**35A-4-105 Department may be represented by attorneys in actions.**

- (1) In any civil action to enforce the provisions of this chapter the department may be represented by any qualified attorney who is employed by the department and is designated by it for this purpose, or at the department's request by the attorney general, or if the action is brought in the courts of any other state by any attorney qualified to appear in the courts of that state.
- (2) All criminal actions for violation of any provision of this chapter, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the attorney general of the state; or, at his request and under his direction, by the prosecuting attorney of any county in which the employing unit has a place of business or the violator resides.

Renumbered and Amended by Chapter 240, 1996 General Session

**35A-4-106 Reciprocal arrangements with other jurisdictions.**

- (1) The division is authorized to enter into reciprocal arrangements with appropriate and authorized agencies of other states or of the federal government, or both, in accordance with Subsections (1)(a) through (d):
  - (a) Services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be considered to be services performed entirely within any one of the states:
    - (i) in which any part of the individual's service is performed;
    - (ii) in which the individual has the individual's residence; or
    - (iii) in which the employing unit maintains a place of business, if there is in effect, as to such services, an election, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by the individual for the employing unit are considered to be performed entirely within the state.
  - (b) The division shall participate in any arrangements for the payment of benefits on the basis of combining an individual's wages and employment covered under this chapter with the individual's wages and employment covered under the unemployment compensation laws of other states that:
    - (i) are approved by the Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations; and
    - (ii) include provisions for:



- (A) applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws; and
  - (B) avoiding the duplicate use of wages and employment by reason of such combining.
- (c)
- (i) Wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment compensation law of another state or of the federal government, shall be considered to be wages for insured work for the purpose of determining the individual's rights to benefits under this chapter.
  - (ii) Wages for insured work, on the basis of which an individual may become entitled to benefits under this chapter shall be considered to be wages or services on the basis of which unemployment compensation under the law of another state or of the federal government is payable.
  - (iii) An arrangement may not be entered into unless it contains provisions for reimbursements:
    - (A) to the fund for the benefits paid under this chapter upon the basis of such wages or services; and
    - (B) from the fund for such of the compensation paid under the other law upon the basis of wages for insured work, as the director of the division finds will be fair and reasonable as to all affected interests.
- (d)
- (i) Contributions due under this chapter with respect to wages for insured work shall, for the purposes of Section 35A-4-305, be considered to have been paid to the fund as of the date payment was made as contributions therefor under another state or Federal Unemployment Compensation Law.
  - (ii) An arrangement may not be entered into unless it contains provisions for the reimbursement to the fund of the contributions and the actual earnings thereon as the director of the division finds will be fair and reasonable as to all affected interests.
- (2)
- (a) Reimbursement paid from the fund pursuant to Subsection (1)(c) shall be considered to be benefits for the purpose of Sections 35A-4-401 and 35A-4-501.
  - (b) The division is authorized to make to other state or federal agencies and to receive from other state or federal agencies reimbursements from or to the fund in accordance with arrangements entered into pursuant to Subsection (1).
- (3)
- (a) The administration of this chapter and of other state and federal unemployment compensation and public employment service laws will be promoted by cooperation between this state and the other states and the appropriate federal agencies in exchanging services, and making available facilities and information.
  - (b) The division is authorized to make investigations, secure and transmit information, make available services and facilities, and exercise other powers provided in this chapter with respect to the administration of this chapter as it considers necessary or appropriate to facilitate the administration of any unemployment compensation or public employment service law, and in like manner, to accept and use information, services and facilities made available to this state by the agency charged with the administration of any other unemployment compensation or public employment service law.
- (4) To the extent permissible under the laws and Constitution of the United States, the director of the division is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this chapter and facilities and services provided under the

unemployment compensation law of any foreign government, may be utilized for the taking of claims and the payment of benefits under this chapter or under a similar law of the foreign government.

Amended by Chapter 375, 1997 General Session

**35A-4-107 Limit of liability -- State -- Department.**

- (1) Benefits shall be considered to be due and payable under this chapter only to the extent provided in this chapter and to the extent that money is available to the credit of the Unemployment Compensation Fund.
- (2) The state, the department, or any division of the department may not be held liable for any amount that exceeds the money available in the Unemployment Compensation Fund.

Amended by Chapter 342, 2011 General Session

**35A-4-108 Legislature may amend or repeal -- No vested private right.**

- (1) The Legislature reserves the right to amend or repeal all or any part of this chapter at any time.
- (2) There shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant to this chapter shall exist subject to the power of the Legislature to amend or repeal this chapter at any time.

Renumbered and Amended by Chapter 240, 1996 General Session

## **Part 2 Definitions**

**35A-4-201 General definitions.**

As used in this chapter:

- (1)
  - (a) Except as otherwise provided in Subsection (1)(b), "base period" means the first four of the last five completed calendar quarters next preceding the first day of the individual's benefit year with respect to any individual whose benefit year commences on or after January 5, 1986.
  - (b)
    - (i) For a claimant whose benefit year is effective on or after January 2, 2011, and who does not have sufficient wages in the first four of the last five completed calendar quarters to otherwise qualify for benefits under Subsection (1)(a), the base period is the last four completed calendar quarters.
    - (ii) Wages used to establish eligibility regardless of how the base period is calculated are not available for qualifying benefits in any subsequent benefit year.
- (2) "Benefit year" means the 52 consecutive week period beginning with the first week with respect to which an individual files for benefits and is found to have an insured status.
- (3) "Benefits" means the money payments payable to an individual as provided in this chapter with respect to the individual's unemployment.

- (4) "Calendar quarter" means the period of three consecutive months ending on March 31, June 30, September 30, or December 31, or the equivalent, as the department may by rule prescribe.
- (5) "Contribution" means the money payments required by this chapter to be made into the Unemployment Compensation Fund by any employing unit on account of having individuals in its employ.
- (6) "Division" means the Unemployment Insurance Division.
- (7) "Employment office" means a free public employment office or branch operated by this or any other state as a part of a state-controlled system of public employment offices or by a federal agency charged with the administration of an unemployment compensation program or free public employment offices.
- (8) "Extended benefits" has the meaning specified in Subsection 35A-4-402(7)(f).
- (9) "Fund" means the Unemployment Compensation Fund established by this chapter.
- (10) "Insured average annual wage" means on or before the 15th day of May of each year, the total wages of insured workers for the preceding calendar year, divided by the average monthly number of insured workers, determined by dividing by 12 the total insured workers for the preceding calendar year as determined under the rules of the department calculated to two decimal places, disregarding any fraction of one cent.
- (11) "Insured average fiscal year wage" means on or before the 15th day of November of each year, the total wages of insured workers for the preceding fiscal year, divided by the average monthly number of insured workers, determined by dividing by 12 the total insured workers for the preceding fiscal year as determined under the rules of the department calculated to two decimal places, disregarding any fraction of one cent.
- (12) "Insured average fiscal year weekly wage" means the insured average fiscal year wage determined in Subsection (11), divided by 52, calculated to two decimal places, disregarding any fraction of one cent.
- (13) "Insured average weekly wage" means the insured average annual wage determined in Subsection (10), divided by 52, calculated to two decimal places, disregarding any fraction of one cent.
- (14) "Insured status" means that an individual has, during the individual's base-period, performed services and earned wages in employment sufficient to qualify for benefits under Section 35A-4-403.
- (15) "Insured work" means employment for an employer, as defined in Section 35A-4-203.
- (16) "Monetary base period wage requirement" means 8% of the insured average fiscal year wage for the preceding fiscal year, for example, fiscal year 1990 for individuals establishing benefit years in 1991, rounded up to the next higher multiple of \$100.
- (17) "State" includes the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia.
- (18) "Tribal unit" means a subdivision, subsidiary, or business enterprise wholly owned by an American Indian tribe.
- (19) "Week" means the period or periods of seven consecutive calendar days as the department may prescribe by rule.

Amended by Chapter 277, 2010 General Session  
Amended by Chapter 278, 2010 General Session  
Amended by Chapter 282, 2010 General Session

### **35A-4-202 Employing units.**

As used in this chapter:

- (1)
  - (a) "Employing unit" means:
    - (i) any individual or type of organization that has or subsequent to January 1, 1935, had one or more individuals performing services for it within the state including any:
      - (A) partnership;
      - (B) association;
      - (C) trust;
      - (D) estate;
      - (E) joint stock company;
      - (F) insurance company;
      - (G) limited liability company;
      - (H) limited liability partnership;
      - (I) joint venture;
      - (J) corporation, whether domestic or foreign;
      - (K) the receiver, trustee in bankruptcy, trustee or successor of any entity listed in Subsections (1)(a)(i)(A) through (J);
      - (L) the legal representative of a deceased person; or
      - (M) a tribal unit; or
    - (ii) any properly and legally registered professional employer organization as defined by Section 31A-40-102.
  - (b) The department may adopt rules specific to a professional employer organization pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (c) All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be performing services for a single employing unit for all the purposes of this chapter.
  - (d) Each individual employed to perform or to assist in performing the work of any person in the service of an employing unit is considered to be engaged by the employing unit for all the purposes of this chapter whether the individual was hired or paid directly by the employing unit or by the person, provided the employing unit had actual or constructive knowledge of the work.
- (2) "Hospital" means an institution that is licensed, certified, or approved by the Department of Health as a hospital.
- (3) "Institution of higher education," for the purposes of this section, means an educational institution that:
  - (a)
    - (i) admits, as regular students only, individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;
    - (ii) is legally authorized in this state to provide a program of education beyond high school;
    - (iii) provides:
      - (A) an educational program for which it awards a bachelor's or higher degree;
      - (B) a program that is acceptable for full credit toward a bachelor's or higher degree;
      - (C) a program of postgraduate or postdoctoral studies; or
      - (D) a program of training to prepare students for gainful employment in a recognized occupation; and
    - (iv) is a public or other nonprofit institution.
  - (b) All colleges and universities in this state are institutions of higher education for purposes of this section.

Amended by Chapter 318, 2008 General Session  
Amended by Chapter 382, 2008 General Session

**35A-4-203 Definition of employer -- Joint employers -- Franchisors.**

- (1) As used in this chapter "employer" means:
- (a) an individual or employing unit which employs one or more individuals for some portion of a day during a calendar year, or that, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, under the act, to be an employer;
  - (b) an employing unit that, having become an employer under Subsection (1)(a), has not, under Sections 35A-4-303 and 35A-4-310, ceased to be an employer subject to this chapter; or
  - (c) for the effective period of its election under Subsection 35A-4-310(3), an employing unit that has elected to become fully subject to this chapter.
- (2)
- (a) For purposes of this Subsection (2), "federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.
  - (b) For purposes of determining whether two or more persons are considered joint employers under this chapter, an administrative ruling of a federal executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law, or adopted by statute or rule .
- (3)
- (a) As used in this Subsection (3):
    - (i) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
    - (ii) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
    - (iii) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
  - (b) For purposes of this chapter, a franchisor is not considered to be an employer of:
    - (i) a franchisee; or
    - (ii) a franchisee's employee.
  - (c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (3) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Amended by Chapter 370, 2016 General Session

**35A-4-204 Definition of employment.**

- (1) Subject to the other provisions of this section, "employment" means any service performed for wages or under any contract of hire, whether written or oral, express or implied, including service in interstate commerce, and service as an officer of a corporation.
- (2) "Employment" includes an individual's entire service performed within or both within and without this state if one of Subsections (2)(a) through (k) is satisfied.
- (a) The service is localized in this state. Service is localized within this state if:
    - (i) the service is performed entirely within the state; or
    - (ii) the service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

- (b)
  - (i) The service is not localized in any state but some of the service is performed in this state and the individual's base of operations, or, if there is no base of operations, the place from which the service is directed or controlled, is in this state; or
  - (ii) the individual's base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.
- (c)
  - (i)
    - (A) The service is performed entirely outside this state and is not localized in any state;
    - (B) the worker is one of a class of employees who are required to travel outside this state in performance of their duties; and
  - (C)
    - (I) the base of operations is in this state; or
    - (II) if there is no base of operations, the place from which the service is directed or controlled is in this state.
  - (ii) Services covered by an election under Subsection 35A-4-310(3), and services covered by an arrangement under Section 35A-4-106 between the division and the agency charged with the administration of any other state or federal unemployment compensation law, under which all services performed by an individual for an employing unit are considered to be performed entirely within this state, are considered to be employment if the division has approved an election of the employing unit for whom the services are performed, under which the entire service of the individual during the period covered by the election is considered to be insured work.
- (d)
  - (i) The service is performed in the employ of the state, a county, city, town, school district, or other political subdivision of the state, or in the employ of an Indian tribe or tribal unit or an instrumentality of any one or more of the foregoing which is wholly owned by the state or one of its political subdivisions or Indian tribes or tribal units if:
    - (A) the service is excluded from employment as defined in the Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(7);
    - (B) the service is not excluded from employment by Section 35A-4-205; and
    - (C) as to any county, city, town, school district, or political subdivision of this state, or an instrumentality of the same or Indian tribes or tribal units, that service is either:
      - (I) required to be treated as covered employment as a condition of eligibility of employers in this state for Federal Unemployment Tax Act employer tax credit;
      - (II) required to be treated as covered employment by any other requirement of the Federal Unemployment Tax Act, as amended; or
      - (III) not required to be treated as covered employment by any requirement of the Federal Unemployment Tax Act, but coverage of the service is elected by a majority of the members of the governing body of the political subdivision or instrumentality or tribal unit in accordance with Section 35A-4-310.
  - (ii) Benefits paid on the basis of service performed in the employ of this state shall be financed by payments to the division instead of contributions in the manner and amounts prescribed by Subsections 35A-4-311(2)(a) and (4).
  - (iii) Benefits paid on the basis of service performed in the employ of any other governmental entity or tribal unit described in this Subsection (2) shall be financed by payments to the

division in the manner and amount prescribed by the applicable provisions of Section 35A-4-311.

- (e) The service is performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if:
  - (i) the service is excluded from employment as defined in the Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(8), solely by reason of Section 3306(c)(8) of that act; and
  - (ii) the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not the weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.
- (f)
  - (i) The service is performed outside the United States, except in Canada, in the employ of an American employer, other than service that is considered employment under the provisions of this Subsection (2) or the parallel provisions of another state's law if:
    - (A) the employer's principal place of business in the United States is located in this state;
    - (B) the employer has no place of business in the United States but is:
      - (I) an individual who is a resident of this state;
      - (II) a corporation that is organized under the laws of this state; or
      - (III) a partnership or trust in which the number of partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or
    - (C) none of the criteria of Subsections (2)(f)(i)(A) and (B) is met but:
      - (I) the employer has elected coverage in this state; or
      - (II) the employer fails to elect coverage in any state and the individual has filed a claim for benefits based on that service under the law of this state.
  - (ii) "American employer" for purposes of this Subsection (2) means a person who is:
    - (A) an individual who is a resident of the United States;
    - (B) a partnership if 2/3 or more of the partners are residents of the United States;
    - (C) a trust if all of the trustees are residents of the United States;
    - (D) a corporation organized under the laws of the United States or of any state;
    - (E) a limited liability company organized under the laws of the United States or of a state;
    - (F) a limited liability partnership organized under the laws of the United States or of any state;
    - or
    - (G) a joint venture if 2/3 or more of the members are individuals, partnerships, corporations, limited liability companies, or limited liability partnerships that qualify as American employers.
- (g) The service is performed:
  - (i) by an officer or member of the crew of an American vessel on or in connection with the vessel; and
  - (ii) the operating office from which the operations of the vessel, operating on navigable waters within, or within and without, the United States, is ordinarily and regularly supervised, managed, directed, and controlled within this state.
- (h) A tax with respect to the service in this state is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or that, as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required to be covered under this chapter.
- (i)
  - (i) Notwithstanding Subsection 35A-4-205(1)(p), the service is performed:

- (A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or dry cleaning services, for the driver's principal; or
  - (B) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged on a full-time basis in the solicitation on behalf of and the transmission to the salesman's principal, except for sideline sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.
- (ii) The term "employment" as used in this Subsection (2) includes services described in Subsection (2)(i)(i) performed only if:
- (A) the contract of service contemplates that substantially all of the services are to be performed personally by the individual;
  - (B) the individual does not have a substantial investment in facilities used in connection with the performance of the services other than in facilities for transportation; and
  - (C) the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.
- (j) The service is performed by an individual in agricultural labor as defined in Section 35A-4-206.
- (k) The service is domestic service performed in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of \$1,000 or more during any calendar quarter in either the current calendar year or the preceding calendar year to individuals employed in the domestic service.
- (3) Services performed by an individual for wages or under any contract of hire, written or oral, express or implied, are considered to be employment subject to this chapter, unless it is shown to the satisfaction of the division that:
- (a) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the contract of hire for services; and
  - (b) the individual has been and will continue to be free from control or direction over the means of performance of those services, both under the individual's contract of hire and in fact.
- (4) If an employer, consistent with a prior declaratory ruling or other formal determination by the division, has treated an individual as independently established and it is later determined that the individual is in fact an employee, the department may by rule provide for waiver of the employer's retroactive liability for contributions with respect to wages paid to the individual prior to the date of the division's later determination, except to the extent the individual has filed a claim for benefits.

Amended by Chapter 22, 2006 General Session

**35A-4-205 Exempt employment.**

- (1) If the services are also exempted under the Federal Unemployment Tax Act, as amended, employment does not include:
- (a) service performed in the employ of the United States Government or an instrumentality of the United States immune under the United States Constitution from the contributions imposed by this chapter, except that, to the extent that the Congress of the United States shall permit, this chapter shall apply to those instrumentalities and to services performed for the instrumentalities to the same extent as to all other employers, employing units, individuals and services; provided, that if this state is not certified for any year by the Secretary of Labor



- under Section 3304 of the Federal Internal Revenue Code of 1954, 26 U.S.C. 3304, the payments required of the instrumentalities with respect to that year shall be refunded by the division from the fund in the same manner and within the same period as is provided in Subsection 35A-4-306(5) with respect to contributions erroneously collected;
- (b) service performed by an individual as an employee or employee representative as defined in Section 1 of the Railroad Unemployment Insurance Act, 45 U.S.C., Sec. 351;
  - (c) agricultural labor as defined in Section 35A-4-206;
  - (d) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in Subsection 35A-4-204(2)(k);
  - (e)
    - (i) service performed in the employ of a school, college, or university, if the service is performed:
      - (A) by a student who is enrolled and is regularly attending classes at that school, college, or university; or
      - (B) by the spouse of the student, if the spouse is advised, at the time the spouse commences to perform that service, that the employment of that spouse to perform that service is provided under a program to provide financial assistance to the student by the school, college, or university, and that the employment will not be covered by any program of unemployment insurance;
    - (ii) service performed by an individual who is enrolled at a nonprofit or public educational institution, that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at the institution, that combines academic instruction with work experience, if the service is an integral part of the program and the institution has so certified to the employer, but this Subsection (1) does not apply to service performed in a program established for or on behalf of an employer or group of employers;
    - (iii) service performed in the employ of a hospital, if the service is performed by a patient of the hospital; or
    - (iv) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved under state law;
  - (f) service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of the child's parent;
  - (g) for the purposes of Subsections 35A-4-204(2)(d) and (e), service performed:
    - (i) in the employ of:
      - (A) a church or convention or association of churches; or
      - (B) an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;
    - (ii) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of duties required by the order;
    - (iii) in the employ of a governmental entity or Indian tribe referred to in Subsection 35A-4-204(2)
      - (d) if the service is performed by an individual in the exercise of the individual's duties:
        - (A) as an elected official;
        - (B) as a member of a legislative body or the judiciary;
        - (C) as a member of the National Guard or Air National Guard;

- (D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;
- (E) in an advisory position or a policymaking position the performance of the duties of which ordinarily does not require more than eight hours per week; or
- (F) as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$1,000;
- (iv) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, injury, or providing a remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving that rehabilitation or remunerative work;
- (v) as part of an unemployment work-relief or work-training program, assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision of the state or of an Indian tribe, by an individual receiving the work-relief or work-training; and
- (vi) by an inmate of a custodial or penal institution;
- (h) casual labor not in the course of the employing unit's trade or business;
- (i) service performed in any calendar quarter in the employ of any organization exempt from income tax under Subsection 501(a), Internal Revenue Code, other than an organization described in Subsection 401(a) or Section 521 Internal Revenue Code, if the remuneration for the service is less than \$50;
- (j) service performed in the employ of a foreign government, including service as a consular or other officer, other employee, or a nondiplomatic representative;
- (k) service performed in the employ of an instrumentality wholly owned by a foreign government:
  - (i) if the service is of a character similar to that performed in foreign countries by employees of the United States government or its instrumentalities; and
  - (ii) if the division finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government with respect to whose instrumentality exemption is claimed grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and its instrumentalities;
- (l) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all the service performed by the individual for that person is performed for remuneration solely by way of commission;
- (m) service performed by an individual in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
- (n) service covered by an arrangement between the division and the agency charged with the administration of any other state or federal unemployment compensation law under which all services performed by an individual for an employing unit during the period covered by the employing unit's duly approved election, are considered to be performed entirely within the agency's state or under the federal law;
- (o) service performed by lessees engaged in metal mining under lease agreements, unless the individual lease agreement, or the practice in actual operation under the agreement, is such as would constitute the lessees' employees of the lessor at common law; and
- (p) services as an outside salesman paid solely by way of commission if the services were performed outside of all places of business of the enterprises for which the services are performed except:
  - (i) as provided in Subsection 35A-4-204(2)(i); or

- (ii) if the services would constitute employment at common law.
- (2)
- (a) "Included and excluded service" means if the services performed during 1/2 or more of any pay period by an individual for the person employing the individual constitute employment, all the services of the individual for the period are considered to be employment.
  - (b) If the services performed during more than 1/2 of any pay period by an individual for the person employing the individual do not constitute employment, then none of the services of the individual for the period are considered to be employment.
  - (c) As used in this Subsection (2), "pay period" means a period of not more than 31 consecutive days for which payment of remuneration is ordinarily made to the individual by the person employing the individual.
- (3) The following services are exempt employment under the Utah Employment Security Act:
- (a) service performed by an individual as a licensed real estate agent or salesman, if all the service performed by the individual is performed for remuneration solely by way of commission;
  - (b) service performed by an individual as a licensed securities agent or salesman or a registered representative, if all the service performed by the individual is performed for remuneration solely by way of commission;
  - (c) service performed by an individual as a telephone survey conductor or pollster if:
    - (i) the individual does not perform the service on the principal's premises; and
    - (ii) the individual is paid for the service solely on a piece-rate or commission basis; and
  - (d) service performed by a nurse licensed or registered under Title 58, Chapter 31b, Nurse Practice Act, if:
    - (i) the service of the nurse is performed in the home of the patient;
    - (ii) substantially all of the nurse's compensation for the service is from health insurance proceeds; and
    - (iii) no compensation or fee for the service is paid to an agency or company as a business furnishing nursing services.

Amended by Chapter 22, 2006 General Session

**35A-4-206 Agricultural labor.**

- (1) "Agricultural labor" means any remunerated service performed after December 31, 1971:
- (a) on a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;
  - (b) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of the service is performed on a farm;
  - (c) in connection with:
    - (i) the production or harvesting of any commodity defined as an agricultural commodity in Subsection 15(g) of the Federal Agricultural Marketing Act, as amended, 46 Stat. 1550, Sec. 3; 12 U.S.C. 1141j;
    - (ii) the ginning of cotton; or
    - (iii) the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used primarily for supplying and storing water for farming purposes;

- (d) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the operator produced more than 1/2 of the commodity with respect to which the service is performed; or
  - (e) in the employ of a group of operators of farms, or a cooperative organization of which the operators are members, in the performance of service described in Subsection (1)(d), but only if the operators produced more than 1/2 of the commodity with respect to which the service is performed.
- (2)
- (a) Subsections (1)(d) and (e) are not applicable with respect to service:
    - (i) performed in connection with commercial canning or commercial freezing;
    - (ii) in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or
    - (iii) on a farm operated for profit if the service is not in the course of the employer's trade or business.
  - (b) As used in Subsection (1), "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.
- (3)
- (a) Services performed by an individual in agricultural labor are considered employment when the service is performed for a person who:
    - (i) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor; or
    - (ii) for some portion of a day in each of 20 different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment of time.
  - (b) For the purposes of this Subsection (3), any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person is treated as an employee of the crew leader:
    - (i) if the crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act;
    - (ii) if substantially all the members of the crew operate or maintain tractors, mechanized harvesting, or crop dusting equipment, or any other mechanized equipment, that is provided by the crew leader; and
    - (iii) if the individual is not an employee of the other person within the meaning of Section 35A-4-204.
  - (c) For the purposes of this Subsection (3), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under Subsection (3)(b)(iii):
    - (i) the other person and not the crew leader is treated as the employer of the individual; and
    - (ii) the other person is treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader, either on the individual's own behalf or on behalf of the other person, for the service in agricultural labor performed for the other person.
  - (d) For the purposes of this Subsection (3), "crew leader" means an individual who:
    - (i) furnishes individuals to perform service in agricultural labor for any other person;

- (ii) pays, either on the individual's own behalf or on behalf of the other person, the individuals so furnished by the individual's for the service in agricultural labor performed by them; and
- (iii) has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person.

Amended by Chapter 375, 1997 General Session

**35A-4-207 Unemployment.**

- (1)
  - (a) An individual is "unemployed" in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to the week are less than his weekly benefit amount.
  - (b) The department shall prescribe rules applicable to unemployed individuals making distinctions in the procedure as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the department considers necessary.
- (2) The department may by rule prescribe in the case of individuals working on a regular attachment basis the existence of unemployment for periods longer than a week if:
  - (a) it is a period of less than full-time work;
  - (b) insofar as possible the loss of wages required as a condition of being considered unemployed in those periods shall be such as to allow comparable benefits, for comparable loss in wages, to those individuals working less than full-time in each week as would be payable on a weekly claim period basis to those individuals working full-time and not at all in alternate weeks.
- (3) Unemployment shall in no case be measured on a basis of longer than a four-week period.

Renumbered and Amended by Chapter 240, 1996 General Session

**35A-4-208 Wages defined.**

- (1) As used in this chapter, "wages" means wages as currently defined by Section 3306(b), Internal Revenue Code of 1986, with modifications, subtractions, and adjustments provided in Subsections (2), (3), and (4).
- (2) For purposes of Section 35A-4-303, "wages" does not include that amount paid to an individual by an employer with respect to employment subject to this chapter that is in excess of 75% of the insured average fiscal year wage, rounded to the next higher multiple of \$100, during the fiscal year prior to the calendar year of the payment to the individual by the individual's employer on or after January 1, 1988.
- (3) For the purpose of determining whether the successor employer during the calendar year has paid remuneration to an individual with respect to employment equal to the applicable taxable wages as defined by this Subsection (3), any remuneration with respect to employment paid to the individual by a predecessor employer during the calendar year and prior to an acquisition is considered to have been paid by a successor employer if:
  - (a) the successor employer during any calendar year acquires the unemployment experience within the meaning of Subsection 35A-4-303(8) or 35A-4-304(3) of a predecessor employer; and
  - (b) immediately after the acquisition employs in the successor employer's trade or business an individual who immediately prior to the acquisition was employed in the trade or business of the predecessor.

- (4) The remuneration paid to an individual by an employer with respect to employment in another state, upon which contributions were required of the employer under the unemployment compensation law of that state, shall be included as a part of the taxable wage base defined in this section.
- (5) As used in this chapter, "wages" does not include:
- (a) the amount of any payment, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for a payment, made to, or on behalf of, an employee or any of the employee's dependents under a plan or system established by an employer that makes provision for:
    - (i)
      - (A) the employer's employees generally;
      - (B) the employer's employees generally and their dependents;
      - (C) a class or classes of the employer's employees; or
      - (D) a class or classes of the employer's employees and their dependents; and
    - (ii) on account of:
      - (A) sickness or accident disability, but, in the case of payments made to an employee or any of the employee's dependents, Subsection (5)(a)(i) excludes from wages only payments that are received under a workers' compensation law;
      - (B) medical or hospitalization expenses in connection with sickness or accident disability; or
      - (C) death;
  - (b) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for the employer;
  - (c) the payment by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon an individual in its employ under Section 3101, Internal Revenue Code, with respect to domestic services performed in a private home of the employer or for agricultural labor;
  - (d) any payment made to, or on behalf of, an employee or the employee's beneficiary:
    - (i) from or to a trust described in Section 401(a), Internal Revenue Code, that is exempt from tax under Section 501(a), Internal Revenue Code, at the time of the payment, except for a payment made to an employee of the trust as remuneration for services rendered as an employee and not as a beneficiary of the trust;
    - (ii) under or to an annuity plan that at the time of the payment is a plan described in Section 403(a), Internal Revenue Code;
    - (iii) under a simplified employee pension, as defined in Section 408(k)(l), Internal Revenue Code, other than any contributions described in Section 408(k)(6), Internal Revenue Code;
    - (iv) under or to an annuity contract described in Section 403(b), Internal Revenue Code, except for a payment for the purchase of the contract that is made by reason of a salary reduction agreement whether or not the agreement is evidenced by a written instrument;
    - (v) under or to an exempt governmental deferred compensation plan as defined in Section 3121(v)(3), Internal Revenue Code; or
    - (vi) to supplement pension benefits under a plan or trust described in Subsections (5)(d)(i) through (v) to take into account a portion or all of the increase in the cost of living, as determined by the Secretary of Labor, since retirement, but only if the supplemental payments are under a plan that is treated as a welfare plan under Section 3(2)(B)(ii) of the Employee Income Security Act of 1974; or

- (e) any payment made to, or on behalf of, an employee or the employee's beneficiary under a cafeteria plan within the meaning of Section 125, Internal Revenue Code, if the payment would not be treated as wages under a cafeteria plan.

Amended by Chapter 12, 2005 General Session

### **Part 3 Contributions**

#### **35A-4-301 Definitions.**

As used in this part:

- (1) "Benefit cost rate" means benefit costs of all individuals paid in a calendar year, as defined in Subsection (2), including the state's share of extended benefit costs, divided by the total wages paid by all employers subject to contributions in the same calendar year, calculated to four decimal places, disregarding the remaining fraction, if any.
- (2) "Benefit costs" means the net money payments made to individuals who were employed by employers subject to contributions, excluding extended benefit costs, as provided in this chapter with respect to unemployment.
- (3) "Computation date" means July 1 of any year, beginning July 1, 1984.
- (4) "Contribution year" means any calendar year beginning on January 1 and ending on December 31.
- (5) "Fiscal year" means the year beginning with July 1 of one year and ending June 30 of the next year. For example, fiscal year 1992 begins July 1, 1991, and ends June 30, 1992.
- (6) "New employer" means any employer who has been an employer as defined in this chapter and whose account has been chargeable with benefits for less than one fiscal year immediately preceding the computation date.
- (7) "Payroll" means total wages.
- (8) "Qualified employer" means any employer who was an employer as defined in this chapter during each quarter of the prior fiscal year immediately preceding the computation date.
- (9) "Qualifying period" means the four fiscal years immediately preceding the contribution year on or after January 1, 1985. If four fiscal years of data are not available, the qualifying period is the lesser number of fiscal years for which data are available, but not less than one fiscal year.
- (10) "Reserve" means that amount of money in the fund which has been appropriated or is subject to appropriation by the Legislature, exclusive of money transferred to the fund under the Federal Employment Security Administrative Financing Act of 1954, 42 U.S.C. 1101 et seq.
- (11) "Taxable wages" means all remuneration paid by an employer to employees for insured work that is subject to unemployment insurance contributions.
- (12) "Total wages" means all remuneration paid by an employer to employees for insured work.
- (13) "Unemployment experience" means all factors, including benefit costs and taxable wages, which bear a direct relation to an employer's unemployment risk.

Amended by Chapter 12, 2005 General Session

#### **35A-4-302 Contributions.**

- (1)

- (a) Contributions accrue and become payable by each employer for each calendar year in which the employer is subject to this chapter with respect to wages for employment. The contributions become due and shall be paid by each employer to the division for the fund in accordance with rules the department may prescribe.
  - (b) Contributions may not be deducted, in whole or in part, from the wages of individuals in the employer's employ.
  - (c) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to 1/2 cent or more, in which case it shall be increased to one cent.
- (2) All contributions paid by an employer under this chapter are deductible in arriving at the taxable income of the employer under Title 59, Chapter 7, Corporate Franchise and Income Taxes, and Chapter 10, Individual Income Tax Act, to the same extent as taxes are deductible during any taxable year by the employer.

Renumbered and Amended by Chapter 240, 1996 General Session

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

- (1)
- (a) An employer's basic contribution rate is the same as the employer's benefit ratio and is 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 any remaining fraction.
  - (b) In calculating the basic contribution rate under Subsection (1)(a), if four fiscal years of data are not available:
    - (i) the data of the number of complete fiscal years that is available shall be divided by the total taxable wages for the same time period; or
    - (ii) if the employer is a new employer, the basic contribution rate shall be determined as described in Subsection (5).
- (2)
- (a) Subject to Subsection (2)(b), the division shall determine the social contribution rate by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding four fiscal years by the total taxable wages of all employers subject to contributions for the same period, calculated to four decimal places, disregarding any remaining fraction, and rounding the result to three decimal places as follows:
    - (i) if the fourth decimal place is four or less, the third decimal place does not change; or
    - (ii) if the fourth decimal place is five or more, rounding the third decimal place up.
  - (b) For calendar years 2012 and 2013 only, if the calculation of the social contribution rate under Subsection (2)(a) is greater than 0.004, the social contribution rate for that calendar year is 0.004.
- (3)
- (a) The division shall set the reserve factor at a rate that sustains an adequate reserve.
  - (b) For the purpose of setting the reserve factor:
    - (i) the adequate reserve is defined as between 18 and 24 months of benefits at the average of the five highest benefit cost rates in the last 25 years;
    - (ii) the division shall set the reserve factor at 1.0000 if the actual reserve fund balance as of June 30 preceding the computation date is determined to be an adequate reserve;
    - (iii) the division shall set the reserve factor between 0.5000 and 1.0000 if the actual reserve fund balance as of June 30 preceding the computation date is greater than the adequate reserve;



- (iv) the division shall set the reserve factor between 1.0000 and 1.5000 if the actual reserve fund balance as of June 30 prior to the computation date is less than the adequate reserve;
  - (v) if the actual reserve fund balance as of June 30 preceding the computation date is insolvent or negative or if there is an outstanding loan from the Federal Unemployment Account or other lending institution, the division shall set the reserve factor at 2.0000 until the actual reserve fund balance as of June 30 preceding the computation date is determined by the division to be solvent or positive and there is no outstanding loan;
  - (vi) the division shall set the reserve factor on or before January 1 of each year; and
  - (vii) money made available to the state under Section 903 of the Social Security Act, 42 U.S.C. 1103, as amended, which is received on or after January 1, 2004, may not be considered in establishing the reserve factor under this section for the rate year 2005 or any following rate year.
- (4)
- (a) Beginning January 1, 2009, an employer's overall contribution rate is:
    - (i) except as provided in Subsection (4)(a)(ii) or (iii), the employer's basic contribution rate multiplied by the reserve factor established under Subsection (3)(b), calculated to four decimal places, disregarding any remaining fraction, plus the social contribution rate established under Subsection (2), and the result calculated to three decimal places, disregarding any remaining fraction;
    - (ii) if under Subsection (4)(a)(i), the overall contribution rate calculation for an employer is greater than 9% plus the applicable social contribution rate, the overall contribution rate for the employer shall be reduced to 9% plus the applicable social contribution rate; or
    - (iii) if under Subsection (4)(a)(i), the overall contribution rate calculation for a new employer is less than 1.1%, the overall contribution rate for the new employer shall be increased to 1.1%.
  - (b) Beginning January 1, 2012, an employer's overall contribution rate is:
    - (i) except as provided in Subsection (4)(b)(ii) or (iii), the employer's basic contribution rate multiplied by the reserve factor established under Subsection (3)(b), calculated to four decimal places, disregarding any remaining fraction, plus the social contribution rate established under Subsection (2), and the result calculated to three decimal places, disregarding any remaining fraction;
    - (ii) if under Subsection (4)(b)(i), the overall contribution rate calculation for an employer is greater than 7% plus the applicable social contribution rate, the overall contribution rate for the employer shall be reduced to 7% plus the applicable social contribution rate; or
    - (iii) if under Subsection (4)(b)(i), the overall contribution rate calculation for a new employer is less than 1.1%, the overall contribution rate for the new employer shall be increased to 1.1%.
  - (c) The overall contribution rate described under this Subsection (4) does not include the addition of any penalty applicable to an employer:
    - (i) as a result of delinquency in the payment of contributions as provided in Subsection (9); or
    - (ii) that is assessed a penalty rate under Subsection 35A-4-304(5)(a).
- (5)
- (a) Except as otherwise provided in this section, the basic contribution rate for a new employer is based on the average benefit cost rate experienced by employers of the major industry, as defined by department rule, to which the new employer belongs.
  - (b) Except as provided in Subsection (5)(c), by January 1 of each year, the basic contribution rate to be used in computing a new employer's overall contribution rate under Subsection (4) is the benefit cost rate that is the greater of:

- (i) the amount calculated by dividing the total benefit costs charged back to both active and inactive employers of the same major industry for the last two fiscal years by the total taxable wages paid by those employers that were paid during the same time period, computed to four decimal places, disregarding any remaining fraction; or
- (ii) 1%.
- (c) If the major industrial classification assigned to a new employer is an industry for which a benefit cost rate does not exist because the industry has not operated in the state or has not been covered under this chapter, the employer's basic contribution rate is 5.4%. This basic contribution rate is used in computing the employer's overall contribution rate under Subsection (4).
- (6) Notwithstanding any other provision of this chapter, and except as provided in Subsection (7), if an employing unit that moves into this state is declared to be a qualified employer because it has sufficient payroll and benefit cost experience under another state, a rate shall be computed on the same basis as a rate is computed for all other employers subject to this chapter if that unit furnishes adequate records on which to compute the rate.
- (7) An employer who begins to operate in this state after having operated in another state shall be assigned the maximum overall contribution rate until the employer acquires sufficient experience in this state to be considered a "qualified employer" if the employer is:
  - (a) regularly engaged as a contractor in the construction, improvement, or repair of buildings, roads, or other structures on lands;
  - (b) generally regarded as being a construction contractor or a subcontractor specialized in some aspect of construction; or
  - (c) required to have a contractor's license or similar qualification under Title 58, Chapter 55, Utah Construction Trades Licensing Act, or the equivalent in laws of another state.
- (8)
  - (a) If an employer acquires the business or all or substantially all the assets of another employer and the other employer had discontinued operations upon the acquisition or transfers its trade or business, or a portion of its trade or business, under Subsection 35A-4-304(3)(a):
    - (i) for purposes of determining and establishing the acquiring party's qualifications for an experience rating classification, the payrolls of both employers during the qualifying period shall be jointly considered in determining the period of liability with respect to:
      - (A) the filing of contribution reports;
      - (B) the payment of contributions; and
      - (C) the benefit costs of both employers;
    - (ii) the transferring employer shall be divested of the transferring employer's unemployment experience provided the transferring employer had discontinued operations, but only to the extent as defined under Subsection 35A-4-304(3)(c); and
    - (iii) if an employer transfers its trade or business, or a portion of its trade or business, as defined under Subsection 35A-4-304(3), the transferring employer may not be divested of its employer's unemployment experience.
  - (b) An employing unit or prospective employing unit that acquires the unemployment experience of an employer shall, for all purposes of this chapter, be an employer as of the date of acquisition.
  - (c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in Subsection (8)(a), is divested of the employer's unemployment experience by transferring all of the employer's business to another and by ceasing operations as of the date of the transfer, the transferring employer shall cease to be an employer, as defined by this chapter, as of the date of transfer.

- (9)
- (a) A rate of less than the maximum overall contribution rate is effective only for new employers and to those qualified employers who, except for amounts due under division determinations that have not become final, paid all contributions prescribed by the division for the four consecutive calendar quarters in the fiscal year immediately preceding the computation date.
  - (b) Notwithstanding Subsections (1), (5), (6), and (8), an employer who fails to pay all contributions prescribed by the division for the four consecutive calendar quarters in the fiscal year immediately preceding the computation date, except for amounts due under determinations that have not become final, shall pay a contribution rate equal to the overall contribution rate determined under the experience rating provisions of this chapter, plus a surcharge of 1% of wages.
  - (c) An employer who pays all required contributions shall, for the current contribution year, be assigned a rate based upon the employer's own experience as provided under the experience rating provisions of this chapter effective the first day of the calendar quarter in which the payment was made.
  - (d) Delinquency in filing contribution reports may not be the basis for denial of a rate less than the maximum contribution rate.
- (10) If an employer makes a contribution payment based on the overall contribution rate in effect at the time the payment was made and a provision of this section retroactively reduces the overall contribution rate for that payment, the division:
- (a) may not directly refund the difference between what the employer paid and what the employer would have paid under the new rate; and
  - (b) shall allow the employer to make an adjustment to a future contribution payment to offset the difference between what the employer paid and what the employer would have paid under the new rate.

Amended by Chapter 26, 2013 General Session

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

- (1) As used in this section:
- (a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.
  - (b) "Person" has the meaning given that term by Section 7701(a)(1) of the Internal Revenue Code of 1986.
  - (c) "Trade or business" includes the employer's workforce.
  - (d) "Violate or attempt to violate" includes intent to evade, misrepresentation, or willful nondisclosure.
- (2) Notwithstanding any other provision of this chapter, Subsections (3) and (4) shall apply regarding assignment of rates and transfers of unemployment experience.
- (3)
- (a) If an employer transfers its trade or business, or a portion of its trade or business, to another employer and, at the time of the transfer, there is common ownership, management, or control of the employers, then the unemployment experience attributable to each employer shall be combined into a common experience rate calculation.
  - (b) The contribution rates of the employers shall be recalculated and made effective upon the date of the transfer of trade or business as determined by division rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c)

- (i) If one or more of the employers is a qualified employer at the time of the transfer, then all employing units that are party to a transfer described in Subsection (3)(a) of this section shall be assigned an overall contribution rate under Subsection 35A-4-303(4), using combined unemployment experience rating factors, for the rate year during which the transfer occurred and for the subsequent three rate years.
  - (ii) If none of the employing units is a qualified employer at the time of the transfer, then all employing units that are party to the transfer described in Subsection (3)(a) shall be assigned the highest overall contribution rate applicable at the time of the transfer to any employer who is party to the acquisition for the rate year during which the transfer occurred and for subsequent rate years until the time when one or more of the employing units is a qualified employer.
  - (iii) Once one or more employing units described in Subsection (3)(c)(ii) is a qualified employer, all the employing units shall be assigned an overall rate under Subsection 35A-4-303(4), using combined unemployment experience rating factors for subsequent rate years, not to exceed three years following the year of the transfer.
- (d) The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of its trade or business when, as the result of the transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and the trade or business is now performed by the employer to whom the workforce is transferred.

(4)

- (a) Whenever a person is not an employer under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business may not be transferred to that person if the division finds that the person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.
- (b) The person shall be assigned the applicable new employer rate under Subsection 35A-4-303(5).
- (c) In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the division shall use objective factors which may include:
  - (i) the cost of acquiring the business;
  - (ii) whether the person continued the business enterprise of the acquired business;
  - (iii) how long the business enterprise was continued; or
  - (iv) whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(5)

- (a) If a person knowingly violates or attempts to violate Subsection (3) or (4) or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of any of those subsections or provisions, the person is subject to the following penalties:
  - (i)
    - (A) If the person is an employer, then the employer shall be assigned an overall contribution rate of 5.4% for the rate year during which the violation or attempted violation occurred and for the subsequent rate year.
    - (B) If the person's business is already at 5.4% for any year, or if the amount of increase in the person's rate would be less than 2% for that year, then a penalty surcharge of

contributions of 2% of taxable wages shall be imposed for the rate year during which the violation or attempted violation occurred and for the subsequent rate year.

- (ii)
  - (A) If the person is not an employer, the person shall be subject to a civil penalty of not more than \$5,000.
  - (B) The fine shall be deposited in the penalty and interest account established under Section 35A-4-506.
- (b)
  - (i) In addition to the penalty imposed by Subsection (5)(a), a violation of this section may be prosecuted as unemployment insurance fraud.
  - (ii) The determination of the degree of an offense shall be measured by the total value of all contributions avoided or reduced or contributions sought to be avoided or reduced by the unlawful conduct as applied to the degrees listed under Subsection 76-8-1301(2)(a).
- (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules to identify the transfer or acquisition of a business for purposes of this section.
- (7) This section shall be interpreted and applied in a manner that meets the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

Amended by Chapter 15, 2012 General Session

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

- (1)
  - (a) Contributions unpaid on the date on which they are due and payable, as prescribed by the division, shall bear interest at the rate of 1% per month from and after that date until payment plus accrued interest is received by the division.
  - (b)
    - (i) Contribution reports not made and filed by the date on which they are due as prescribed by the division are subject to a penalty to be assessed and collected in the same manner as contributions due under this section equal to 5% of the contribution due if the failure to file on time was not more than 15 days, with an additional 5% for each additional 15 days or fraction thereof during which the failure continued, but not to exceed 25% in the aggregate and not less than \$25 with respect to each reporting period.
    - (ii) If a report is filed after the required time and it is shown to the satisfaction of the division or its authorized representative that the failure to file was due to a reasonable cause and not to willful neglect, no addition shall be made to the contribution.
  - (c)
    - (i) If contributions are unpaid after 10 days from the date of the mailing or personal delivery by the division or its authorized representative, of a written demand for payment, there shall attach to the contribution, to be assessed and collected in the same manner as contributions due under this section, a penalty equal to 5% of the contribution due.
    - (ii) A penalty may not attach if within 10 days after the mailing or personal delivery, arrangements for payment have been made with the division, or its authorized representative, and payment is made in accordance with those arrangements.
  - (d) The division shall assess as a penalty a service charge, in addition to any other penalties that may apply, in an amount not to exceed the service charge imposed by Section 7-15-1 for dishonored instruments if:

- (i) any amount due the division for contributions, interest, other penalties or benefit overpayments is paid by check, draft, order, or other instrument; and
    - (ii) the instrument is dishonored or not paid by the institution against which it is drawn.
  - (e) Except for benefit overpayments under Subsection 35A-4-405(5), benefit overpayments, contributions, interest, penalties, and assessed costs, uncollected three years after they become due, may be charged as uncollectible and removed from the records of the division if:
    - (i) no assets belonging to the liable person and subject to attachment can be found; and
    - (ii) in the opinion of the division there is no likelihood of collection at a future date.
  - (f) Interest and penalties collected in accordance with this section shall be paid into the Special Administrative Expense Account created by Section 35A-4-506.
  - (g) Action required for the collection of sums due under this chapter is subject to the applicable limitations of actions under Title 78B, Chapter 2, Statutes of Limitations.
- (2)
  - (a) If an employer fails to file a report when prescribed by the division for the purpose of determining the amount of the employer's contribution due under this chapter, or if the report when filed is incorrect or insufficient or is not satisfactory to the division, the division may determine the amount of wages paid for employment during the period or periods with respect to which the reports were or should have been made and the amount of contribution due from the employer on the basis of any information it may be able to obtain.
  - (b) The division shall give written notice of the determination to the employer.
  - (c) The determination is considered correct unless:
    - (i) the employer, within 10 days after mailing or personal delivery of notice of the determination, applies to the division for a review of the determination as provided in Section 35A-4-508; or
    - (ii) unless the division or its authorized representative of its own motion reviews the determination.
  - (d) The amount of contribution determined under Subsection (2)(a) is subject to penalties and interest as provided in Subsection (1).
- (3)
  - (a) If, after due notice, an employer defaults in the payment of contributions, interest, or penalties on the contributions, or a claimant defaults in a repayment of benefit overpayments and penalties on the overpayments, the amount due shall be collectible by civil action in the name of the division, and the employer adjudged in default shall pay the costs of the action.
  - (b) Civil actions brought under this section to collect contributions, interest, or penalties from an employer, or benefit overpayments and penalties from a claimant shall be:
    - (i) heard by the court at the earliest possible date; and
    - (ii) entitled to preference upon the calendar of the court over all other civil actions except:
      - (A) petitions for judicial review under this chapter; and
      - (B) cases arising under the workers' compensation law of this state.
  - (c)
    - (i)
      - (A) To collect contributions, interest, or penalties, or benefit overpayments and penalties due from employers or claimants located outside Utah, the division may employ private collectors providing debt collection services outside Utah.
      - (B) Accounts may be placed with private collectors only after the employer or claimant has been given a final notice that the division intends to place the account with a private collector for further collection action.
      - (C) The notice shall advise the employer or claimant of the employer's or claimant's rights under this chapter and the applicable rules of the department.

- (ii)
  - (A) A private collector may receive as compensation up to 25% of the lesser of the amount collected or the amount due, plus the costs and fees of any civil action or postjudgment remedy instituted by the private collector with the approval of the division.
  - (B) The employer or claimant shall be liable to pay the compensation of the collector, costs, and fees in addition to the original amount due.
- (iii) A private collector is subject to the federal Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692 et seq.
- (iv)
  - (A) A civil action may not be maintained by a private collector without specific prior written approval of the division.
  - (B) When division approval is given for civil action against an employer or claimant, the division may cooperate with the private collector to the extent necessary to effect the civil action.
- (d)
  - (i) Notwithstanding Section 35A-4-312, the division may disclose the contribution, interest, penalties or benefit overpayments and penalties, costs due, the name of the employer or claimant, and the employer's or claimant's address and telephone number when any collection matter is referred to a private collector under Subsection (3)(c).
  - (ii) A private collector is subject to the confidentiality requirements and penalty provisions provided in Section 35A-4-312 and Subsection 76-8-1301(4), except to the extent disclosure is necessary in a civil action to enforce collection of the amounts due.
- (e) An action taken by the division under this section may not be construed to be an election to forego other collection procedures by the division.
- (4)
  - (a) In the event of a distribution of an employer's assets under an order of a court under the laws of Utah, including a receivership, assignment for benefits of creditors, adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than \$400 to each claimant, earned within five months of the commencement of the proceeding.
  - (b) If an employer commences a proceeding in the Federal Bankruptcy Court under a chapter of 11 U.S.C. 101 et seq., as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, contributions, interest, and penalties then or thereafter due shall be entitled to the priority provided for taxes, interest, and penalties in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
- (5)
  - (a) In addition and as an alternative to any other remedy provided by this chapter and provided that no appeal or other proceeding for review provided by this chapter is then pending and the time for taking it has expired, the division may issue a warrant in duplicate, under its official seal, directed to the sheriff of any county of the state, commanding the sheriff to levy upon and sell the real and personal property of a delinquent employer or claimant found within the sheriff's county for the payment of the contributions due, with the added penalties, interest, or benefit overpayment and penalties, and costs, and to return the warrant to the division and pay into the fund the money collected by virtue of the warrant by a time to be specified in the warrant, not more than 60 days from the date of the warrant.
  - (b)
    - (i) Immediately upon receipt of the warrant in duplicate, the sheriff shall file the duplicate with the clerk of the district court in the sheriff's county.

- (ii) The clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent employer or claimant mentioned in the warrant, and in appropriate columns the amount of the contribution, penalties, interest, or benefit overpayment and penalties, and costs, for which the warrant is issued and the date when the duplicate is filed.
  - (c) The amount of the docketed warrant shall:
    - (i) have the force and effect of an execution against all personal property of the delinquent employer; and
    - (ii) become a lien upon the real property of the delinquent employer or claimant in the same manner and to the same extent as a judgment duly rendered by a district court and docketed in the office of the clerk.
  - (d) After docketing, the sheriff shall:
    - (i) proceed in the same manner as is prescribed by law with respect to execution issued against property upon judgments of a court of record; and
    - (ii) be entitled to the same fees for the sheriff's services in executing the warrant, to be collected in the same manner.
- (6)
- (a) Contributions imposed by this chapter are a lien upon the property of an employer liable for the contribution required to be collected under this section who shall sell out the employer's business or stock of goods or shall quit business, if the employer fails to make a final report and payment on the date subsequent to the date of selling or quitting business on which they are due and payable as prescribed by rule.
  - (b)
    - (i) An employer's successor, successors, or assigns, if any, are required to withhold sufficient of the purchase money to cover the amount of the contributions and interest or penalties due and payable until the former owner produces a receipt from the division showing that they have been paid or a certificate stating that no amount is due.
    - (ii) If the purchaser of a business or stock of goods fails to withhold sufficient purchase money, the purchaser is personally liable for the payment of the amount of the contributions required to be paid by the former owner, interest and penalties accrued and unpaid by the former owner, owners, or assignors.
- (7)
- (a) If an employer is delinquent in the payment of a contribution, the division may give notice of the amount of the delinquency by registered mail to all persons having in their possession or under their control, any credits or other personal property belonging to the employer, or owing any debts to the employer at the time of the receipt by them of the notice.
  - (b) A person notified under Subsection (7)(a) shall neither transfer nor make any other disposition of the credits, other personal property, or debts until:
    - (i) the division has consented to a transfer or disposition; or
    - (ii) 20 days after the receipt of the notice.
  - (c) All persons notified under Subsection (7)(a) shall, within five days after receipt of the notice, advise the division of credits, other personal property, or other debts in their possession, under their control or owing by them, as the case may be.
- (8)
- (a)
    - (i) Each employer shall furnish the division necessary information for the proper administration of this chapter and shall include wage information for each employee, for each calendar quarter.



- (ii) The information shall be furnished at a time, in the form, and to those individuals as the department may by rule require.
- (b)
  - (i) Each employer shall furnish each individual worker who is separated that information as the department may by rule require, and shall furnish within 48 hours of the receipt of a request from the division a report of the earnings of any individual during the individual's base-period.
  - (ii) The report shall be on a form prescribed by the division and contain all information prescribed by the division.
- (c)
  - (i) For each failure by an employer to conform to this Subsection (8) the division shall, unless good cause is shown, assess a \$50 penalty if the filing was not more than 15 days late.
  - (ii) If the filing is more than 15 days late, the division shall assess an additional penalty of \$50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed \$250 per filing.
  - (iii) The penalty is to be collected in the same manner as contributions due under this chapter.
- (d)
  - (i) The division shall prescribe rules providing standards for determining which contribution reports shall be filed on magnetic or electronic media or in other machine-readable form.
  - (ii) In prescribing these rules, the division:
    - (A) may not require an employer to file contribution reports on magnetic or electronic media unless the employer is required to file wage data on at least 250 employees during any calendar quarter or is an authorized employer representative who files quarterly tax reports on behalf of 100 or more employers during any calendar quarter;
    - (B) shall take into account, among other relevant factors, the ability of the employer to comply at reasonable cost with the requirements of the rules; and
    - (C) may require an employer to post a bond for failure to comply with the rules required by this Subsection (8)(d).
- (9)
  - (a)
    - (i) An employer liable for payments in lieu of contributions shall file Reimbursable Employment and Wage Reports.
    - (ii) The reports are due on the last day of the month that follows the end of each calendar quarter unless the division, after giving notice, changes the due date.
    - (iii) A report postmarked on or before the due date is considered timely.
  - (b)
    - (i) Unless the employer can show good cause, the division shall assess a \$50 penalty against an employer who does not file Reimbursable Employment and Wage Reports within the time limits set out in Subsection (9)(a) if the filing was not more than 15 days late.
    - (ii) If the filing is more than 15 days late, the division shall assess an additional penalty of \$50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed \$250 per filing.
    - (iii) The division shall assess and collect the penalties referred to in this Subsection (9)(b) in the same manner as prescribed in Sections 35A-4-309 and 35A-4-311.
- (10) If a person liable to pay a contribution or benefit overpayment imposed by this chapter neglects or refuses to pay it after demand, the amount, including any interest, additional amount, addition to contributions, or assessable penalty, together with any additional accruable

costs, shall be a lien in favor of the division upon all property and rights to property, whether real or personal belonging to the person.

(11)

- (a) The lien imposed by Subsection (10) arises at the time the assessment, as defined in the department rules, is made and continues until the liability for the amount assessed, or a judgment against the taxpayer arising out of the liability, is satisfied.
- (b)
  - (i) The lien imposed by Subsection (10) is not valid as against a purchaser, holder of a security interest, mechanics' lien holder, or judgment lien creditor until the division files a warrant with the clerk of the district court.
  - (ii) For the purposes of this Subsection (11)(b):
    - (A) "Judgment lien creditor" means a person who obtains a valid judgment of a court of record for recovery of specific property or a sum certain of money, and who in the case of a recovery of money, has a perfected lien under the judgment on the property involved. A judgment lien does not include inchoate liens such as attachment or garnishment liens until they ripen into a judgment. A judgment lien does not include the determination or assessment of a quasi-judicial authority, such as a state or federal taxing authority.
    - (B) "Mechanics' lien holder" means any person who has a lien on real property, or on the proceeds of a contract relating to real property, for services, labor, or materials furnished in connection with the construction or improvement of the property. A person has a lien on the earliest date the lien becomes valid against subsequent purchasers without actual notice, but not before the person begins to furnish the services, labor, or materials.
    - (C) "Person" means:
      - (I) an individual;
      - (II) a trust;
      - (III) an estate;
      - (IV) a partnership;
      - (V) an association;
      - (VI) a company;
      - (VII) a limited liability company;
      - (VIII) a limited liability partnership; or
      - (IX) a corporation.
    - (D) "Purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest, other than a lien or security interest, in property which is valid under state law against subsequent purchasers without actual notice.
    - (E) "Security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time:
      - (I) the property is in existence and the interest has become protected under the law against a subsequent judgment lien arising out of an unsecured obligation; and
      - (II) to the extent that, at that time, the holder has parted with money or money's worth.

(12)

- (a) Except in cases involving a violation of unemployment compensation provisions under Section 76-8-1301, Subsection 35A-4-304(5), or Subsection 35A-4-405(5), and at the discretion of the division, the division may accept an offer in compromise from an employer or claimant to reduce past due debt arising from contributions or benefit overpayments imposed under this chapter.

- (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules for allowing an offer in compromise provided under Subsection (12)(a).

Amended by Chapter 15, 2012 General Session

**35A-4-306 Charging benefit costs to employer.**

- (1) Benefit costs of former workers of an employer will be charged to the employer in the same proportion as the wages paid by that employer in the base period bear to the total wages of all employers of that worker in the base period, calculated to the nearest five decimal places.
- (2) Notification by the division that a worker has filed an initial claim for unemployment insurance benefits will be sent to all base-period employers and all subsequent employers prior to the payment of benefits. Any employing unit that receives a notice of the filing of a claim may protest payment of benefits to former employees or charges to the employer if the protest is filed within 10 days after the date the notice is issued.
- (3) On or before November 1 of each year beginning November 1, 1984, each employer shall receive notification of all benefit costs of former workers that have been charged to that employer in the immediately preceding fiscal year. Any employing unit that receives a notice of benefit charges may protest the correctness of the charges if the protest is filed within 30 days after the date the notice is issued.
- (4) On written request made by an employer, corrections or modifications of the employer's wages shall be taken into account for the purpose of redetermining the employer's contribution rate. The request shall be made to the division no later than the end of the calendar year following the year for which the contribution rate is assigned. The division may, within a like period upon its own initiative, redetermine an employer's contribution rate.
- (5)
  - (a) If no later than three years after the date on which any contributions or interest or penalty for contributions were due, an employer who has paid the contributions, interest, or penalty may make application for an adjustment in connection with subsequent contribution payments, or for a refund because the adjustment cannot be made, and the division shall determine that the contributions or interest or penalty or any portion thereof was erroneously collected, the division shall allow the employer to make an adjustment, without interest, in connection with subsequent contribution payments by the employer, or if the adjustment cannot be made, the division shall refund that amount, without interest.
  - (b) Refunds of contributions shall be made from the clearing account or the benefit account in the fund, and refunds of interest and penalty shall be made from the Special Administrative Expense Account or from the interest and penalty money in the clearing account of the fund.
  - (c) For like cause and within the same period, an adjustment or refund may be made on the division's own initiative.
  - (d) Decisions with respect to applications for refund are final unless the employing unit, within 10 days after the mailing or personal delivery of notice of the decision, applies to the division for a review of the decision as provided in Section 35A-4-508.

Amended by Chapter 278, 2010 General Session

**35A-4-307 Social costs -- Relief of charges.**

- (1) Social costs consist of the following benefit costs:

- (a) Benefit costs of an individual will not be charged to a base-period employer and are considered social costs if the individual's separation from that employer occurred under 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;
    - (iii) the individual received benefits following a discharge for nonperformance due to medical reasons;
    - (iv) the individual received benefits while attending the first week of mandatory apprenticeship training; or
    - (v) the individual received benefits after quitting voluntarily to accompany or follow a spouse who is a member of the United States armed forces as described in Subsection 35A-4-405(1)(e).
  - (b) Social costs are benefit costs that are or have been charged to an employer who has terminated coverage and is no longer liable for contributions, less the amount of contributions paid by the employer 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 will not be charged to base-period employers.
  - (f) Benefit costs will not be charged to employers if the costs are attributable to:
    - (i) the state's share of extended benefits;
    - (ii) uncollectible benefit overpayments; or
    - (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.
  - (g) Benefit costs that are not charged to an employer and not described in this Subsection (1) 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.

Amended by Chapter 289, 2014 General Session

**35A-4-308 Bonds to ensure compliance.**

- (1)
  - (a) The division, whenever it considers it necessary to ensure compliance with this chapter, may require any employer, subject to the contribution imposed hereunder, to deposit with it any bond or security as the division shall determine.
  - (b) The bond or security may be sold by the division at public sale, if it becomes necessary, in order to recover any tax, interest, or penalty due.
  - (c) Notice of the sale may be served upon the employer who deposited the securities personally or by mail. If by mail, notice sent to the last-known address as the same appears in the records of the division is sufficient for purposes of this requirement.

- (d) Upon the sale, the surplus, if any, above the amounts due, shall be returned to the employer who deposited the security.
- (2)
  - (a) If an employer fails to comply with Subsection (1), the district court of the county in which the employer resides or in which the employer employs workers shall, upon the commencement of a suit by the division for that purpose, enjoin the employer from further employing workers in this state or continuing in business until the employer has complied with Subsection (1).
  - (b) Upon filing of a suit for such purpose by the division, the court shall set a date for hearing and cause notice to be served upon the employer. The hearing shall be not less than five nor more than 15 days from the service of the notice.

Renumbered and Amended by Chapter 240, 1996 General Session

**35A-4-309 Nonprofit organizations -- Contributions -- Payments in lieu of contributions.**

- (1) Notwithstanding any other provisions of this chapter for payments by employers, benefits paid to employees of nonprofit organizations, as described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), that are exempt from income tax under Section 501(a), shall be financed in accordance with the following provisions:
  - (a) Any nonprofit organization which is, or becomes, subject to this chapter shall pay contributions under Section 35A-4-303, unless it elects in accordance with this Subsection (1) to pay to the division for the unemployment fund an amount equal to the amount of regular benefits and of 1/2 of the extended benefits paid that is attributable to service in the employ of the nonprofit organization, to individuals for weeks of unemployment that begin during the effective period of this election.
  - (b)
    - (i) Any nonprofit organization that is, or becomes, subject to this chapter may elect to become liable for payments in lieu of contributions for a period of not less than one contribution year beginning with the date on which the organization becomes subject to this chapter.
    - (ii) The nonprofit organization shall file a written notice of its election with the division not later than 30 days immediately following the date that the division gives notice to the organization that it is subject to this chapter.
  - (c) Any nonprofit organization that makes an election in accordance with Subsection (1)(b)(i) shall continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election, not later than 30 days prior to the beginning of the contribution year for which this termination shall first be effective.
  - (d)
    - (i) Any nonprofit organization that has been paying contributions under this chapter may change to a reimbursable basis by filing with the division, no later than 30 days prior to the beginning of any contribution year, a written notice of election to become liable for payments in lieu of contributions.
    - (ii) This election is not terminable by the organization for that year or the next year.
  - (e) The division may, for good cause, extend the period within which a notice of election or a notice of termination shall be filed and may permit an election to be retroactive.
  - (f)
    - (i) The division, in accordance with department rules, shall notify each nonprofit organization of any determination that the division may make of the organization's status as an employer, of the effective date of any election that it makes, and of any termination of this election.

- (ii) These determinations are subject to reconsideration, appeal, and review in accordance with Section 35A-4-508.
- (2) Payments in lieu of contributions shall be made in accordance with this Subsection (2).
  - (a) At the end of each calendar month, or at the end of any other period as determined by the division, the division shall bill each nonprofit organization or group of nonprofit organizations that has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during this month or other prescribed period that is attributable to service in the employ of the organization.
  - (b) Payment of any bill rendered under Subsection (2)(a) shall be made no later than 30 days after the bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with Subsection (2)(d).
  - (c) Payments made by any nonprofit organization under this Subsection (2) may not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.
  - (d)
    - (i) The amount due specified in any bill from the division shall be conclusive on the organization unless, not later than 15 days after the bill was mailed to its last-known address or otherwise delivered to it, the organization files an application for redetermination by the division or an appeal to the Division of Adjudication, setting forth the grounds for the application or appeal in accordance with Section 35A-4-508.
    - (ii) The division shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which the application for redetermination has been filed.
    - (iii) Any redetermination is conclusive on the organization unless, no later than 15 days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files an appeal to the Division of Adjudication in accordance with Section 35A-4-508 and Chapter 1, Part 3, Adjudicative Proceedings, setting forth the grounds for the appeal.
    - (iv) Proceedings on appeal to the Division of Adjudication from the amount of a bill rendered under this Subsection (2) or a redetermination of the amount shall be in accordance with Section 35A-4-508.
  - (e) Past due payments of amounts in lieu of contributions are subject to the same interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.
- (3) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under Subsection (2), the division may terminate the organization's election to make payment in lieu of contributions as of the beginning of the next contribution year, and the termination is effective for that and the next contribution year.
- (4)
  - (a) In the discretion of the division, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required, within 30 days after the effective date of its election, to deposit money with the division.
  - (b) The amount of the deposit shall be determined in accordance with this Subsection (4).
  - (c)
    - (i) The amount of the deposit required by this Subsection (4) shall be equal to 1% of the organization's total wages paid for employment as defined in Section 35A-4-204 for the four calendar quarters immediately preceding the effective date of the election, or the

biennial anniversary of the effective date of election, whichever date shall be most recent and applicable.

- (ii) If the nonprofit organization did not pay wages in each of these four calendar quarters, the amount of the deposit is as determined by the division.
- (d)
  - (i) Any deposit of money in accordance with this Subsection (4) shall be retained by the division in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as provided in this Subsection (4).
  - (ii) The division may deduct from the money deposited under this Subsection (4) by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in Subsection (2)(e).
  - (iii) The division shall require the organization within 30 days following any deduction from a money deposit under this Subsection (4) to deposit sufficient additional money to make whole the organization's deposit at the prior level.
  - (iv)
    - (A) The division may, at any time, review the adequacy of the deposit made by any organization.
    - (B) If, as a result of this review, the division determines that an adjustment is necessary, it shall require the organization to make an additional deposit within 30 days of written notice of the division's determination or shall return to it any portion of the deposit the division no longer considers necessary, as considered appropriate.
- (e) If any nonprofit organization fails to make a deposit, or to increase or make whole the amount of a previously made deposit, as provided under this Subsection (4), the division may terminate the organization's election to make payments in lieu of contributions.
- (f)
  - (i) Termination under Subsection (4)(e) shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which the termination becomes effective.
  - (ii) The division may extend for good cause the applicable filing, deposit, or adjustment period by not more than 60 days.
- (5)
  - (a) Each employer liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of the employer.
  - (b) If benefits paid to an individual are based on wages paid by more than one employer and one or more of these employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer liable for the payments shall be determined in accordance with Subsection (5)(c) or (d).
  - (c) If benefits paid to an individual are based on wages paid by one or more employers who are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by that employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.
  - (d) If benefits paid to an individual are based on wages paid by two or more employers who are liable for payments in lieu of contributions, the amount of benefits payable by each of those employers shall be an amount which bears the same ratio to the total benefits paid to the

individual as the total base-period wages paid to the individual by the employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.

- (6)
- (a)
- (i) Two or more employers who have become liable for payments in lieu of contributions, in accordance with this section and Subsection 35A-4-204(2)(d), may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of these employers.
  - (ii) Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this Subsection (6).
- (b)
- (i) Upon approval of the application, the division shall establish a group account for these employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account.
  - (ii) This account shall remain in effect for not less than two contribution years and thereafter until terminated at the discretion of the division or upon application by the group.
- (c) Upon establishment of the account, each member of the group is liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by the member in the quarter bear to the total wages paid during the quarter for service performed in the employ of all members of the group.
- (d) The department shall prescribe rules, with respect to applications for establishment, maintenance, and termination of group accounts authorized by this Subsection (6), for addition of new members to, and withdrawal of active members from, these accounts, for the determination of the amounts that are payable under this Subsection (6) by members of the group, and the time and manner of these payments.
- (7)
- (a) An employing unit that acquires a nonprofit organization or substantially all the assets of a nonprofit organization that has elected reimbursable coverage as defined in Subsection (1), in accordance with rules made by the commission, shall be given the subject date of the transferring nonprofit organization, provided the transferring nonprofit organization ceases to operate as an employing unit at the point of acquisition.
  - (b) The acquiring entity shall reimburse the Unemployment Compensation Fund for the transferring nonprofit organization's share of any unreimbursed benefits paid to former employees of the transferring nonprofit organization.

Amended by Chapter 297, 2011 General Session

### **35A-4-310 Employing units.**

- (1)
- (a) Any employing unit that is or becomes an employer subject to this chapter within any calendar quarter is subject to this chapter during the entire calendar quarter.
  - (b)
    - (i) No employing unit is liable as an employer under Section 35A-4-302 for any period prior to three calendar years immediately preceding the calendar year in which the division determines the employing unit to be an employer as defined in Section 35A-4-203.



- (ii) This limitation does not apply if the division determines that the employing unit knowingly or willfully failed to report to the division to avoid liability for contributions imposed by this chapter.
- (2) Notwithstanding the other provisions of this section, the division may on its own initiative terminate coverage when it finds that an employing unit had no calendar quarter within the preceding calendar year during which there were wages paid for employment and the division finds that during the preceding calendar year the employing unit did not meet any of the conditions for subjectivity to this chapter.
- (3)
  - (a)
    - (i) An employing unit not otherwise subject to this chapter that files with the division its written election to become an employer subject to this chapter for not less than two calendar years shall, with the written approval of the election by the division, become an employer subject to this chapter to the same extent as all other employers, as of the date stated in the approval.
    - (ii) The employing unit shall cease to be subject to this chapter as of January 1 of any calendar year subsequent to the two calendar years, referred to in Subsection (3)(a)(i) only if, at least 30 days prior to the first day of January, it has filed with the division a written notice to the effect.
  - (b)
    - (i) Services which do not constitute employment as defined in this chapter shall, upon the filing by the employing unit for whom the services are performed of a written election that services performed by individuals in its employ in one or more distinct establishments or places of work shall be considered to constitute employment for all the purposes of this chapter for not less than two calendar years, and upon the written approval of the election by the division, be considered to constitute employment subject from and after the date stated in the approval.
    - (ii) The services referred to in Subsection (3)(b)(i) shall cease to be considered to be employment subject to this chapter as of January 1 of any calendar year subsequent to the two calendar years only if, at least 30 days prior to the first day of January, the employing unit has filed with the division a written notice to that effect.

Amended by Chapter 7, 2004 General Session

**35A-4-311 Coverage and liability of governmental units or Indian tribal units -- Payments in lieu of contributions -- Delinquencies -- Payments to division.**

- (1) Notwithstanding any other provisions of this chapter, benefits paid to employees of counties, cities, towns, school districts, political subdivisions, or their instrumentalities or Indian tribes or tribal units shall be financed in accordance with the following provisions:
  - (a) Any county, city, town, school district, political subdivision, or instrumentality thereof or Indian tribes or tribal units that is or becomes subject to this chapter may pay contributions under the provisions of Section 35A-4-302, or may elect to pay to the division for the unemployment fund an amount equal to the amount of regular benefits and, as provided in Subsection (4), the extended benefits attributable to service in the employ of such organization, and paid to individuals for weeks of unemployment that begin during the effective period of such election.
  - (b) Any county, city, town, school district, political subdivision, or instrumentality thereof or Indian tribes or tribal units of the state, or combination of the foregoing, that is or becomes subject to this chapter may elect to become liable for payments in lieu of contributions for a period of not

less than one contribution year beginning with the date on which the organization becomes subject to this chapter by filing a written notice of its election with the division not later than 30 days immediately following the date that the division gives notice to the organization that it is subject to this chapter.

- (c) Any county, city, town, school district, political subdivision, or instrumentality thereof, or Indian tribes or tribal units, or combination of the foregoing, that makes an election in accordance with Subsections (1)(a) and (b) shall continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election. A notice terminating such election shall be filed by January 31 of the year in which the termination is to be effective.
  - (d) Any county, city, town, school district, political subdivision, or instrumentality thereof of the state, or Indian tribes or tribal units, or combination of the foregoing which have been paying contributions under this chapter may change to a reimbursable basis by filing with the division, no later than 30 days prior to the beginning of any contribution year, a written notice of election to become liable for payments in lieu of contributions; the organization may not terminate such election for a period of two contribution years.
  - (e) The division may, for good cause, extend the period within which a notice of election or a notice of termination shall be filed and may permit an election to be retroactive.
  - (f) The division, in accordance with department rules, shall notify each county, city, town, school district, political subdivision, or Indian tribes or tribal units, or their instrumentalities of any determination that it may make of its status as an employer, or the effective date of any election which it makes, and of any termination of such election. The determinations shall be subject to reconsideration, appeal, and review in accordance with the provisions of Section 35A-4-508.
- (2) Payments in lieu of contributions shall be made in accordance with the provisions of this Subsection (2).
- (a) At the end of each calendar month, or at the end of any other period as determined by the division, the division shall bill each county, city, town, school district, political subdivision, or instrumentality thereof, or combination of the foregoing, that has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits and, as provided in Subsection (4), the amount of extended benefits paid during such month or other prescribed period that is attributable to service in the employ of such county, city, town, school district, political subdivision, or instrumentality thereof.
  - (b) Payment of any bill rendered under Subsection (2)(a) shall be made not later than 30 days after such bill was mailed to the governmental unit or tribal unit or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with Subsection (2)(c).
  - (c)
    - (i) The amount due specified in any bill from the division shall be conclusive on the governmental unit or tribal unit unless, no later than 15 days after the bill was mailed or otherwise delivered to it, the governmental unit or tribal unit files an application for redetermination by the division or an appeal, setting forth the grounds for such application or appeal.
    - (ii) Upon an application for redetermination the division shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination.
    - (iii) Any such redetermination shall be conclusive on the governmental unit or tribal unit unless, no later than 15 days after the redetermination was mailed to its last known address or otherwise delivered to it, the governmental unit or tribal unit files an appeal, setting forth the grounds for the appeal.

- (iv) Proceedings on appeal from the amount of a bill rendered under this Subsection (2) or a redetermination of the amount shall be in accordance with the provisions of Section 35A-4-508.
  - (d) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.
- (3)
- (a) If any governmental unit or tribal unit is delinquent in making payments in lieu of contributions as required under Subsection (2), the division may terminate the governmental unit's or tribal unit's election to make payment in lieu of contributions as of the beginning of the next contribution year, and the termination shall be effective for that and the next contribution year.
  - (b)
    - (i) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within 90 days of receipt of a billing notice will cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in Subsection 35A-4-311(1), for the following tax year unless payment in full is received before contribution rates for the next tax year are computed.
    - (ii) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in Subsection (3)(b)(i), shall have the option reinstated if, after a period of one year:
      - (A) all contributions have been made timely; and
      - (B) no contributions, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.
    - (iii) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed time frame:
      - (A) will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act; and
      - (B) will cause the Indian tribe to lose the option to make payments in lieu of contributions.
- (4) Each governmental unit or tribal unit liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of extended benefits paid that are attributable to service in the employ of such governmental unit or tribal unit. Provided, that governmental units or tribal units electing payments in lieu of contributions shall, with respect to extended benefit costs for weeks of unemployment beginning prior to January 1, 1979, pay an amount equal to 50% of such costs and with respect to extended benefit costs for weeks of unemployment beginning on or after January 1, 1979, shall pay 100% of such costs. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer liable for the payments shall be determined in accordance with Subsection (4)(a) or (4)(b).
- (a) If benefits paid to an individual are based on wages paid by one or more employers who are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.
  - (b) If benefits paid to an individual are based on wages paid by two or more employers who are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount that bears the same ratio to the total benefits paid to the

individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

- (5)
- (a) Two or more Indian tribe or tribal unit employers who have become liable for payments in lieu of contributions, in accordance with the provisions of this section and Subsection 35A-4-204(2)(d), may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of these employers. Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this Subsection (5).
  - (b) Upon approval of the application, the division shall establish a group account for these employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. This account shall remain in effect for not less than one contribution year and thereafter until terminated at the discretion of the division or upon application by the group.
  - (c) Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in the quarter bear to the total wages paid during the quarter for service performed in the employ of all members of the group.

Amended by Chapter 297, 2011 General Session

### **35A-4-312 Records.**

- (1)
- (a) An employing unit shall keep true and accurate work records containing information the department may prescribe by rule.
  - (b) A record shall be open to inspection and subject to being copied by the division or its authorized representatives at a reasonable time and as often as necessary.
  - (c) An employing unit shall make a record available in the state for three years after the calendar year in which the services are rendered.
- (2) The division may require from an employing unit a sworn or unsworn report with respect to a person employed by the employing unit that the division considers necessary for the effective administration of this chapter.
- (3) Except as provided in this section or in Sections 35A-4-103 and 35A-4-106, information obtained under this chapter or obtained from an individual may not be published or open to public inspection in a manner revealing the employing unit's or individual's identity.
- (4)
- (a) The information obtained by the division under this section may not be used in court or admitted into evidence in an action or proceeding, except:
    - (i) in an action or proceeding arising out of this chapter;
    - (ii) if the Labor Commission enters into a written agreement with the division under Subsection (6)(b), in an action or proceeding by the Labor Commission to enforce:
      - (A) Title 34, Chapter 23, Employment of Minors;
      - (B) Title 34, Chapter 28, Payment of Wages;
      - (C) Title 34, Chapter 40, Utah Minimum Wage Act; or
      - (D) Title 34A, Utah Labor Code;

- (iii) under the terms of a court order obtained under Subsection 63G-2-202(7) and Section 63G-2-207; or
  - (iv) under the terms of a written agreement between the Office of State Debt Collection and the division as provided in Subsection (5).
- (b) The information obtained by the division under this section shall be disclosed to:
- (i) a party to an unemployment insurance hearing before an administrative law judge of the department or a review by the Workforce Appeals Board to the extent necessary for the proper presentation of the party's case; or
  - (ii) an employer, upon request in writing for information concerning a claim for a benefit with respect to a former employee of the employer.
- (5) The information obtained by the division under this section may be disclosed to:
- (a) an employee of the department in the performance of the employee's duties in administering this chapter or other programs of the department;
  - (b) an employee of the Labor Commission for the purpose of carrying out the programs administered by the Labor Commission;
  - (c) an employee of the Department of Commerce for the purpose of carrying out the programs administered by the Department of Commerce;
  - (d) an employee of the governor's office or another state governmental agency administratively responsible for statewide economic development, to the extent necessary for economic development policy analysis and formulation;
  - (e) an employee of another governmental agency that is specifically identified and authorized by federal or state law to receive the information for the purposes stated in the law authorizing the employee of the agency to receive the information;
  - (f) an employee of a governmental agency or workers' compensation insurer to the extent the information will aid in:
    - (i) the detection or avoidance of duplicate, inconsistent, or fraudulent claims against:
      - (A) a workers' compensation program; or
      - (B) public assistance funds; or
    - (ii) the recovery of overpayments of workers' compensation or public assistance funds;
  - (g) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or in aid of a felony criminal investigation;
  - (h) an employee of the State Tax Commission or the Internal Revenue Service for the purposes of:
    - (i) audit verification or simplification;
    - (ii) state or federal tax compliance;
    - (iii) verification of a code or classification of the:
      - (A) 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or
      - (B) 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and
    - (iv) statistics;
  - (i) an employee or contractor of the department or an educational institution, or other governmental entity engaged in workforce investment and development activities under the Workforce Innovation and Opportunity Act, 29 U.S.C. Sec. 3101 et seq., for the purpose of:
    - (i) coordinating services with the department;
    - (ii) evaluating the effectiveness of those activities; and
    - (iii) measuring performance;

- (j) an employee of the Governor's Office of Economic Development, for the purpose of periodically publishing in the Directory of Business and Industry, the name, address, telephone number, number of employees by range, code or classification of an employer, and type of ownership of Utah employers;
  - (k) the public for any purpose following a written waiver by all interested parties of their rights to nondisclosure;
  - (l) an individual whose wage data is submitted to the department by an employer, if no information other than the individual's wage data and the identity of the employer who submitted the information is provided to the individual;
  - (m) an employee of the Insurance Department for the purpose of administering Title 31A, Chapter 40, Professional Employer Organization Licensing Act;
  - (n) an employee of the Office of State Debt Collection for the purpose of collecting state accounts receivable as provided in Section 63A-3-502;
  - (o) a creditor, under a court order, to collect on a judgment as provided in Section 35A-4-314; or
  - (p) an employee of the Wage and Hour Division of the United States Department of Labor for the purpose of carrying out the programs administered by the Wage and Hour Division as permitted under 20 C.F.R. 603.5(e), if the information is subject to the payment of costs described in 20 C.F.R. 603.8(d) and:
    - (i) is limited to:
      - (A) the name and identifying information of an employer found by the department to have misclassified one or more workers under Subsection 35A-4-204(3);
      - (B) the total number of misclassified workers for that employer; and
      - (C) the aggregate amount of misclassified wages for that employer;
    - (ii) an employer is given the opportunity to cure a misclassification of one or more workers, in a manner established by division rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, before the information is disclosed as described in this Subsection (5)(p); and
    - (iii) an annual report regarding the benefit to the state from disclosure of information under this Subsection (5)(p) is provided to the department for inclusion in the department's annual report described in Section 35A-1-109.
- (6) Disclosure of private information under Subsection (4)(a)(ii) or Subsection (5), with the exception of Subsections (5)(a), (g), and (o), may be made if:
- (a) the division determines that the disclosure will not have a negative effect on:
    - (i) the willingness of employers to report wage and employment information; or
    - (ii) the willingness of individuals to file claims for unemployment benefits; and
  - (b) the agency enters into a written agreement with the division in accordance with rules made by the department.
- (7)
- (a) The employees of a division of the department other than the Workforce Research and Analysis Division and the Unemployment Insurance Division or an agency receiving private information from the division under this chapter are subject to the same requirements of privacy and confidentiality and to the same penalties for misuse or improper disclosure of the information as employees of the division.
  - (b) Use of private information obtained from the department by a person or for a purpose other than one authorized in Subsection (4) or (5) violates Subsection 76-8-1301(4).

Amended by Chapter 296, 2016 General Session

**35A-4-312.5 Suspected misuse of personal identifying information.**

(1) As used in this section:

- (a) "Child identity protection plan" is a program operated by the attorney general that uses IRIS and allows the attorney general to enter into an agreement with a third party to transmit verified personal information of a person younger than 18 years of age through secured means to enable the protection of the person's Social Security number from misuse.
- (b) "IRIS" means the Identity Theft Reporting Information System operated by the attorney general.
- (c) "Personal identifying information" has the same meaning as defined in Section 76-6-1102.
- (d) "Suspected misuse of personal identifying information" includes:
  - (i) a Social Security number under which wages are being reported by two or more individuals;  
or
  - (ii) a Social Security number of an individual under the age of 18 with reported wages exceeding \$1,000 for a single reporting quarter.

(2) Notwithstanding Section 35A-4-312, if the department records disclose a suspected misuse of personal identifying information by an individual other than the purported owner of the information, or if a parent, guardian, or individual under the age of 18 is enrolling or has enrolled in the child identity protection plan, the department may:

- (a) inform the purported owner of the information or, if the purported owner is a minor, the minor's parent or guardian, of the suspected misuse; and
- (b) provide information of the suspected misuse to an appropriate law enforcement agency responsible for investigating an identity fraud violation.

Amended by Chapter 57, 2011 General Session

**35A-4-313 Determination of employer and employment.**

The division or its authorized representatives may, upon its own motion or upon application of an employing unit, determine whether an employing unit constitutes an employer and whether services performed for, or in connection with the business of, an employer constitute employment for the employing unit. The determinations may constitute the basis for determination of contribution liability under Subsection 35A-4-305(2) and be subject to review and appeal as provided.

Renumbered and Amended by Chapter 240, 1996 General Session

**35A-4-314 Disclosure of information for debt collection -- Court order -- Procedures -- Use of information restrictions -- Penalties.**

- (1) The division shall disclose to a creditor who has obtained judgment against a debtor the name and address of the last known employer of the debtor if:
  - (a) the judgment creditor obtains a court order requiring disclosure of the information as described in Subsection (2); and
  - (b) the judgment creditor completes the requirements described in Subsection (3), including entering into a written agreement with the division.
- (2)
  - (a) A court shall grant an order to disclose the information described in Subsection (1) if, under the applicable Utah Rules of Civil Procedure:
    - (i) the judgment creditor files a motion with the court, which includes a copy of the judgment, and serves a copy of the motion to the judgment debtor and the division;

- (ii) the judgment debtor and the division have the opportunity to respond to the motion; and
  - (iii) the court denies or overrules any objection to disclosure in the judgment debtor's and the division's response.
- (b) A court may not grant an order to disclose the information described in Subsection (1), if the court finds that the division has established that disclosure will have a negative effect on:
- (i) the willingness of employers to report wage and employment information; or
  - (ii) the willingness of individuals to file claims for unemployment benefits.
- (c) The requirements of Subsection 63G-2-202(7) and Section 63G-2-207 do not apply to information sought through a court order as described in this section.
- (3) If a court order is granted in accordance with this section, a judgment creditor shall:
- (a) provide to the division a copy of the order requiring the disclosure;
  - (b) enter into a written agreement with the division, in a form approved by the division;
  - (c) pay the division a reasonable fee that reflects the cost for processing the request as established by department rule; and
  - (d) comply with the data safeguard and security measures described in 20 C.F.R. Sec. 603.9 with respect to information received from the division under this section.
- (4) If a judgment creditor complies with Subsection (3), the division shall provide the information to the judgment creditor within 14 business days after the day on which the creditor complies with Subsection (3).
- (5) A judgment creditor may not:
- (a) use the information obtained under this section for a purpose other than satisfying the judgment between the creditor and debtor; or
  - (b) disclose or share the information with any other person.
- (6) The division may audit a judgment creditor or other party receiving information under this section for compliance with the data safeguard and security measures described in 20 C.F.R. Sec. 603.9.
- (7) If a judgment creditor or other party fails to comply with the data safeguard and security measures under 20 C.F.R. Sec. 603.9, the judgment creditor or other party is subject to a civil penalty of no more than \$10,000 enforceable by the Utah Office of the Attorney General as follows:
- (a) the attorney general, on the attorney general's own behalf or on behalf of the division, may file an action in district court to enforce the civil penalty; and
  - (b) if the attorney general prevails in enforcing the civil penalty against the judgment creditor or other party:
    - (i) the attorney general is entitled to an award for reasonable attorney fees, court costs, and investigative expenses; and
    - (ii) the civil penalty shall be deposited into the special administrative expense account described in Subsection 35A-4-506(1).

Enacted by Chapter 473, 2013 General Session

## **Part 4 Benefits and Eligibility**

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



- (1)
  - (a) Benefits are payable from the fund to an individual who is or becomes unemployed and eligible for benefits.
  - (b) All benefits shall be paid through the employment offices or other agencies designated by the division in accordance with rules the department may prescribe in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2)
  - (a)
    - (i) Except as otherwise provided in Subsection (2)(a)(ii), an individual's "weekly benefit amount" is an amount equal to 1/26th, disregarding any fraction of \$1, of the individual's total wages for insured work paid during that quarter of the base period in which the total wages were highest.
    - (ii) With respect to an individual whose benefit year begins after the termination of any payable week under Pub. L. No. 111-5, Sec. 2002 as amended, an individual's weekly benefit amount is an amount equal to 1/26th minus \$5, disregarding any fraction of \$1, of the individual's total wages for insured work paid during that quarter of the base period in which the total wages were highest.
  - (b)
    - (i) The weekly benefit amount may not exceed 62.5% of the insured average fiscal year weekly wage during the preceding fiscal year, disregarding any fraction of \$1.
    - (ii) With respect to an individual whose benefit year begins after the termination of any payable week under Pub. L. No. 111-5, Sec. 2002 as amended, the weekly benefit amount may not exceed 62.5% of the insured average fiscal year weekly wage during the preceding fiscal year minus \$5, disregarding any fraction of \$1.
  - (c)
    - (i) Except as otherwise provided in Subsections (2)(c)(ii) and (iii), the "weekly benefit amount" of an individual who is receiving, or who is eligible to receive, based upon the individual's previous employment, a pension, which includes a governmental, Social Security, or other pension, retirement or disability retirement pay, under a plan maintained or contributed to by a base-period employer is the "weekly benefit amount" which is computed under this section less 100% of the retirement benefits, that are attributable to a week, disregarding any fraction of \$1.
    - (ii) With respect to an individual whose benefit year begins after July 1, 2004, and ends on or before the termination of any payable week under Pub. L. No. 111-5, Sec. 2002 as amended, the "weekly benefit amount" of that individual, who is receiving or who is eligible to receive Social Security benefits based upon the individual's previous employment, is the "weekly benefit amount" which is computed under this section less 50% of the individual's Social Security benefits that are attributable to the week, but not below zero.
    - (iii) With respect to an individual whose benefit year begins after the termination of any payable week under Pub. L. No. 111-5, Sec. 2002 as amended, this Subsection (2)(c) and Subsection (2)(d) do not apply to Social Security benefits an individual is receiving or is eligible to receive as they are not considered retirement benefits for purposes of those subsections.
  - (d)
    - (i)
      - (A) The weekly benefit amount and the potential benefits payable to an individual who, subsequent to the commencement of the individual's benefit year, becomes or is determined to be eligible to receive retirement benefits or increased retirement benefits,

shall be recomputed effective with the first calendar week during the individual's benefit year with respect to which the individual is eligible to receive retirement benefits or increased retirement benefits.

(B) The new weekly benefit amount shall be determined under this Subsection (2).

- (ii) As recomputed the total benefits potentially payable, commencing with the effective date of the recomputation, shall be equal to the recomputed weekly benefit amount times the quotient obtained by dividing the potential benefits unpaid prior to the recomputation by the initial weekly benefit amount, disregarding fractions.
- (3)
- (a) An eligible individual who is unemployed in any week shall be paid with respect to that week a benefit in an amount equal to the individual's weekly benefit amount less that part of the individual's wage payable to the individual with respect to that week that is in excess of 30% of the individual's weekly benefit amount.
  - (b) The resulting benefit payable shall disregard any fraction of \$1.
  - (c) For the purpose of this Subsection (3) "wages" does not include a grant paid to the individual as public assistance.
- (4)
- (a) An otherwise eligible individual is entitled during a benefit year to a total amount of benefits determined by multiplying the individual's weekly benefit amount times the individual's potential duration.
  - (b) To determine an individual's potential duration, the individual's total wages for insured work paid during the base period is multiplied by 27%, disregarding any fraction of \$1, and divided by the individual's weekly benefit amount, disregarding any fraction, but not less than 10 nor more than 26.
- (5)
- (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may by rule prescribe:
    - (i) that the existence of unemployment, eligibility for benefits, and the amount of benefits payable shall be determined in the case of an otherwise eligible individual who, within a week or other period of unemployment, is separated from or secures work on a regular attachment basis for that portion of the week or other period of unemployment occurring before or after separation from or securing of work; and
    - (ii) in the case of an individual working on a regular attachment basis, eligibility for benefits and the amount of benefits payable for periods of unemployment longer than a week.
  - (b) The rules made shall be reasonably calculated to secure general results substantially similar to those provided by this chapter with respect to weeks of unemployment.
- (6) The division shall, in all cases involving actual or potential disqualifying issues and prior to the payment of benefits to an eligible individual, notify the individual's most recent employer of the eligibility determination.
- (7) Upon written request of an individual made under rules of the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, all remuneration for insured work paid to the individual during the individual's period in the form of a bonus or lump-sum payment shall, for benefit purposes, be apportioned to the calendar quarters in which the remuneration was earned.

Amended by Chapter 255, 2013 General Session

**35A-4-402 Extended benefits.**

- (1) Except when the result would be inconsistent with the other provisions of this section or the rules of the department, the provisions of this chapter that apply to claims for or payments of regular benefits apply to claims for and payments of extended benefits.
- (2) An individual is eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the division finds that with respect to that week the individual:
  - (a) is an "exhaustee" as defined in this section;
  - (b) has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and
  - (c) has satisfied the federal requirements as adopted by state regulation for the receipt of extended benefits.
- (3) The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period is an amount equal to the weekly benefit amount payable to him during his applicable benefit year.
- (4) The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year is the lesser of the following amounts:
  - (a) 50% of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;
  - (b) 13 times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year; or
  - (c) 39 times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid or deemed paid to him under this chapter with respect to the benefit year.
- (5) Notwithstanding any other provision of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that the individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade adjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.
- (6)
  - (a) Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator, the division shall make an appropriate public announcement.
  - (b) Computations required by Subsection (7)(f) shall be made by the division, in accordance with regulations prescribed by the United States Secretary of Labor.
- (7) As used in this section:
  - (a) "Extended benefit period" means a period that:
    - (i) begins with the third week after a week for which there is a state "on" indicator; and
    - (ii) ends with either:
      - (A) the third week after the first week for which there is a state "off" indicator; or
      - (B) after the 13th consecutive week of duration of that period, whichever occurs later; however, no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state.
  - (b) There is a "state 'on' indicator" for this state for a week if the division determines, in accordance with the regulations of the Secretary of Labor, that for the period consisting of

that week and the immediately preceding 12 weeks, the rate of insured unemployment, not seasonally adjusted, under this chapter equaled or exceeded 120% of the average of the rates for the corresponding 13-week period ending in each of the preceding two calendar years and that the rate equaled or exceeded 4% until the weeks beginning after September 25, 1982, at which time it will become 5%.

- (c) There is a "state 'off' indicator" for this state for a week if the division determines, in accordance with the regulations of the Secretary of Labor, that for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment, not seasonally adjusted, under this chapter was less than 120% of the average of the rates for the corresponding 13-week period ending in each of the preceding two calendar years or that the rate was less than 4% until the weeks beginning after September 25, 1982, at which time it will become 5%.
- (d) "Rate of insured unemployment," for purposes of Subsections (7)(b) and (7)(c), means the percentage derived by dividing the average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the division on the basis of its reports to the Secretary of Labor, by the average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of the 13-week period.
- (e) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen under 5 U.S.C. Chapter 85, other than extended benefits.
- (f) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen under 5 U.S.C. Chapter 85, payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.
- (g) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within the extended benefit period, any weeks thereafter which begin in that period.
- (h) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:
  - (i) has received, prior to that week, all of the regular benefits that were available to him under this chapter or any other state law, including dependent's allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. Chapter 85, in his current benefit year that includes such week. An individual, for the purposes of this subsection, shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wages or employment, or both, that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or
  - (ii) has no, or insufficient, wages or employment or both on the basis of which he could establish a new benefit year that would include that week, his benefit year having expired prior to that week; and
  - (iii) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, or any other federal laws as are specified in regulations issued by the Secretary of Labor and has not received, and is not seeking, unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada. However, if that person is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under that law he is considered an "exhaustee," provided that

the reference in this subsection to the Virgin Islands shall be inapplicable effective on the day on which the U. S. Secretary of Labor approves under Section 3304 (a) of the Internal Revenue Code of 1954, 26 U.S.C. 3304(a), an unemployment compensation law submitted to the Secretary by the Virgin Islands for approval.

- (i) "State law" means the unemployment insurance law of any state, approved by the Secretary of Labor under Section 3304 of the Internal Revenue Code of 1954, 26 U.S.C. 3304(a).

Renumbered and Amended by Chapter 240, 1996 General Session

**35A-4-403 Eligibility of individual -- Conditions -- Furnishing reports -- Weeks of employment -- Successive benefit years.**

- (1) Except as provided in Subsections (2) and (3), an unemployed individual is eligible to receive benefits for any week if the division finds:
  - (a) the individual has made a claim for benefits for that week in accordance with rules the department may prescribe, except as provided in Subsection (4);
  - (b) the individual has registered for work with the department and acted in a good faith effort to secure employment during each and every week for which the individual made a claim for benefits under this chapter in accordance with rules the department may prescribe, except as provided in Subsection (4);
  - (c) the individual is able to work and is available for work during each and every week for which the individual made a claim for benefits under this chapter;
  - (d) the individual has been unemployed for a waiting period of one week for each benefit year, but a week may not be counted as a week of unemployment for the purpose of this Subsection (1)(d):
    - (i) unless it occurs within the benefit year that includes the week for which the individual claims benefits;
    - (ii) if benefits have been paid for the claim; or
    - (iii) unless the individual was eligible for benefits for the week as provided in this section and Sections 35A-4-401 and 35A-4-405, except for the requirement of this Subsection (1)(d);
  - (e)
    - (i) the individual has furnished the division separation and other information the department may prescribe by rule, or proves to the satisfaction of the division that the individual had good cause for failing to furnish the information;
    - (ii) if an employer fails to furnish reports concerning separation and employment as required by this chapter and rules adopted under the chapter, the division shall, on the basis of information it obtains, determine the eligibility and insured status of an individual affected by that failure and the employer is not considered to be an interested party to the determination;
  - (f)
    - (i) the individual's base-period wages were at least 1-1/2 times the individual's wages for insured work paid during that quarter of the individual's base period in which the individual's wages were highest; or
    - (ii) for any claimant whose benefit year is effective on or before January 1, 2011, the individual shows to the satisfaction of the division that the individual worked at least 20 weeks in insured work during the individual's base-period and earned wages of at least 5% of the monetary base-period wage requirement each week, rounded to the nearest whole dollar, provided that the individual's total base-period wages were not less than the monetary base-period wage requirement as defined in Section 35A-4-201; and

- (g)
  - (i) the individual applying for benefits in a successive benefit year has had subsequent employment since the effective date of the preceding benefit year equal to at least six times the individual's weekly benefit amount, in insured work; and
  - (ii) the individual's total wages and employment experience in the individual's base period meet the requirements specified in Subsection (1)(f).
- (2)
  - (a) For purposes of this Subsection (2), "suitable employment" means:
    - (i) work of a substantially equal or higher skill level than the individual's past adversely affected employment as defined for purposes of the Trade Act of 1974; and
    - (ii) wages for that work at not less than 80% of the individual's average weekly wage as determined for purposes of the Trade Act of 1974.
  - (b)
    - (i) An individual in training with the approval of the division is not ineligible to receive benefits by reason of nonavailability for work, failure to search for work, refusal of suitable work, failure to apply for or to accept suitable work, or not having been unemployed for a waiting period of one week for any week the individual is in the approved training.
    - (ii) For purposes of Subsection (2)(b)(i), the division shall approve any mandatory apprenticeship-related training.
  - (c) Notwithstanding any other provision of this chapter, the division may not deny an otherwise eligible individual benefits for any week:
    - (i) because the individual is in training approved under Section 236 (a)(1) of the Trade Act of 1974, 19 U.S.C. 2296(a);
    - (ii) for leaving work to enter training described in Subsection (2)(c)(i) if the work left is not suitable employment; or
    - (iii) because of the application to any such week in training of provisions in this law or any applicable federal unemployment compensation law relating to availability for work, active search for work, or refusal to accept work.
- (3) An individual located in a foreign country for three or more days of a week and who is otherwise eligible for benefits is only eligible to receive benefits for that week if:
  - (a) the individual is legally authorized to work in the foreign country; and
  - (b) the state and the foreign country have entered into a reciprocal agreement concerning the payment of unemployment benefits.
- (4) The department may, by rule, waive or alter either or both of the requirements of Subsections (1)(a) and (b) as to:
  - (a) individuals attached to regular jobs;
  - (b) a disaster in Utah as declared by the president of the United States or by the state's governor after giving due consideration to factors directly associated with the disaster, including:
    - (i) the disaster's impact on employers and their ability to employ workers in the affected area in Utah;
    - (ii) the disaster's impact on claimants and their ability to comply with filing requirements in the affected area in Utah; and
    - (iii) the magnitude of the disaster and the anticipated time for recovery; and
  - (c) cases or situations when it finds that compliance with the requirements would be oppressive, or would be inconsistent with the purposes of this chapter, as long as the rule does not conflict with Subsection 35A-4-401(1).

Amended by Chapter 371, 2014 General Session

**35A-4-404 Eligibility for benefits after receiving workers' compensation or occupational disease compensation.**

- (1) Notwithstanding any requirements involving base periods or other benefit compensational factors provided for under this chapter a person who has had a continuous period of sickness or injury for which the person was compensated under the workers' compensation or the occupational disease laws of this state or under federal law shall, if the person is otherwise eligible, thereafter be entitled to receive the unemployment compensation benefits the person would have been entitled to receive under the law and regulations based on the person's potential eligibility at the time of the person's last employment.
- (2) Benefit rights are not preserved under this section unless the individual:
  - (a) files a claim for benefits with respect to a week no later than 90 days after the end of the continuous period of sickness or injury; and
  - (b) files the claim with respect to a week within the 36-month period immediately following the commencement of such period of sickness or injury.

Amended by Chapter 297, 2011 General Session

**35A-4-405 Ineligibility for benefits.**

Except as otherwise provided in Subsection (5), an individual is ineligible for benefits or 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 may not be denied eligibility for benefits if the claimant leaves work under circumstances where it would be contrary to equity and good conscience to impose a disqualification.
  - (c) Using available information from employers and the claimant, the division shall 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) Except as provided in Subsection (1)(e), a claimant who has left work voluntarily to accompany or follow the claimant's spouse to a new locality does so without good cause for purposes of this Subsection (1).
  - (e) A claimant who has left work voluntarily to accompany or follow the claimant's spouse to a new locality does so with good cause for purposes of this Subsection (1) and is eligible to receive benefits if:
    - (i) the claimant's spouse is a member of the United States armed forces and the claimant's spouse has been relocated by a full-time assignment scheduled to last at least 180 days while on:
      - (A) active duty as defined in 10 U.S.C. Sec. 101(d)(1); or
      - (B) active guard or reserve duty as defined in 10 U.S.C. Sec. 101(d)(6);
    - (ii) it is impractical as determined by the division for the claimant to commute to the previous work from the new locality;

- (iii) the claimant left work voluntarily no earlier than 15 days before the scheduled start date of the spouse's active-duty assignment; and
  - (iv) the claimant otherwise meets and follows the eligibility and reporting requirements of this chapter, including registering for work with the division or, if the claimant has relocated to another state, the equivalent agency of that state.
- (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 the claimant was discharged for dishonesty constituting a crime or any felony or class A misdemeanor in connection with the claimant's work as shown by the facts, together with the claimant's admission, or as shown by the claimant's conviction of that crime in a court of competent jurisdiction and for the 51 next following weeks.
  - (c) 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)
    - (i) 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.
    - (ii) 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 may not be denied eligibility for benefits for failure to apply, accept referral, or accept available suitable work under circumstances where 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 work is suitable for an individual, the division shall consider the:
    - (i) degree of risk involved to the individual's 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 the individual's customary occupation;
    - (vi) wages for similar work in the locality; and
    - (vii) distance of the available work from the individual's 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 may 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 the claimant's unemployment is due to a stoppage of work that exists because of a strike involving the claimant's grade, class, or group of workers at the factory or establishment at which the claimant 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 any law of the state or of the United States pertaining to hours, wages, or other conditions of work, the strike may not render the workers ineligible for benefits.
  - (b) If the division finds that the employer, the employer's agent or representative has conspired, planned, or agreed with any of the employer's workers, their agents or representatives to foment a strike, that strike may not render the workers ineligible for benefits.
  - (c) A worker may receive benefits if, subsequent to the worker's unemployment because of a strike as defined in this Subsection (4), the worker 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 may not include any wages the worker earned from the employer involved in the strike.
- (5)
- (a) For each week a claimant obtains a benefit under this chapter by willfully making a false statement or representation or by knowingly failing to report a material fact, and a penalty of no more than 49 additional weeks as follows:
    - (i) 13 weeks for the first week the false statement or representation was made or fact withheld to receive a benefit; and
    - (ii) six weeks for each additional week the false statement or representation was made or fact withheld to receive a benefit.
  - (b) The additional penalty weeks shall begin on the Sunday of the week the determination finding the claimant in violation of this Subsection (5) is issued.
  - (c)
    - (i) Each claimant found in violation of this Subsection (5) shall repay to the division the overpayment and, as a civil penalty for fraud, an amount equal to the overpayment.
    - (ii) The overpayment is the amount of benefits the claimant received by direct reason of fraud.
    - (iii) Subject to the requirements of Subsection 35A-4-506(7), the civil penalty for fraud amount shall be treated as any other penalty under this chapter.
    - (iv) The repayment of an overpayment and a civil penalty for fraud shall be collectible by civil action or warrant in the manner provided in Subsections 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 this Subsection (5) remains unpaid.
  - (e) Determinations under this Subsection (5) shall be appealable in the manner provided by this chapter for appeals from other benefit determinations.
  - (f) If the fraud determination is based solely on unreported or underreported work or earnings, or both, and the claimant would have been eligible for benefits if the work or earnings, or both,

had been correctly reported, the individual does not lose eligibility for that week because of the misreporting but is liable for the overpayment and subject to the penalties in Subsection (5)(c) and the disqualification periods for future weeks in Subsection (5)(a).

- (6) For any week with respect to which or a part of which the claimant 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 the claimant is not entitled to those unemployment benefits, this disqualification does not apply.
- (7)
- (a) For any week with respect to which the claimant 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, the claimant 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)
- (i) 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.
- (ii) If compensation is denied to any individual under this Subsection (8) 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 (8).
- (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)
- (i) 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 in accordance with the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3304(a)(6)(A)(iv).

- (ii) For purposes of this 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) 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:
  - (i) to or on behalf of an educational institution in accordance with the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3304(a)(6)(A)(v); and
  - (ii) while employed by a governmental entity, Indian tribe, or nonprofit organization, to which the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3309(a)(1) applies.
- (f) 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 services 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 consist 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.

Amended by Chapter 315, 2013 General Session

**35A-4-406 Claims for benefits -- Continuing jurisdiction -- Appeal -- Notice of decision -- Repayment of benefits fraudulently received.**

- (1)
  - (a) Claims for benefits shall be made and shall be determined by the division or referred to an administrative law judge in accordance with rules adopted by the department.
  - (b) Each employer shall post and maintain in places readily accessible to individuals in his service printed statements concerning benefit rights, claims for benefits, and the other matters relating to the administration of this chapter as prescribed by rule of the department.
  - (c) Each employer shall supply to individuals in his service copies of the printed statements or other materials relating to claims for benefits when and as the department may by rule

prescribe. The printed statements and other materials shall be supplied by the division to each employer without cost to the employer.

- (2)
  - (a) Jurisdiction over benefits shall be continuous.
  - (b) Upon its own initiative or upon application of any party affected, the division may on the basis of change in conditions or because of a mistake as to facts, review a decision allowing or disallowing in whole or in part a claim for benefits.
  - (c) The review shall be conducted in accordance with rules adopted by the department and may result in a new decision that may award, terminate, continue, increase, or decrease benefits, or may result in a referral of the claim to an appeal tribunal.
  - (d) Notice of any redetermination shall be promptly given to the party applying for redetermination and to other parties entitled to notice of the original determination, in the manner prescribed in this section with respect to notice of an original determination.
  - (e) The new order shall be subject to review and appeal as provided in this section.
  - (f) A review may not be made after one year from the date of the original determination, except in cases of fraud or claimant fault as provided in Subsection (4).
- (3)
  - (a) The claimant or any other party entitled to notice of a determination as provided by department rule may file an appeal from the determination with the Division of Adjudication within 10 days after the date of mailing of the notice of determination or redetermination to the party's last-known address or, if the notice is not mailed, within 10 days after the date of delivery of the notice.
  - (b) Unless the appeal or referral is withdrawn with permission of the administrative law judge, after affording the parties reasonable opportunity for a fair hearing, the administrative law judge shall make findings and conclusions and on that basis affirm, modify, or reverse the determination or redetermination.
  - (c) The administrative law judge shall first give notice of the pendency of an appeal to the division, which may then be a party to the proceedings. The administrative law judge shall receive into the record of the appeal any documents or other records provided by the division, and may obtain or request any additional documents or records held by the division or any of the parties that the administrative law judge considers relevant to the proper determination of the appeal.
  - (d) The parties shall be promptly notified of the administrative law judge's decision and shall be furnished with a copy of the decision and the findings and conclusions in support of the decision.
  - (e) The decision is considered to be final unless, within 30 days after the date of mailing of notice and a copy of the decision to the party's last-known address, or in the absence of mailed notice, within 30 days after the delivery of the notice, further appeal is initiated in accordance with Section 35A-4-508 and Chapter 1, Part 3, Adjudicative Proceedings.
- (4)
  - (a) Any person who, by reason of his fraud, has received any sum as benefits under this chapter to which he was not entitled shall repay the sum to the division for the fund.
  - (b) If any person, by reason of his own fault, has received any sum as benefits under this chapter to which under a redetermination or decision pursuant to this section he has been found not entitled, he shall repay the sum, or shall, in the discretion of the division, have the sum deducted from any future benefits payable to him, or both.

- (c) In any case in which under this subsection a claimant is liable to repay to the division any sum for the fund, the sum shall be collectible in the same manner as provided for contributions due under this chapter.
- (5)
  - (a) If any person has received any sum as benefits under this chapter to which under a redetermination or decision he was not entitled, and it has been found that he was without fault in the matter, he is not liable to repay the sum but shall be liable to have the sum deducted from any future benefits payable to him.
  - (b) The division may waive recovery of the overpayment if it is shown to the satisfaction of the division that the claimant has the inability to meet more than the basic needs of survival for an indefinite period lasting at least several months.

Renumbered and Amended by Chapter 240, 1996 General Session

**35A-4-407 Voluntary income tax withholding.**

- (1) The department shall advise an individual filing a new claim for benefits at the time of filing the claim that:
  - (a) unemployment benefits may be subject to federal, state, and local income tax;
  - (b) there are requirements for estimating tax payments;
  - (c) the individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits at the amount specified by the Internal Revenue Code;
  - (d) the individual may elect to have state income tax deducted and withheld from the individual's payment of benefits at the rate of 5%; and
  - (e) the individual may change a previously elected withholding status.
- (2) Amounts deducted and withheld from benefits for income taxes under Subsection (1) shall remain in the unemployment trust fund until transferred to the federal or state taxing authority as a payment of income tax.
- (3)
  - (a) The department shall follow all procedures specified by the United States Department of Labor, the Internal Revenue Service, and the State Tax Commission pertaining to deducting, withholding, and submitting amounts deducted and withheld for income taxes.
  - (b) Amounts deducted and withheld for income taxes under this section shall be deducted and withheld only after amounts are deducted and withheld for:
    - (i) overpayment of unemployment compensation;
    - (ii) child support obligations; or
    - (iii) any other amount required to be deducted and withheld under this chapter.

Renumbered and Amended by Chapter 240, 1996 General Session

**Part 5  
Administration and Funds**

**35A-4-501 Unemployment Compensation Fund -- Administration -- Contents -- Treasurer and custodian -- Separate accounts -- Use of money requisitioned -- Advances under Social Security Act.**

- (1)

- (a) There is established the Unemployment Compensation Fund, separate and apart from all public money or funds of this state, that shall be administered by the department exclusively for the purposes of this chapter.
- (b) This fund shall consist of the following money, all of which shall be mingled and undivided:
  - (i) all contributions collected under this chapter, less refunds of contributions made from the clearing account under Subsection 35A-4-306(5);
  - (ii) interest earned upon any money in the fund;
  - (iii) any property or securities acquired through the use of money belonging to the fund;
  - (iv) all earnings of the property or securities;
  - (v) all money credited to this state's account in the unemployment trust fund under Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended; and
  - (vi) all other money received for the fund from any other source.
- (2)
  - (a) The state treasurer shall:
    - (i) be the treasurer and custodian of the fund;
    - (ii) administer the fund in accordance with the directions of the division; and
    - (iii) pay all warrants drawn upon it by the division or its duly authorized agent in accordance with rules made by the department.
  - (b) The division shall maintain within the fund three separate accounts:
    - (i) a clearing account;
    - (ii) an unemployment trust fund account; and
    - (iii) a benefit account.
  - (c) All money payable to the fund, upon receipt by the division, shall be immediately deposited in the clearing account.
  - (d)
    - (i) All money in the clearing account after clearance shall, except as otherwise provided in this section, be deposited immediately with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained under Section 904 of the Social Security Act, 42 U.S.C. 1104, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.
    - (ii) Refunds of contributions payable under Subsections 35A-4-205(1)(a) and 35A-4-306(5) may be paid from the clearing account or the benefit account.
  - (e) The benefit account shall consist of all money requisitioned from this state's account in the unemployment trust fund in the United States treasury.
  - (f) Money in the clearing and benefit accounts may be deposited in any depository bank in which general funds of this state may be deposited, but no public deposit insurance charge or premium may be paid out of the fund.
  - (g)
    - (i) Money in the clearing and benefit accounts may not be commingled with other state funds, but shall be maintained in separate accounts on the books of the depository bank.
    - (ii) The money shall be secured by the depository bank to the same extent and in the same manner as required by the general depository law of this state.
    - (iii) Collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of the state.
  - (h)

- (i) The state treasurer is liable on the state treasurer's official bond for the faithful performance of the state treasurer's duties in connection with the unemployment compensation fund provided for under this chapter.
  - (ii) The liability on the official bond shall be effective immediately upon the enactment of this provision, and that liability shall exist in addition to the liability upon any separate bond existent on the effective date of this provision, or which may be given in the future.
  - (iii) All sums recovered for losses sustained by the fund shall be deposited in the fund.
- (3)
- (a)
    - (i) Money requisitioned from the state's account in the unemployment trust fund shall, except as set forth in this section, be used exclusively for the payment of benefits and for refunds of contributions under Subsections 35A-4-205(1)(a) and 35A-4-306(5).
    - (ii) The department shall from time to time requisition from the unemployment trust fund amounts, not exceeding the amounts standing to this state's account in the fund, as it considers necessary for the payment of those benefits and refunds for a reasonable future period.
    - (iii)
      - (A) Upon receipt the treasurer shall deposit the money in the benefit account and shall pay benefits and refunds from the account by means of warrants issued by the division in accordance with rules prescribed by the department.
      - (B) Expenditures of these money in the benefit account and refunds from the clearing account are not subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.
  - (b) Money in the state's account in the unemployment trust fund that were collected under the Federal Unemployment Tax Act, 26 U.S.C. 3301 et seq., and credited to the state under Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended may be requisitioned from the state's account and used in the payment of expenses incurred by the department for the administration of the state's unemployment law and public employment offices, if the expenses are incurred and the withdrawals are made only after and under a specific appropriation of the Legislature that specifies:
    - (i) the purposes and amounts;
    - (ii) that the money may not be obligated after the two-year period that began on the date of the enactment of the appropriation law; and
    - (iii) that the total amount which may be used during a fiscal year may not exceed the amount by which the aggregate of the amounts credited to this state's account under Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended, during the fiscal year and the 34 preceding fiscal years, exceeds the aggregate of the amounts used by this state for administration during the same 35 fiscal years.
      - (A) For the purpose of Subsection (3)(b)(iii), amounts used during any fiscal year shall be charged against equivalent amounts that were first credited and that have not previously been so charged. An amount used during any fiscal year may not be charged against any amount credited during a fiscal year earlier than the 34th preceding fiscal year.
      - (B) Except as appropriated and used for administrative expenses, as provided in this section, money transferred to this state under Section 903 of the Social Security Act as amended, may be used only for the payment of benefits.
      - (C) Any money used for the payment of benefits may be restored for appropriation and use for administrative expenses, upon request of the governor, under Section 903(c) of the Social Security Act.

- (D) The division shall maintain a separate record of the deposit, obligation, expenditure, and return of funds deposited.
  - (E) Money deposited shall, until expended, remain a part of the unemployment fund and, if not expended, shall be returned promptly to the account of this state in the unemployment trust fund.
  - (F) The money available by reason of this legislative appropriation may not be expended or available for expenditure in any manner that would permit their substitution for, or a corresponding reduction in, federal funds that would in the absence of the money be available to finance expenditures for the administration of this chapter.
- (c) Any balance of money requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and refunds during succeeding periods, or in the discretion of the division, shall be redeposited with the secretary of the treasury of the United States of America to the credit of the state's account in the unemployment trust fund, as provided in Subsection (2).
- (4)
- (a) The provisions of Subsections (1), (2), and (3), to the extent that they relate to the unemployment trust fund, shall be operative only so long as the unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for the state a separate book account of all money deposited in the fund by the state for benefit purposes, together with the state's proportionate share of the earnings of the unemployment trust fund, from which no other state is permitted to make withdrawals.
  - (b)
    - (i) When the unemployment trust fund ceases to exist, or the separate book account is no longer maintained, all money belonging to the unemployment compensation fund of the state shall be administered by the division as a trust fund for the purpose of paying benefits under this chapter, and the division shall have authority to hold, invest, transfer, sell, deposit, and release the money, and any properties, securities, or earnings acquired as an incident to the administration.
    - (ii) The money shall be invested in readily marketable bonds or other interest-bearing obligations of the United States of America, of the state, or of any county, city, town, or school district of the state, at current market prices for the bonds.
    - (iii) The investment shall be made so that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits.

Amended by Chapter 297, 2011 General Session

**35A-4-502 Administration of Employment Security Act.**

- (1)
- (a) The department shall administer this chapter through the division.
  - (b) The department may make, amend, or rescind any rules and special orders necessary for the administration of this chapter.
  - (c) The division may:
    - (i) employ persons;
    - (ii) make expenditures;
    - (iii) require reports;
    - (iv) make investigations;



- (v) make audits of any or all funds provided for under this chapter when necessary; and
- (vi) take any other action it considers necessary or suitable to that end.
- (d) No later than the first day of October of each year, the department shall submit to the governor a report covering the administration and operation of this chapter during the preceding calendar year and shall make any recommendations for amendments to this chapter as the department considers proper.
- (e)
  - (i) The report required under Subsection (1)(d) shall include a balance sheet of the money in the fund in which there shall be provided, if possible, a reserve against liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the division in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period.
  - (ii) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly inform the governor and the Legislature and make appropriate recommendations.
- (2)
  - (a) The department may make, amend, or rescind rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (b) The director of the division or the director's designee may adopt, amend, or rescind special orders after appropriate notice and opportunity to be heard. Special orders become effective 10 days after notification or mailing to the last-known address of the individuals or concerns affected thereby.
- (3) The director of the division or the director's designee shall cause to be printed for distribution to the public:
  - (a) the text of this chapter;
  - (b) the department's rules pertaining to this chapter;
  - (c) the department's annual reports to the governor required by Subsection (1)(e); and
  - (d) any other material the director of the division or the director's designee considers relevant and suitable and shall furnish them to any person upon application.
- (4)
  - (a) The division may delegate to any person so appointed the power and authority it considers reasonable and proper for the effective administration of this chapter and may bond any person handling money or signing checks under this authority.
  - (b) The department may, when permissible under federal and state law, make arrangements to voluntarily elect coverage under the United States Civil Service Retirement System or a comparable private retirement plan with respect to past as well as future services of individuals employed under this chapter who:
    - (i) were hired prior to October 1, 1980; and
    - (ii) have been retained by the department without significant interruption in the employees' services for the department.
  - (c) An employee of the department who no longer may participate in a federal or other retirement system as a result of a change in status or appropriation under this chapter may purchase credit with the employee's assets from the federal or other retirement system in which the employee may no longer participate in a retirement system created under:
    - (i) Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act for a purchase made under this Subsection (4)(c) by an employee eligible for service credit under Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act; or

- (ii) Title 49, Chapter 22, New Public Employees' Tier II Contributory Retirement Act, for a purchase made under this Subsection (4)(c) by an employee eligible for service credit under Title 49, Chapter 22, New Public Employees' Tier II Contributory Retirement Act.
- (5) There is created an Employment Advisory Council composed of the members listed in Subsections (5)(a) and (b).
  - (a) The executive director shall appoint:
    - (i) not less than five employer representatives chosen from individuals recommended by employers, employer associations, or employer groups;
    - (ii) not less than five employee representatives chosen from individuals recommended by employees, employee associations, or employee groups; and
    - (iii) five public representatives chosen at large.
  - (b) The executive director or the executive director's designee shall serve as a nonvoting member of the council.
  - (c) The employee representatives shall include both union and nonunion employees who fairly represent the percentage in the labor force of the state.
  - (d) Employers and employees shall consider nominating members of groups who historically may have been excluded from the council, such as women, minorities, and individuals with disabilities.
  - (e)
    - (i) Except as required by Subsection (5)(e)(ii), as terms of current council members expire, the executive director shall appoint each new member or reappointed member to a four-year term.
    - (ii) Notwithstanding the requirements of Subsection (5)(e)(i), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.
  - (f) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
  - (g) The executive director shall terminate the term of any council member who ceases to be representative as designated by the council member's original appointment.
  - (h) The council shall advise the department and the Legislature in formulating policies and discussing problems related to the administration of this chapter including:
    - (i) reducing and preventing unemployment;
    - (ii) encouraging the adoption of practical methods of vocational training, retraining, and vocational guidance;
    - (iii) monitoring the implementation of the Wagner-Peyser Act;
    - (iv) promoting the creation and development of job opportunities and the reemployment of unemployed workers throughout the state in every possible way; and
    - (v) appraising the industrial potential of the state.
  - (i) The council shall assure impartiality and freedom from political influence in the solution of the problems listed in Subsection (5)(h).
  - (j) The executive director or the executive director's designee shall serve as chair of the council and call the necessary meetings.
  - (k) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
    - (i) Section 63A-3-106;
    - (ii) Section 63A-3-107; and
    - (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

- (l) The department shall provide staff support to the council.
- (6) In the discharge of the duties imposed by this chapter, the division director or the director's designee as designated by department rule, may in connection with a disputed matter or the administration of this chapter:
  - (a) administer oaths and affirmations;
  - (b) take depositions;
  - (c) certify to official acts; and
  - (d) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records necessary as evidence.
- (7)
  - (a) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the director of the division or the director's designee shall have jurisdiction to issue to that person an order requiring the person to appear before the director or the director's designee to produce evidence, if so ordered, or give testimony regarding the matter under investigation or in question. Any failure to obey that order of the court may be punished by the court as contempt.
  - (b) Any person who, without just cause, fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in that person's power to do so, in obedience to a subpoena of the director or the director's designee shall be punished as provided in Subsection 35A-1-301(1)(b). Each day the violation continues is a separate offense.
  - (c) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.
- (8)
  - (a) In the administration of this chapter, the division shall cooperate with the United States Department of Labor to the fullest extent consistent with the provisions of this chapter and shall take action, through the adoption of appropriate rules by the department and administrative methods and standards, as necessary to secure to this state and its citizens all advantages available under the provisions of:
    - (i) the Social Security Act that relate to unemployment compensation;
    - (ii) the Federal Unemployment Tax Act; and
    - (iii) the Federal-State Extended Unemployment Compensation Act of 1970.
  - (b) In the administration of Section 35A-4-402, which is enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, 26 U.S.C. 3304, the division shall take any action necessary to ensure that the section is interpreted and applied to meet the requirements of the federal act, as interpreted by the United States Department of Labor and to secure to this state the full reimbursement of the federal share of extended and regular benefits paid under this chapter that are reimbursable under the federal act.

Amended by Chapter 439, 2011 General Session

**35A-4-503 Destruction or disposal of records or reports by division -- Procedure.**

The division may destroy or dispose of reports or records that are properly recorded or summarized in the payment records of the division, or that are no longer necessary in the proper

administration of this chapter in accordance with an applicable records retention schedule approved by the Records Management Committee under Section 63A-12-113.

Amended by Chapter 254, 2019 General Session

**35A-4-506 Special Administrative Expense Account.**

- (1) There is created a restricted account within the General Fund known as the "Special Administrative Expense Account."
- (2)
  - (a) Subject to Subsection (7), interest and penalties collected under this chapter, less refunds made under Subsection 35A-4-306(5), shall be paid into the restricted account from the clearing account of the restricted account at the end of each calendar month.
  - (b) A contribution to the restricted account and any other money received for that purpose shall be paid into the restricted account.
  - (c) The money in the restricted account may not be expended in any manner that would permit its substitution for, or a corresponding reduction in, federal funds that would in the absence of the money be available to finance expenditures for the administration of this chapter.
- (3) Nothing in this section shall prevent the money from being used as a revolving fund to cover expenditures, necessary and proper under this chapter, for which federal funds have been duly requested but not yet received subject to the charging of those expenditures against the funds when received.
- (4) Subject to Subsections (6) and (7), money in the restricted account shall be deposited, administered, and dispersed in accordance with the directions of the Legislature.
- (5) Subject to Subsection (6), money in the restricted account is made available to replace, within a reasonable time, any money received by this state under Section 302 of the Social Security Act, 42 U.S.C. Sec. 502, as amended, that because of any action of contingency has been lost or has been expended for purposes other than or in amounts in excess of those necessary for the proper administration of this chapter.
- (6) If money in the restricted account is used for a purpose unrelated to the administration of the unemployment compensation program as described in Subsection 303(a)(8) of the Social Security Act, 42 U.S.C. Sec. 503(a)(8), as amended, the division shall develop and follow a cost allocation plan in compliance with United States Department of Labor regulations, including the cost principles described in 29 C.F.R. 97.22(b) and 2 C.F.R. Part 225.
- (7) Beginning October 1, 2013, 15% of a civil penalty for fraud collected under Subsection 35A-4-405(5)(c)(i) shall be deposited into the Unemployment Compensation Fund, described in Section 35A-4-501, in compliance with Subsection 303(a)(11) of the Social Security Act, 42 U.S.C. Sec. 503(a)(8), as amended.
- (8) Money in the restricted account shall be available to the division for expenditure in accordance with this section.
- (9) The state treasurer shall pay all warrants drawn upon it by the division or its duly authorized agent in accordance with rules made by the department.
- (10)
  - (a) The state treasurer is liable on the state treasurer's official bond for the faithful performance of the treasurer's duties in connection with the Special Administrative Expense Account described in this chapter.
  - (b) Liability on the official bond exists in addition to any liability upon any separate bond that exists on the effective date of this provision or that may be given in the future.

- (c) Any money recovered on any surety bond losses sustained by the Special Administrative Expense Account shall be deposited in the restricted account or in the General Fund if directed by the Legislature.

Amended by Chapter 315, 2013 General Session

**35A-4-507 Authority to obtain money from state's account in federal unemployment trust fund -- Use and deposit.**

- (1) Notwithstanding the provisions of Sections 35A-4-501 and 35A-4-506, the department may requisition and receive from the state's account in the unemployment trust fund in the treasury of the United States the money standing to the state's credit as may, consistent with conditions for approval of this chapter under the Federal Unemployment Tax Act, 26 U.S.C. 3301 et seq., be used for expenses of administering this chapter and to expend the money for that purpose.
- (2) Money requisitioned under Subsection (1) shall be deposited in the Special Administrative Expense Account created by Section 35A-4-506.

Amended by Chapter 342, 2011 General Session

**35A-4-508 Review of decision or determination by division -- Administrative law judge -- Division of adjudication -- Workforce Appeals Board -- Judicial review by Court of Appeals -- Exclusive procedure.**

- (1)
  - (a) A review of a decision or determination involving contribution liability or applications for refund of contributions shall be made by the division in accordance with the provisions of this chapter.
  - (b) The division in conducting the review may in its discretion:
    - (i) refer the matter to an administrative law judge;
    - (ii) decide the application for review on the basis of any facts and information as may be obtained; or
    - (iii) hear argument or hold an informal hearing to secure further facts.
  - (c) After the review, notice of the decision shall be given to the employing unit.
  - (d) The decision made pursuant to the review is the final decision of the division unless, within 10 days after the date of notification or mailing of the decision, a further appeal is initiated under the provisions of this section.
- (2)
  - (a) Within 10 days after the mailing or personal delivery of a notice of a determination or decision rendered following a review under Subsection (1), an employing unit may appeal to the Division of Adjudication by filing a notice of appeal.
  - (b) The administrative law judge shall give notice of the pendency of the appeal to the division and any parties entitled to notice as provided by department rule. The administrative law judge shall receive into the record of the appeal any documents or other records provided by the division, and may obtain or request any additional documents or records held by the division or any of the parties that the administrative law judge considers relevant to a proper determination of the appeal.
  - (c) After affording the parties reasonable opportunity for a fair hearing, the administrative law judge shall make findings and conclusions and on that basis affirm, modify, or reverse the determination of the division.

- (d) The parties and the division shall be promptly notified of the administrative law judge's decision and furnished a copy of the decision and findings.
  - (e) The decision of the administrative law judge is considered to be a final order of the department unless within 30 days after the date the decision of the administrative law judge is issued further appeal is initiated under this section and Chapter 1, Part 3, Adjudicative Proceedings.
- (3)
- (a) The director of the Division of Adjudication shall assign an impartial, salaried administrative law judge selected in accordance with Subsection 35A-4-502(4)(a) to hear and decide referrals or appeals relating to claims for benefits or to make decisions affecting employing units under this chapter.
  - (b) All records on appeals shall be maintained in the offices of the Division of Adjudication. The records shall include an appeal docket showing the receipt and disposition of the appeals on review.
- (4) The Workforce Appeals Board may review and decide an appeal from a decision of an administrative law judge issued under this chapter.
- (5)
- (a) The manner in which disputed matters are presented, the reports required from the claimant and employing units, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the department for determining the rights of the parties, whether or not the rules conform to common-law or statutory rules of evidence and other technical rules of procedure.
  - (b) When the same or substantially similar evidence is relevant and material to the matters in issue in more than one proceeding, the same time and place for considering each matter may be fixed, hearings jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, if in the judgment of the administrative law judge having jurisdiction of the proceedings, the consolidation would not be prejudicial to any party.
- (6)
- (a) Except for reconsideration of any determination under Subsection 35A-4-406(2), any right, fact, or matter in issue, directly passed upon or necessarily involved in a determination or redetermination that has become final, or in a decision on appeal under this section that has become final, is conclusive for all the purposes of this chapter as between the division, the claimant, and all employing units that had notice of the determination, redetermination, or decision. Subject to appeal proceedings and judicial review as provided in this section, any determination, redetermination, or decision as to rights to benefits is conclusive for all the purposes of this chapter and is not subject to collateral attack by any employing unit, irrespective of notice.
  - (b) Any findings of fact or law, judgment, conclusion, or final order made by an unemployment insurance hearing officer, administrative law judge, or any person with the authority to make findings of fact or law in any action or proceeding before the unemployment insurance appeals tribunal, is not conclusive or binding in any separate or subsequent action or proceeding, between an individual and the individual's present or prior employer, brought before an arbitrator, court, or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.
- (7)

- (a) Any decision in the absence of an appeal as provided becomes final upon issuance and judicial review may be permitted only after any party claiming to be aggrieved has exhausted the party's remedies before the department as provided by this chapter.
  - (b) The division is a party to any judicial action involving any decisions and shall be represented in the judicial action by any qualified attorney employed by the department and designated by it for that purpose or at the division's request by the attorney general.
- (8)
- (a) Within 30 days after the decision of the Workforce Appeals Board is issued, any aggrieved party may secure judicial review by commencing an action in the court of appeals against the Workforce Appeals Board for the review of its decision, in which action any other party to the proceeding before the Workforce Appeals Board shall be made a defendant.
  - (b) In that action a petition, that shall state the grounds upon which a review is sought, shall be served upon the Workforce Appeals Board or upon that person the Workforce Appeals Board designates. This service is considered completed service on all parties but there shall be left with the party served as many copies of the petition as there are defendants and the Workforce Appeals Board shall mail one copy to each defendant.
  - (c) With its answer, the Workforce Appeals Board shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter together with its findings of fact and decision, in accordance with the requirements of the Utah Rules of Appellate Procedure.
  - (d) The Workforce Appeals Board may certify to the court questions of law involved in any decision by the board.
  - (e) In any judicial proceeding under this section, the findings of the Workforce Appeals Board as to the facts, if supported by evidence, are conclusive and the jurisdiction of the court is confined to questions of law.
  - (f) It is not necessary in any judicial proceeding under this section to enter exceptions to the rulings of the division, an administrative law judge, Workforce Appeals Board and no bond is required for entering the appeal.
  - (g) Upon final determination of the judicial proceeding, the division shall enter an order in accordance with the determination. In no event may a petition for judicial review act as a supersedeas.
- (9) The procedure provided for hearings and decisions with respect to any decision or determination of the division affecting claimants or employing units under this chapter is the sole and exclusive procedure notwithstanding any other provision of this title.

Amended by Chapter 13, 1998 General Session

**Chapter 5**  
**Training and Workforce Improvement Act**  
  
**Part 1**  
**Job Training Coordination Act**

**35A-5-101 Title.**

- (1) This chapter is known as the "Training and Workforce Improvement Act."

(2) This part is known as the "Job Training Coordination Act."

Renumbered and Amended by Chapter 375, 1997 General Session

**35A-5-102 Federal grants for retraining.**

- (1) By following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, the state, through the department, may and is encouraged to apply for retraining, community assistance, or technology transfer funds available through:
  - (a) the United States Department of Defense;
  - (b) United States Department of Labor; or
  - (c) other appropriate federal offices or departments.
- (2) In applying for federal funds, the state, through the department, may inform the federal government of state matching or enhancement funds if those funds are available under Section 67-1-12.

Amended by Chapter 296, 2016 General Session

**35A-5-103 Roles of service providers.**

- (1) Delivery of job training related services not administered by the department under this chapter shall be provided in accordance with Subsections (2) and (3).
- (2) The State Board of Education and the Board of Regents shall provide for basic education, remedial education, and applied technology training.
- (3) The Office of Rehabilitation shall provide those services authorized under the Rehabilitation Act of 1973, as amended.

Amended by Chapter 144, 2016 General Session

## **Part 2 Workforce Improvement**

**35A-5-202 Contracts with providers.**

- (1) In compliance with Title 63G, Chapter 6a, Utah Procurement Code, the department shall enter into a contract with one or more qualified providers to implement the state workforce services plan described in Section 35A-1-207.
- (2) A contract entered into under this section:
  - (a) shall be performance based; and
  - (b) may be structured so that the provider receives reimbursement based on:
    - (i) job development;
    - (ii) participant placement in jobs;
    - (iii) wages and benefits provided; and
    - (iv) participant retention in jobs over at least a 12-month period.
- (3) If the department determines through the procurement process that there are no qualified providers to implement the state workforce services plan, the department may implement the plan.

Amended by Chapter 296, 2016 General Session



### **Part 3**

## **Tax Credit for Employment of Persons Who Are Homeless Act**

#### **35A-5-301 Title.**

This part is known as the "Tax Credit for Employment of Persons Who Are Homeless Act."

Enacted by Chapter 315, 2014 General Session

#### **35A-5-302 Definitions.**

As used in this part:

- (1) "Date of hire" means the date a person who is homeless first performs labor or services for compensation for an employer.
- (2) "Governmental entity" is as defined in Section 59-2-511.
- (3) "Permanent housing, permanent supportive, or transitional facility" means a facility:
  - (a) located within the state;
  - (b) that provides supervision of residents of the facility; and
  - (c) that is:
    - (i) a publicly or privately operated shelter:
      - (A) designed to provide temporary living accommodations, including a welfare hotel, congregate shelter, or transitional housing for the mentally ill; and
      - (B) that receives federal homeless assistance funding distributed by the United States Department of Housing and Urban Development; or
    - (ii) an emergency shelter that receives homeless assistance funding from a county, city, or town.
- (4) "Person who is homeless" means an individual whose primary nighttime residence is:
  - (a) a public or private place not designated for or ordinarily used as a regular sleeping accommodation for an individual, including a car, park, abandoned building, bus station, train station, airport, or camping ground; or
  - (b) a publicly or privately operated shelter designated to provide temporary living arrangements, including a permanent housing, permanent supportive, or transitional facility.
- (5) "Wage requirement" means that an employer pays a person who is homeless \$4,000 or more in wages during a time period that:
  - (a) begins on the date of hire; and
  - (b) ends no later than two calendar quarters after the calendar quarter in which the date of hire occurs.

Amended by Chapter 502, 2019 General Session

#### **35A-5-303 Application for tax credit certificate.**

- (1) An employer who employs a person who is homeless and seeks to receive a tax credit certificate under this part shall file an application with the department with respect to each person who is homeless that the employer employs.
- (2) The application shall be on a form the department provides to the employer.
- (3) The application shall require the employer to certify that:
  - (a) the person who the employer employs:

- (i) met the definition of a person who is homeless on the date of hire or at any time during the 60-day period immediately before the date of hire;
  - (ii) is an employee, and not an independent contractor, of the employer;
  - (iii) is legally eligible to work in the United States; and
  - (iv) has not worked for the employer for more than 40 hours during the 60-day period immediately before the date of hire; and
- (b) the employer:
- (i) complies with all state, federal, or local requirements related to the employment of the person who is homeless; and
  - (ii) is not a governmental entity.
- (4) The application:
- (a) shall list, for each person who is homeless that the employer employs:
    - (i) the person's name;
    - (ii) the person's social security number; and
    - (iii) the person's current address;
  - (b) shall list the employer's federal employer identification number; and
  - (c) may require additional information as determined by the department.
- (5) An employer shall provide documentation to the department to support the certifications and other information the employer provides in the application described in this section.
- (6) If the department determines that, on the basis of the documentation and other information the employer provides, the employer has satisfied the certification requirements of Subsection (3) and provided the information described in Subsection (4), the department shall enter into a participation agreement with the employer as provided in Section 35A-5-304 for each person who is homeless who the employer employs.
- (7) If the department determines that, on the basis of the documentation and other information the employer provides, the employer has not satisfied the certification requirements of Subsection (3) or provided the information described in Subsection (4), the department:
- (a) shall deny the application; or
  - (b) inform the employer that the documentation the employer provided is inadequate and request the employer to submit new or additional documentation.
- (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with the provisions of this part, the department may make rules governing the administration of the tax credit described in this part.

Amended by Chapter 502, 2019 General Session

**35A-5-304 Participation agreements.**

- (1) If the department enters into a participation agreement with an employer, the participation agreement shall:
- (a) be provided by the department; and
  - (b) establish the requirements the employer is required to meet to be eligible to receive a tax credit certificate, including:
    - (i) requiring the employer to meet the certification requirements of Subsection 35A-5-303(3);
    - (ii) requiring the employer to provide written notice to the department when the employer meets the wage requirement; and
    - (iii) requiring the employer to provide documentation or other information the department requests:

- (A) to establish the hours and dates that the person who is homeless works for the employer;  
and
  - (B) to support the employer's eligibility to receive a tax credit certificate under this part.
- (2) An agreement under this section does constitute a right to receive a tax credit certificate under this part.

Amended by Chapter 502, 2019 General Session

**35A-5-305 Tax credit certificate.**

- (1) An employer shall provide written notice to the department as provided in the participation agreement described in Section 35A-5-304.
- (2) The department shall determine whether an employer has met the requirements of the participation agreement under Section 35A-5-304 to receive a tax credit certificate after the employer provides the written notice described in Subsection (1) to the department.
- (3) Subject to the other provisions of this section, if the department determines that an employer has met the requirements of the participation agreement under Section 35A-5-304 to receive a tax credit certificate, the department may issue a tax credit certificate to the employer.
- (4) A tax credit certificate under this section:
  - (a) shall list the amount of tax credit allowable for the taxable year in an amount that does not exceed \$2,000;
  - (b) shall list the name and federal employer number of the employer;
  - (c) shall list the name, Social Security identification number, and current address of the person who is homeless with respect to whom the employer has met the wage requirement; and
  - (d) may include any other information required by the department.
- (5) Subject to Subsections (6) and (7), the department shall issue tax credit certificates under this section in the order that the department receives the written notice described in Subsection (1).
- (6) The department may not issue tax credit certificates that total more than \$100,000 in a fiscal year.
- (7)
  - (a) Subject to Subsection (7)(b), if the department would have issued tax credit certificates that total more than \$100,000 in a fiscal year but for the limit provided in Subsection (6), the department shall issue the tax credit certificates that exceed \$100,000 in the next fiscal year.
  - (b) If the department issues tax credit certificates in accordance with Subsection (7)(a):
    - (i) the tax credit certificates may not total more than \$100,000; and
    - (ii) the department may not issue tax credit certificates for an amount that exceeds the limit described in Subsection (7)(b)(i) in a future fiscal year.
- (8) The department shall provide a copy of a tax credit certificate the department issues under this section to the State Tax Commission.

Amended by Chapter 502, 2019 General Session

**35A-5-306 Report to the Legislature.**

Beginning with the 2016 interim, the department shall annually provide an electronic report to the Economic Development and Workforce Services Interim Committee and the Revenue and Taxation Interim Committee:

- (1) on or before the November interim meeting; and
- (2) on the amount of tax credits the department grants under this part.

Amended by Chapter 135, 2016 General Session

## **Chapter 6 Apprenticeship Act**

### **Part 1 General Provisions**

#### **35A-6-101 Title.**

This chapter shall be known as the "Apprenticeship Act."

Enacted by Chapter 375, 1997 General Session

#### **35A-6-102 Definitions.**

As used in this chapter and in Title 34, Labor in General:

- (1) "Apprentice" means an individual who has entered into:
  - (a) a written agreement approved by the Office of Apprenticeship with an employer or the employer's agent, an association of employers, an organization of employees, or a joint committee representing employers and employees;
  - (b) an apprenticeship that meets Office of Apprenticeship standards; or
  - (c) an apprenticeship that can be completed at no charge to the participant where the participant learns and works with registered standards to learn a set of skills that result in the participant qualifying for a state license or certification or earning industry recognized credentials at the completion of the apprenticeship.
- (2) "Commissioner" means the Commissioner of Apprenticeship Programs described in Section 35A-6-105.
- (3) "Office of Apprenticeship" means the federal agency designated by the United States Department of Labor to oversee apprenticeship programs.

Amended by Chapter 224, 2019 General Session

#### **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 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.

Amended by Chapter 132, 1999 General Session

**35A-6-104 Application of chapter -- Voluntary election.**

This chapter applies only to such persons, firms, political subdivisions, corporations, employer associations, or bona fide organizations of employees as voluntarily elect to conform with its provisions.

Renumbered and Amended by Chapter 375, 1997 General Session

**35A-6-105 Commissioner of Apprenticeship Programs.**

- (1) There is created the position of Commissioner of Apprenticeship Programs within the department.
- (2) The commissioner shall be appointed by the executive director and chosen from one or more recommendations provided by a majority vote of the State Workforce Development Board.
- (3) The commissioner may be terminated without cause by the executive director.
- (4) The commissioner shall:
  - (a) promote and educate the public, including high school guidance counselors and potential participants in apprenticeship programs, about apprenticeship programs offered in the state, including apprenticeship programs offered by private sector businesses, trade groups, labor unions, partnerships with educational institutions, and other associations in the state;
  - (b) coordinate with the department and other stakeholders, including the Utah System of Technical Colleges, union and nonunion apprenticeship programs, the Office of Apprenticeship, the State Board of Education, the Utah System of Higher Education, the Department of Commerce, the Division of Occupational and Professional Licensing, and the Governor's Office of Economic Development to improve and promote apprenticeship opportunities in the state; and
  - (c) provide an annual written report to:
    - (i) the department for inclusion in the department's annual written report described in Section 35A-1-109;
    - (ii) the Business, Economic Development, and Labor Appropriations Subcommittee; and
    - (iii) the Higher Education Appropriations Subcommittee.
- (5) The annual written report described in Subsection (4)(c) shall provide information concerning:
  - (a) the number of available apprenticeship programs in the state;
  - (b) the number of apprentices participating in each program;
  - (c) the completion rate of each program;
  - (d) the cost of state funding for each program; and
  - (e) recommendations for improving apprenticeship programs.

Enacted by Chapter 224, 2019 General Session

## Chapter 7 Centralized New Hire Registry Act

### **35A-7-101 Title.**

This chapter is known as the "Centralized New Hire Registry Act."

Enacted by Chapter 232, 1997 General Session

### **35A-7-102 Definitions.**

As used in this chapter:

- (1) "Business day" means a day on which state offices are open for regular business.
- (2) "Compensation" means payment owed by an employer for labor or services performed by an employee.
- (3) "Date of hire" means the date labor or services for compensation are first performed by the employee.
- (4) "Date of rehire" means the date labor or services for compensation are first performed by an employee who was previously employed by the employer but has been separated from that employment for at least 60 consecutive days.
- (5)
  - (a) "Employee" means an individual who is an employee within the meaning of Chapter 24 of the Internal Revenue Code of 1986.
  - (b) "Employee" does not include an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of that agency determines that reporting the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.
- (6)
  - (a) "Employer" means any person or entity that is an employer as defined in Section 3401(d) of the Internal Revenue Code of 1986.
  - (b) "Employer" includes any governmental entity and any labor organization.
- (7)
  - (a) "Labor organization" means any entity as defined in Section 2(5) of the National Labor Relations Act.
  - (b) "Labor organization" includes any entity or hiring hall that is used by agreement between the organization and an employer to carry out requirements described in Section 8(f)(3) of the National Labor Relations Act.
- (8) "Registry" means the centralized new hire registry created in Section 35A-7-103.

Amended by Chapter 107, 2012 General Session

### **35A-7-103 Establishment of registry.**

- (1)
  - (a) The Department of Workforce Services, through contract with the Office of Recovery Services, shall establish a centralized new hire registry database for the purpose of receiving and maintaining information on newly hired or rehired employees.
  - (b) The database shall be formatted to conduct automatic comparisons as described in Section 35A-7-105 by October 1, 1997.

- (2) Information in the registry will be used to match the employee's employment records with other databases to allow for the rapid implementation of support orders and verification of employment status.

Enacted by Chapter 232, 1997 General Session

**35A-7-104 Reporting requirements.**

- (1) An employer that hires or rehires an employee shall send to the department:
  - (a) the employee's name, address, Social Security number, and date of hire or date of rehire; and
  - (b) the employer's name, address, and federal tax identification number.
- (2) An employer shall send the information required by this section to the department:
  - (a) not later than 20 days after the date of hire or date of rehire; or
  - (b) if approved by the department, on a semimonthly basis of not less than 12 days nor more than 16 days apart.
- (3) The department shall determine by rule the form and manner for sending the information required under this section, which may include magnetic, electronic, and voice activated transmission.
- (4) The reporting requirement of this section does not apply to an employer if the employer:
  - (a) has employees in two or more states;
  - (b) sends the information required by this section to a state other than Utah; and
  - (c) complies with the multi-state employer reporting requirement of Section 453A of the Social Security Act, 42 U.S.C. 653a.

Amended by Chapter 107, 2012 General Session

**35A-7-105 Requirements of the new hire registry.**

- (1) Within five business days after receiving information described in Section 35A-7-104, the department shall:
  - (a) enter the information into the registry;
  - (b) conduct an automated comparison of the social security numbers reported by employers and the social security numbers appearing in the records of the Office of Recovery Services beginning May 1, 1998; and
  - (c) when an information comparison reveals a positive match between an individual's social security number and the child support records, provide the following information to the Office of Recovery Services:
    - (i) the name, address, and social security number of the individual; and
    - (ii) the name, address, and federal tax number of the individual's employer.
- (2) Beginning May 1, 1998, within two business days after information described in Section 35A-7-104 is entered into the registry, matched, and reported to the Office of Recovery Services, the Office of Recovery Services shall transmit a notice to the employer directing the employer to withhold the employee's wages in an amount equal to the employee's monthly or other periodic support obligation.
- (3) Within three business days after information described in Section 35A-7-104 is entered into the registry, the department shall furnish that information to the National Directory of New Hires.
- (4) The department shall, on a quarterly basis, furnish to the National Directory of New Hires extracts of the reports required under the Social Security Act, 42 U.S.C. Sec. 303(a)(6), to be made to the Secretary of Labor concerning the wages and unemployment compensation paid

to individuals by such dates, in such format, and containing such information as specified in federal regulations.

- (5) State agencies operating employment security and workers' compensation programs may have access to the information in the registry for purposes of administering those programs.

Enacted by Chapter 232, 1997 General Session

**35A-7-106 Penalties for failure to report.**

- (1) An employer who fails to timely report the hiring or rehiring of an employee as required by this chapter is subject to a civil penalty of:
  - (a) \$25 for each such failure; or
  - (b) \$500 if the failure to report is intentional and is the result of an agreement between the employer and the employee to not supply the required information, or to supply false or incomplete information.
- (2) The department may assess the penalty by following the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act. The department shall collect any unpaid civil penalty in the same manner as provided for other penalties under Subsections 35A-4-305(3) and (5).

Amended by Chapter 382, 2008 General Session

**35A-7-107 Use and access to the registry records.**

- (1)
  - (a) The records of the registry shall be maintained as private records under Section 63G-2-202.
  - (b) In addition to those persons granted access to private records under Sections 63G-2-202 and 63G-2-206, state or federal agencies may access data from the registry for the following purposes:
    - (i) the Office of Recovery Services for use related to locating, establishing, and enforcing child, medical, and spousal support obligations and other services;
    - (ii) state agencies which use financial information in determining eligibility for public assistance programs;
    - (iii) state agencies which use financial information in collecting state accounts receivable; and
    - (iv) federal agencies responsible for periodic matches of new hire registry information with federal data bases.
- (2) Information that is received under this chapter shall be kept by the department for at least six months.

Amended by Chapter 59, 2011 General Session

**35A-7-108 Authorization to contract for services and collect funds.**

- (1) The department may contract for services to assist with the implementation of this chapter.
- (2) The department, through contract with the Office of Recovery Services, may collect fees from state and federal agencies for performing data comparisons in accordance with Section 35A-4-106.

Enacted by Chapter 232, 1997 General Session



## **Chapter 8 Housing and Community Development Division**

### **Part 1 Definitions**

#### **35A-8-101 Definitions.**

As used in this chapter:

- (1) "Accessible housing" means housing which has been constructed or modified to be accessible, as described in the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.
- (2) "Director" means the director of the division.
- (3) "Division" means the Housing and Community Development Division.

Renumbered and Amended by Chapter 212, 2012 General Session

### **Part 2 Housing and Community Development Division**

#### **35A-8-201 Housing and Community Development Division.**

The Housing and Community Development Division is under the administration and general supervision of the director.

Renumbered and Amended by Chapter 212, 2012 General Session

#### **35A-8-202 Powers and duties of division.**

- (1) The division shall:
  - (a) assist local governments and citizens in the planning, development, and maintenance of necessary public infrastructure and services;
  - (b) cooperate with, and provide technical assistance to, counties, cities, towns, regional planning commissions, area-wide clearinghouses, zoning commissions, parks or recreation boards, community development groups, community action agencies, and other agencies created for the purpose of aiding and encouraging an orderly, productive, and coordinated development of the state and its political subdivisions;
  - (c) assist the governor in coordinating the activities of state agencies which have an impact on the solution of community development problems and the implementation of community plans;
  - (d) serve as a clearinghouse for information, data, and other materials which may be helpful to local governments in discharging their responsibilities and provide information on available federal and state financial and technical assistance;
  - (e) carry out continuing studies and analyses of the problems faced by communities within the state and develop such recommendations for administrative or legislative action as appear necessary;
  - (f) assist in funding affordable housing and addressing problems of homelessness;
  - (g) support economic development activities through grants, loans, and direct programs financial assistance;

- (h) certify project funding at the local level in conformance with federal, state, and other requirements;
  - (i) utilize the capabilities and facilities of public and private universities and colleges within the state in carrying out its functions; and
  - (j) assist and support local governments, community action agencies, and citizens in the planning, development, and maintenance of home weatherization, energy efficiency, and antipoverty activities.
- (2) The division may:
- (a) by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, seek federal grants, loans, or participation in federal programs;
  - (b) if any federal program requires the expenditure of state funds as a condition to participation by the state in any fund, property, or service, with the governor's approval, expend whatever funds are necessary out of the money provided by the Legislature for the use of the department;
  - (c) in accordance with Part 9, Domestic Violence Shelters, assist in developing, constructing, and improving shelters for victims of domestic violence, as described in Section 77-36-1, through loans and grants to nonprofit and governmental entities; and
  - (d) assist, when requested by a county or municipality, in the development of accessible housing.

Renumbered and Amended by Chapter 212, 2012 General Session

### **Part 3**

#### **Community Impact Alleviation**

#### **35A-8-301 Legislative intent -- Purpose and policy.**

- (1) It is the intent of the Legislature to make available funds received by the state from federal mineral lease revenues under Section 59-21-2, bonus payments on federal oil shale lease tracts U-A and U-B, and all other bonus payments on federal mineral leases to be used for the alleviation of social, economic, and public finance impacts resulting from the development of natural resources in this state, subject to the limitations provided for in Section 35 of the Mineral Leasing Act of 1920 (41 Stat. 450, 30 U.S.C. Sec. 191).
- (2) The purpose of this part is to maximize the long term benefit of funds derived from these lease revenues and bonus payments by fostering funding mechanisms which will, consistent with sound financial practices, result in the greatest use of financial resources for the greatest number of citizens of this state, with priority given to those communities designated as impacted by the development of natural resources covered by the Mineral Leasing Act.
- (3) The policy of this state is to promote cooperation and coordination between the state and its agencies and political subdivisions with individuals, firms, and business organizations engaged in the development of the natural resources of this state. The purpose of such efforts include private sector participation, financial and otherwise, in the alleviation of impacts associated with resources development activities.

Renumbered and Amended by Chapter 212, 2012 General Session

#### **35A-8-302 Definitions.**

As used in this part:

- (1) "Bonus payments" means that portion of the bonus payments received by the United States government under the Leasing Act paid to the state under Section 35 of the Leasing Act, 30 U.S.C. Sec. 191, together with any interest that had accrued on those payments.
- (2) "Impact board" means the Permanent Community Impact Fund Board created under Section 35A-8-304.
- (3) "Impact fund" means the Permanent Community Impact Fund established by this chapter.
- (4) "Interlocal agency" means a legal or administrative entity created by a subdivision or combination of subdivisions under the authority of Title 11, Chapter 13, Interlocal Cooperation Act.
- (5) "Leasing Act" means the Mineral Lands Leasing Act of 1920, 30 U.S.C. Sec. 181 et seq.
- (6) "Qualifying sales and use tax distribution reduction" means that, for the calendar year beginning on January 1, 2008, the total sales and use tax distributions a city received under Section 59-12-205 were reduced by at least 15% from the total sales and use tax distributions the city received under Section 59-12-205 for the calendar year beginning on January 1, 2007.
- (7) "Subdivision" means a county, city, town, county service area, special service district, special improvement district, water conservancy district, water improvement district, sewer improvement district, housing authority, building authority, school district, or public postsecondary institution organized under the laws of this state.
- (8)
  - (a) "Throughput infrastructure project" means the following facilities, whether located within, partially within, or outside of the state:
    - (i) a bulk commodities ocean terminal;
    - (ii) a pipeline for the transportation of liquid or gaseous hydrocarbons;
    - (iii) electric transmission lines and ancillary facilities;
    - (iv) a shortline freight railroad and ancillary facilities;
    - (v) a plant or facility for storing, distributing, or producing hydrogen, including the liquification of hydrogen, for use as a fuel in zero emission motor vehicles, for electricity generation, or for industrial use; or
    - (vi) a plant for the production of zero emission hydrogen fueled trucks.
  - (b) "Throughput infrastructure project" includes:
    - (i) an ownership interest or a joint or undivided ownership interest in a facility;
    - (ii) a membership interest in the owner of a facility; or
    - (iii) a contractual right, whether secured or unsecured, to use all or a portion of the throughput, transportation, or transmission capacity of a facility.

Amended by Chapter 501, 2019 General Session

**35A-8-303 Impact fund -- Deposits and contents -- Use of fund money.**

- (1) There is created an enterprise fund entitled the "Permanent Community Impact Fund."
- (2) The fund consists of:
  - (a) all amounts appropriated to the impact fund under Section 59-21-2;
  - (b) bonus payments deposited to the impact fund under Subsection 59-21-1(2);
  - (c) all amounts appropriated to the impact fund under Section 53C-3-203;
  - (d) all amounts received for the repayment of loans made by the impact board under this chapter; and
  - (e) all other money appropriated or otherwise made available to the impact fund by the Legislature.
- (3) The state treasurer shall:

- (a) invest the money in the impact fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act; and
- (b) deposit all interest or other earnings derived from those investments into the impact fund.
- (4) The amounts in the impact fund available for loans, grants, administrative costs, or other purposes of this part shall be limited to that which the Legislature appropriates for these purposes.
- (5) Federal mineral lease revenue received by the state under the Leasing Act that is deposited into the impact fund shall be used:
  - (a) in a manner consistent with the provisions of:
    - (i) the Leasing Act; and
    - (ii) this part; and
  - (b) for loans, grants, or both to state agencies or subdivisions that are socially or economically impacted by the leasing of minerals under the Leasing Act.
- (6) The money described in Subsection (2)(c) shall be used for grants to political subdivisions of the state to mitigate the impacts resulting from the development or use of school and institutional trust lands.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-304 Permanent Community Impact Fund Board created -- Members -- Terms -- Chair -- Expenses.**

- (1) There is created within the department the Permanent Community Impact Fund Board composed of 11 members as follows:
  - (a) the chair of the Board of Water Resources or the chair's designee;
  - (b) the chair of the Water Quality Board or the chair's designee;
  - (c) the director of the department or the director's designee;
  - (d) the state treasurer;
  - (e) the chair of the Transportation Commission or the chair's designee;
  - (f) a locally elected official who resides in Carbon, Emery, Grand, or San Juan County;
  - (g) a locally elected official who resides in Juab, Millard, Sanpete, Sevier, Piute, or Wayne County;
  - (h) a locally elected official who resides in Duchesne, Daggett, or Uintah County;
  - (i) a locally elected official who resides in Beaver, Iron, Washington, Garfield, or Kane County; and
  - (j) a locally elected official from each of the two counties that produced the most mineral lease money during the previous four-year period, prior to the term of appointment, as determined by the department.
- (2)
  - (a) The members specified under Subsections (1)(f) through (j) may not reside in the same county and shall be:
    - (i) nominated by the Board of Directors of the Southeastern Association of Local Governments, the Six County Association of Governments, the Uintah Basin Association of Governments, and the Five County Association of Governments, respectively, except that a member under Subsection (1)(j) shall be nominated by the Board of Directors of the Association of Governments from the region of the state in which the county is located; and
    - (ii) appointed by the governor with the consent of the Senate.
  - (b) Except as required by Subsection (2)(c), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

- (c) Notwithstanding the requirements of Subsection (2)(b), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
- (d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
- (3) The terms of office for the members of the impact board specified under Subsections (1)(a) through (1)(e) shall run concurrently with the terms of office for the councils, boards, committees, commission, departments, or offices from which the members come.
- (4) The executive director of the department, or the executive director's designee, is the chair of the impact board.
- (5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 89, 2019 General Session

### **35A-8-305 Duties -- Loans -- Interest.**

- (1) The impact board shall:
  - (a) make grants and loans from the amounts appropriated by the Legislature out of the impact fund to state agencies, subdivisions, and interlocal agencies that are or may be socially or economically impacted, directly or indirectly, by mineral resource development for:
    - (i) planning;
    - (ii) construction and maintenance of public facilities; and
    - (iii) provision of public services;
  - (b) establish the criteria by which the loans and grants will be made;
  - (c) determine the order in which projects will be funded;
  - (d) in conjunction with other agencies of the state, subdivisions, or interlocal agencies, conduct studies, investigations, and research into the effects of proposed mineral resource development projects upon local communities;
  - (e) sue and be sued in accordance with applicable law;
  - (f) qualify for, accept, and administer grants, gifts, loans, or other funds from:
    - (i) the federal government; and
    - (ii) other sources, public or private; and
  - (g) perform other duties assigned to it under Sections 11-13-306 and 11-13-307.
- (2) Money, including all loan repayments and interest, in the impact fund derived from bonus payments may be used for any of the purposes set forth in Subsection (1)(a) but may only be given in the form of interest bearing loans to be paid back into the impact fund by the agency, subdivision, or interlocal agency.
- (3)
  - (a) "Provision of public services" under Subsection (1)(a) includes contracts with public postsecondary institutions to fund research, education, or public service programs that benefit impacted counties or political subdivisions of the counties.
  - (b) Each contract under Subsection (3)(a) shall be:
    - (i) based on an application to the impact board from the impacted county; and
    - (ii) approved by the county legislative body.
  - (c) For purposes of this section, a land use plan is a public service program.

Amended by Chapter 89, 2019 General Session

**35A-8-306 Powers.**

The impact board may:

- (1) appoint, where it considers this appropriate, a hearing examiner or administrative law judge with authority to conduct hearings, make determinations, and enter appropriate findings of facts, conclusions of law, and orders under authority of the impact board under Sections 11-13-306 and 11-13-307;
- (2) appoint additional professional and administrative staff necessary to effectuate Sections 11-13-306 and 11-13-307;
- (3) make independent studies regarding matters submitted to it under Sections 11-13-306 and 11-13-307 that the impact board, in its discretion, considers necessary, which studies shall be made a part of the record and may be considered in the impact board's determination; and
- (4) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to perform the impact board's responsibilities under this part.

Amended by Chapter 89, 2019 General Session

**35A-8-307 Impact fund administered by impact board -- Eligibility for assistance -- Review by board -- Administration costs -- Annual report.**

- (1)
  - (a) The impact board shall:
    - (i) administer the impact fund in a manner that will keep a portion of the impact fund revolving;
    - (ii) determine provisions for repayment of loans;
    - (iii) establish criteria for determining eligibility for assistance under this part; and
    - (iv) consider recommendations from the School and Institutional Trust Lands Administration when awarding a grant described in Subsection 35A-8-303(6).
  - (b)
    - (i) The criteria for awarding loans or grants made from funds described in Subsection 35A-8-303(5) shall be consistent with the requirements of Subsection 35A-8-303(5).
    - (ii) The criteria for awarding grants made from funds described in Subsection 35A-8-303(2)(c) shall be consistent with the requirements of Subsection 35A-8-303(6).
  - (c) In order to receive assistance under this part, subdivisions and interlocal agencies shall submit formal applications containing the information that the impact board requires.
- (2) In determining eligibility for loans and grants under this part, the impact board shall consider the following:
  - (a) the subdivision's or interlocal agency's current mineral lease production;
  - (b) the feasibility of the actual development of a resource that may impact the subdivision or interlocal agency directly or indirectly;
  - (c) current taxes being paid by the subdivision's or interlocal agency's residents;
  - (d) the borrowing capacity of the subdivision or interlocal agency, including:
    - (i) its ability and willingness to sell bonds or other securities in the open market; and
    - (ii) its current and authorized indebtedness;
  - (e) all possible additional sources of state and local revenue, including utility user charges;
  - (f) the availability of federal assistance funds;
  - (g) probable growth of population due to actual or prospective natural resource development in an area;

- (h) existing public facilities and services;
  - (i) the extent of the expected direct or indirect impact upon public facilities and services of the actual or prospective natural resource development in an area; and
  - (j) the extent of industry participation in an impact alleviation plan, either as specified in Title 63M, Chapter 5, Resource Development Act, or otherwise.
- (3) The impact board may not fund an education project that could otherwise have reasonably been funded by a school district through a program of annual budgeting, capital budgeting, bonded indebtedness, or special assessments.
- (4) The impact board may restructure all or part of the agency's or subdivision's liability to repay loans for extenuating circumstances.
- (5) The impact board shall:
- (a) review the proposed uses of the impact fund for loans or grants before approving them and may condition its approval on whatever assurances the impact board considers necessary to ensure that proceeds of the loan or grant will be used in accordance with the Leasing Act and this part; and
  - (b) ensure that each loan specifies the terms for repayment and is evidenced by general obligation, special assessment, or revenue bonds, notes, or other obligations of the appropriate subdivision or interlocal agency issued to the impact board under whatever authority for the issuance of those bonds, notes, or obligations exists at the time of the loan.
- (6) The impact board shall allocate from the impact fund to the department those funds that are appropriated by the Legislature for the administration of the impact fund, but this amount may not exceed 2% of the annual receipts to the impact fund.
- (7) The department shall include in the annual written report described in Section 35A-1-109, the number and type of loans and grants made as well as a list of subdivisions and interlocal agencies that received this assistance.

Amended by Chapter 371, 2014 General Session

**35A-8-308 Throughput Infrastructure Fund.**

- (1) There is created an enterprise fund known as the Throughput Infrastructure Fund.
- (2) The fund consists of money generated from the following revenue sources:
- (a) all amounts transferred to the fund under Subsection 59-12-103(12);
  - (b) any voluntary contributions received;
  - (c) appropriations made to the fund by the Legislature; and
  - (d) all amounts received from the repayment of loans made by the impact board under Section 35A-8-309.
- (3) The state treasurer shall:
- (a) invest the money in the fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act; and
  - (b) deposit all interest or other earnings derived from those investments into the fund.

Amended by Chapter 181, 2017 General Session

Amended by Chapter 421, 2017 General Session

**35A-8-309 Throughput Infrastructure Fund administered by impact board -- Uses -- Review by board -- Annual report -- First project.**

- (1) The impact board shall:

- (a) make grants and loans from the Throughput Infrastructure Fund created in Section 35A-8-308 for a throughput infrastructure project;
  - (b) use money transferred to the Throughput Infrastructure Fund in accordance with Subsection 59-12-103(12) to provide a loan or grant to finance the cost of acquisition or construction of a throughput infrastructure project to one or more local political subdivisions, including a Utah interlocal agency created under Title 11, Chapter 13, Interlocal Cooperation Act;
  - (c) administer the Throughput Infrastructure Fund in a manner that will keep a portion of the fund revolving;
  - (d) determine provisions for repayment of loans;
  - (e) establish criteria for awarding loans and grants; and
  - (f) establish criteria for determining eligibility for assistance under this section.
- (2) The cost of acquisition or construction of a throughput infrastructure project includes amounts for working capital, reserves, transaction costs, and other amounts determined by the impact board to be allocable to a throughput infrastructure project.
- (3) The impact board may restructure or forgive all or part of a local political subdivision's or interlocal agency's obligation to repay loans for extenuating circumstances.
- (4) To receive assistance under this section, a local political subdivision or an interlocal agency shall submit a formal application containing the information that the impact board requires.
- (5)
- (a) The impact board shall:
    - (i) review the proposed uses of the Throughput Infrastructure Fund for a loan or grant before approving the loan or grant and may condition its approval on whatever assurances the impact board considers necessary to ensure that proceeds of the loan or grant will be used in accordance with this section;
    - (ii) ensure that each loan specifies terms for interest deferments, accruals, and scheduled principal repayment; and
    - (iii) ensure that repayment terms are evidenced by bonds, notes, or other obligations of the appropriate local political subdivision or interlocal agency issued to the impact board and payable from the net revenues of a throughput infrastructure project.
  - (b) An instrument described in Subsection (5)(a)(iii) may be:
    - (i) non-recourse to the local political subdivision or interlocal agency; and
    - (ii) limited to a pledge of the net revenues from a throughput infrastructure project.
- (6)
- (a) Subject to the restriction in Subsection (6)(b), the impact board shall allocate from the Throughput Infrastructure Fund to the board those amounts that are appropriated by the Legislature for the administration of the Throughput Infrastructure Fund.
  - (b) The amount described in Subsection (6)(a) may not exceed 2% of the annual receipts to the fund.
- (7) The board shall include in the annual written report described in Section 35A-1-109:
- (a) the number and type of loans and grants made under this section; and
  - (b) a list of local political subdivisions or interlocal agencies that received assistance under this section.
- (8)
- (a) The first throughput infrastructure project considered by the impact board shall be a bulk commodities ocean terminal project.
  - (b) Upon receipt of an application from an interlocal agency created for the sole purpose of undertaking a throughput infrastructure project that is a bulk commodities ocean terminal project, the impact board shall:



- (i) grant up to 2% of the money in the Throughput Infrastructure Fund to the interlocal agency to pay or reimburse costs incurred by the interlocal agency preliminary to its acquisition of the throughput infrastructure project; and
- (ii) fund the interlocal agency's application if the application meets all criteria established by the impact board.

Amended by Chapter 493, 2019 General Session

## Part 4 Housing Authorities

### 35A-8-401 Definitions.

As used in this part:

- (1) "Area of operation" means:
  - (a) in the case of an authority of a city, the city, except that the area of operation of an authority of a city does not include an area that lies within the territorial boundaries of some other city; or
  - (b) in the case of an authority of a county, all of the county for which it is created except, that a county authority may not undertake a project within the boundaries of a city unless a resolution has been adopted by the governing body of the city, and by any authority which has been established and authorized to exercise its powers in the city, declaring that there is need for the county authority to exercise its powers within that city.
- (2) "Blighted area" means an area where dwellings predominate that, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light, or sanitary facilities or any combination of these factors, are detrimental to safety, health, and morals.
- (3) "Bonds" means bonds, notes, interim certificates, debentures, or other obligations issued by an authority under this part.
- (4) "City" means a city or town in the state.
- (5) "Clerk" means the city or county clerk, or the officer charged with the duties customarily imposed on the clerk.
- (6) "County" means a county in the state.
- (7) "Elderly" means a person who meets the age, disability, or other conditions established by regulation of the authority.
- (8) "Federal government" includes the United States of America, the Department of Housing and Urban Development, or any other agency or instrumentality, corporate or otherwise, of the United States.
- (9) "Governing body" means, in the case of a city, the council or other body of the city in which is vested legislative authority customarily imposed on the city council, and in the case of a county, the board of county commissioners.
- (10) "Housing authority" or "authority" means a public body corporate and politic created by this part.
- (11)
  - (a) "Housing project" or "project" means a work or undertaking, on contiguous or noncontiguous sites to:
    - (i) demolish, clear, or remove buildings from a blighted area;

- (ii) provide or assist in providing decent, safe, and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of medium and low income by any suitable methods, including rental, sale of individual units in single or multifamily structures under conventional condominium, cooperative sales contract, lease-purchase agreement, loans, or subsidizing of rentals or charges; or
  - (iii) accomplish a combination of Subsections (11)(a)(i) and (ii).
- (b) "Housing project" includes:
- (i) buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances;
  - (ii) streets, sewers, water service, utilities, parks, site preparation and landscaping;
  - (iii) facilities for administrative, community, health, recreational, welfare, or other purposes;
  - (iv) the planning of the buildings and other improvements;
  - (v) the acquisition of property or any interest in the property;
  - (vi) the demolition of existing structures;
  - (vii) the construction, reconstruction, rehabilitation, alteration, or repair of the improvements and all other work in connection with them; and
  - (viii) all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.
- (12) "Major disaster" means a flood, drought, fire, hurricane, earthquake, storm, or other catastrophe, which in the determination of the governing body is of sufficient severity and magnitude to warrant the use of available resources of the federal, state, and local governments to alleviate the damage, hardship, or suffering caused.
- (13) "Mayor" means the mayor of the city or the officer charged with the duties customarily imposed on the mayor or executive head of a city.
- (14) "Obligee of an authority" or "obligee" includes a bondholder, agent or trustee for a bondholder, a lessor demising to the authority used in connection with a project, an assignee or assignees of the lessor's interest in whole or in part, and the federal government when it is a party to a contract with the authority.
- (15) "Persons of medium and low income" mean persons or families who, as determined by the authority undertaking a project, cannot afford to pay the amounts at which private enterprise, unaided by appropriate assistance, is providing a substantial supply of decent, safe and sanitary housing.
- (16) "Person with a disability" means a person with any disability as defined by and covered under the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.
- (17) "Public body" means a city, county or municipal corporation, commission, district, authority, agency, subdivision, or other body of the foregoing.
- (18) "Real property" includes all lands, improvements, and fixtures on them, property of any nature appurtenant to them or used in connection with them, and every estate, interest, and right, legal or equitable, including terms for years.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-402 Creation of housing authority authorized -- Procedure -- Registration as a limited purpose entity.**

- (1) The governing body of each public body of the state, except the state itself, may create an authority, corporate and politic, to be known as a "housing authority."
- (2) The governing body of a city or county shall give consideration to the need for an authority:
  - (a) on its own motion; or

- (b) upon the filing of a petition signed by 25 electors of the city or county asserting that there is need for an authority to function in the city or county and requesting that its governing body make a declaration to that effect.
- (3) The governing body shall adopt a resolution declaring there is need for an authority and creating an authority in the city or county if it finds:
  - (a) that unsanitary or unsafe inhabited dwelling accommodations exist in the city or county; or
  - (b) that there is a shortage of safe and sanitary dwelling accommodations in the city or county available to persons of medium and low income at rentals or prices they can afford.
- (4)
  - (a) In any suit, action, or proceeding involving the validity or enforcement of a contract of the authority, an authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of the resolution prescribed in Subsection (3).
  - (b) A copy of the resolution duly certified by the clerk shall be admissible in evidence in a suit, action, or proceeding.
- (5) In counties of the third, fourth, fifth, and sixth class, the governing body of each public body of the state, except the state itself, may contract with or execute an interlocal agreement for services to be provided by an existing housing authority established in another political subdivision.
- (6)
  - (a) Each housing authority shall register and maintain the housing authority's registration as a limited purpose entity, in accordance with Section 67-1a-15.
  - (b) A housing authority that fails to comply with Subsection (6)(a) or Section 67-1a-15 is subject to enforcement by the state auditor, in accordance with Section 67-3-1.

Amended by Chapter 256, 2018 General Session

**35A-8-403 Indian housing authorities.**

- (1)
  - (a) There is created, with respect to each Indian tribe, band, or community in the state, a public body corporate and politic, to function in the operating area of the Indian tribe, band, or community to be known as the "housing authority" of the Indian tribe, band, or community, which is an agency of this state, possessing all powers, rights, and functions specified for city and county authorities created under this part.
  - (b) This Indian housing authority may not transact business or exercise its powers unless the governing council of the tribe, band, or community, by proper resolution, declares that there is a need for an authority to function for the tribe, band, or community.
- (2)
  - (a) Except as otherwise provided in this part, the provisions of law applicable to housing authorities created for cities and counties and the commissioners of these authorities shall be applicable to Indian housing authorities and the commissioners of those authorities.
  - (b) The chief or other governing head of an Indian tribe, band, or community may exercise all appointing and other powers with respect to an Indian housing authority that are vested by this part in the mayor of a city relating to a city housing authority.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-404 Commissioners -- Appointment -- Terms -- Quorum -- Meetings -- Employment of other officers and employees authorized.**

- (1) If a housing authority is authorized to transact business and exercise powers under this part, not less than five nor more than seven people shall be appointed as commissioners of the authority:
  - (a) in the case of a city, by the mayor, with the advice and consent of the city's governing body; or
  - (b) in the case of a county, by the county's governing body.
- (2)
  - (a) The commissioners first appointed under this part shall serve for terms of one, two, three, four, and five years, respectively, from the date of their appointment.
  - (b) After the first commissioners are appointed under Subsection (2)(a), commissioners are appointed for a term of office of four years.
  - (c) Notwithstanding Subsections (2)(a) and (b), all vacancies are filled for the unexpired term.
- (3) A commissioner qualifies by taking the official oath of office.
- (4) A commissioner may not receive compensation except necessary expenses, including traveling expenses, incurred in the discharge of the commissioner's duties.
- (5) A commissioner holds office until the commissioner's successor is appointed and qualified.
- (6) A certificate of appointment or reappointment of a commissioner shall be:
  - (a) filed with the authority; and
  - (b) conclusive evidence of the appointment of the commissioner.
- (7) The powers of each authority are vested in the commissioners.
- (8)
  - (a) A majority of the commissioners of an authority constitutes a quorum for the purpose of conducting its business and exercising its powers and for all other purposes notwithstanding the existence of any vacancies.
  - (b) The authority may take action upon a vote of a majority of the commissioners present, unless the bylaws of the authority require a larger number.
- (9) Meetings of the commissioners of an authority may be held:
  - (a) anywhere within the area of operation of the authority; or
  - (b) within any area not described in Subsection (9)(a) in which the authority is authorized to undertake a project.
- (10) The commissioners of an authority shall elect a chair and vice chair from the commissioners.
- (11) An authority may employ an executive director, legal and technical experts, and other officers, agents, and employees, permanent and temporary, and shall determine their qualifications, duties, and compensation.
- (12) An authority may delegate to one or more of its agents or employees any powers or duties the authority considers proper.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-405 Disclosure of interest in project -- Restrictions.**

- (1) A commissioner, officer, or employee of an authority, who has voluntarily acquired any of the following interests, shall disclose to the commissioners of the authority, as soon as the person has knowledge of the interest, the nature and extent of the interest:
  - (a) a present or future interest, direct or indirect, in a project;
  - (b) a present or future interest, direct or indirect, in a property included in or planned to be included in a project;

- (c) a contract or proposed contract relating to a project; or
- (d) any other transaction or agreement with the authority.
- (2) The commissioners shall enter the particulars of the disclosure into the minutes of the authority.
- (3) After a disclosure of interest, the commissioner, officer, or employee may participate in any discussions concerning proposed authority action on the property, contract, transaction, or agreement in which the person has an interest, but the commissioner, officer, or employee may not vote on any action proposed by the authority regarding that property, contract, transaction, or agreement.
- (4) Commissioners, officers, and employees of an authority are not "public officers" for purposes of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-406 Misconduct of commissioners -- Removal.**

- (1) A commissioner of an authority may be removed by the mayor or, in the case of an authority for a county, by the body that appointed the commissioner for inefficiency, neglect of duty, or misconduct in office.
- (2) A commissioner may be removed only after a hearing and after having been given a copy of the charges at least 10 days prior to the hearing and having an opportunity to be heard in person or by counsel.
- (3) If a commissioner is removed, a record of the proceedings, together with the charges and findings, shall be filed in the office of the clerk.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-407 Powers of housing authority.**

- (1) An authority has perpetual succession and all the powers necessary to carry out the purposes of this part.
- (2) An authority may:
  - (a) sue and be sued;
  - (b) have a seal and alter it;
  - (c) make and execute contracts and other instruments necessary to the exercise of its powers;
  - (d) make, amend, and repeal bylaws and rules;
  - (e) within its area of operation, prepare, carry out, and operate projects and provide for the acquisition, construction, reconstruction, rehabilitation, improvement, extension, alteration or repair of any project;
  - (f) undertake and carry out studies and analyses of housing needs within its area of operation and ways of meeting those needs, including data with respect to population and family groups and its distribution according to income groups, the amount and quality of available housing, including accessible housing, and its distribution according to rentals and sales prices, employment, wages and other factors affecting the local housing needs and meeting these needs;
  - (g)
    - (i) make the results of studies and analyses available to the public and the building, housing, and supply industries; and
    - (ii) engage in research and disseminate information on housing programs;

- (h) utilize, contract with, act through, assist, and cooperate or deal with any person, agency, institution, or organization, public or private, for the provision of services, privileges, works, or facilities, or in connection with its projects;
- (i) notwithstanding anything to the contrary contained in this part or in any other provision of law:
  - (i) agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards in the development or administration of projects;
  - (ii) include in any contract awarded or entered into in connection with a project stipulations requiring that the contractor and all subcontractors comply with requirements as to minimum salaries or wages and maximum hours of labor; and
  - (iii) comply with any conditions attached to the financial aid of the project;
- (j) lease, rent, sell, or lease with the option to purchase any dwellings, lands, buildings, structures, or facilities embraced in a project;
- (k) subject to the limitations contained in this part with respect to the rental or charges for dwellings in housing projects, establish and revise the rents or charges for the dwellings;
- (l) own, hold, and improve real or personal property;
- (m) purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest in it;
- (n) sell, lease, exchange, transfer, assign, pledge, or dispose of real or personal property or any interest in it;
- (o) make loans for the provision of housing for occupancy by persons of medium and low income;
- (p) make loans or grants for the development and construction of accessible housing;
- (q) insure or provide for the insurance, in stock or mutual companies, of real or personal property or operations of the authority against any risks or hazards;
- (r) procure or agree to the procurement of government insurance or guarantees of the payment of any bonds, in whole or in part, issued by the authority, including the power to pay premiums on the insurance;
- (s) invest money held in reserves, sinking funds, or any funds not required for immediate disbursement in property or securities in which savings banks may legally invest money subject to their control;
- (t) redeem its bonds at the redemption price established or purchase its bonds at less than redemption price, with all bonds that are redeemed or purchased to be canceled;
- (u) within its area of operation, determine where blighted areas exist or where there is unsafe, insanitary, or overcrowded housing;
- (v) make studies and recommendations relating to the problem of clearing, replanning, and reconstructing blighted areas, and the problem of eliminating unsafe, insanitary, or overcrowded housing and providing dwelling accommodations and maintaining a wholesome living environment for persons of medium and low income, and cooperate with any public body or the private sector in action taken in connection with those problems;
- (w) acting through one or more commissioners or other persons designated by the authority, conduct examinations and investigations and hear testimony and take proof under oath at public or private hearings on any matter material for its information;
- (x) administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers, and issue commissions for the examination of witnesses outside the state who are unable to appear before the authority or are excused from attendance;
- (y) make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or like conditions or of demolishing unsafe or insanitary structures within its area of operation, its findings and recommendations with regard to any

building or property where conditions exist that are dangerous to the public health, morals, safety, or welfare; and

(z) exercise all or any part or combination of the powers granted under this part.

- (3)
- (a) If there are two or more housing authorities established within a county of the first or second class, then those housing authorities shall create a uniform online application for the housing choice voucher program with links to each of the housing authorities within the county.
  - (b) As used in Subsection (3)(a), "housing choice voucher program" means the federal government's housing assistance program administered by a housing authority, which enables low-income families, the elderly, and the disabled to secure decent, safe, and sanitary housing in the private market.
- (4) No provision of law with respect to the acquisition, operation, or disposition of property by other public bodies is applicable to an authority unless the Legislature specifically states that it is.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-408 Profit from projects prohibited -- Criteria for determining rentals and payments.**

- (1) To accomplish the public, governmental, and charitable purposes of this part, the Legislature declares that:
- (a) an authority manage and operate the authority's housing projects in an efficient manner to enable each housing project to provide decent, safe, and sanitary dwelling accommodations for persons of medium and low income and fix the rentals or payments for these accommodations for persons of low income at low rates; and
  - (b) an authority may not be operated as a source of revenue to the city or county.
- (2) An authority shall fix the rentals or payments for dwellings in the authority's projects at no higher rates than the authority finds necessary in order to produce revenues that, together with all other available money, revenues, income, and receipts of the authority from whatever sources derived, including federal financial assistance necessary to maintain the low-rent character of the projects, is sufficient to:
- (a) pay, as they become due, the principal and interest on the bonds of the authority;
  - (b) create and maintain reserves required to assure the payment of principal and interest as it becomes due on its bonds;
  - (c) meet the cost of, and provide for, maintaining and operating the projects, including necessary reserves and the cost of any insurance, and the administrative expenses of the authority; and
  - (d) make payments in lieu of taxes and, after payment in full of all obligations for which federal annual contributions are pledged, make repayments of federal and local contributions as it determines are consistent with the maintenance of the low-rent character of projects.
- (3) Rentals or payments for dwellings shall be established and the projects administered, in so far as possible, to assure that any federal financial assistance required is strictly limited to amounts and periods necessary to maintain the low-rent character of the projects.
- (4) Nothing in this section limits the amount an authority may charge for nondwelling facilities.
- (5) All income and revenue described in this section shall be used in the operation of the projects to aid in accomplishing the public, governmental, and charitable purposes of this part.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-409 Eligibility requirements for occupants -- Rights of obligee on default of authority.**

- (1) An authority shall make rules establishing eligibility requirements consistent with the purposes and objectives of this part for admission to and continued occupancy in its projects.
- (2) Nothing contained in this section or in Section 35A-8-408 may be construed to limit the power of an authority, with respect to a housing project, to vest in an obligee the right, in case of a default by the authority, to take possession or cause the appointment of a receiver free from the restrictions imposed by this section or Section 35A-8-408.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-410 Penalties for fraudulently obtaining or continuing to receive housing assistance benefits.**

- (1) A person may not knowingly, by misrepresentation, impersonation, or other fraudulent means, make a false statement to housing authority personnel or, after being accepted as a recipient of housing authority benefits, fail to disclose to housing authority personnel any:
  - (a) change in household composition;
  - (b) employment change;
  - (c) change in marital status;
  - (d) receipt of any other monetary assistance;
  - (e) receipt of in-kind gifts; or
  - (f) other material fact or change in circumstances that would affect the determination of that person's eligibility to receive housing assistance benefits, or would affect the amount of benefits for which the person is eligible.
- (2) A person may not fail to disclose any of the information described in Subsection (1) for the purpose of obtaining or continuing to receive funds or other housing assistance benefits to which the person is not entitled, or in an amount larger than that to which the person is entitled.
- (3) A person who has duties relating to the administration of a housing authority program may not fraudulently misappropriate funds or other assistance with which the person has been entrusted, or of which the person has gained possession by virtue of the person's position.
- (4) A person may not knowingly:
  - (a) file or falsify a claim, report, or document required by state or federal law, or provider agreement, to obtain or attempt to obtain unauthorized housing assistance benefits under this part; or
  - (b) attempt to commit, or aid or abet the commission of, an act prohibited by this section.
- (5) The punishment for violation of a provision of this section by a housing assistance recipient is determined by the cumulative value of the money or other benefits the person received from all instances of fraud committed by the person, and not by each separate instance of fraud.
- (6) The punishment for the offenses of this section are:
  - (a) a second degree felony if the value of the funds or other benefits received, misappropriated, claimed, or applied for, is equal to or exceeds \$5,000;
  - (b) a third degree felony if the value of the funds or other benefits received, misappropriated, claimed, or applied for, is equal to or greater than \$1,500 but less than \$5,000;
  - (c) a class A misdemeanor if the value of the funds or other benefits received, misappropriated, claimed, or applied for, is equal to or greater than \$500 but less than \$1,500; or
  - (d) a class B misdemeanor if the value of the funds or other benefits received, misappropriated, claimed, or applied for, is less than \$500.

Renumbered and Amended by Chapter 212, 2012 General Session



**35A-8-411 Authorities may join or cooperate.**

- (1) Two or more authorities may cooperate with one another or jointly exercise any or all of their powers for the purpose of financing, issuing bonds and other obligations and giving security for them, planning, undertaking, owning, constructing, operating, or contracting with respect to a housing project or projects located within the area of operation of any one or more of the authorities.
- (2) For this purpose, an authority may by resolution authorize a housing authority joining or cooperating with the authority to act on the authority's behalf.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-412 Preference for elderly and persons with a disability.**

- (1) For the purpose of increasing the supply of low-rent housing and related facilities for medium and low-income elderly and medium and low-income persons with a disability, an authority may exercise any of its powers under this part in projects involving dwelling accommodations designed specifically for these persons.
- (2) For dwelling units in any projects suitable to the needs of the elderly or persons with a disability, special preference may be extended in admission to those dwelling units to these persons of medium and low income.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-413 Victims of major disaster.**

- (1)
  - (a) Notwithstanding the provisions of this or any other law relating to rentals, preferences, or eligibility for admission or occupancy of dwellings in housing projects during the period an authority determines that there is an acute need for housing to assure the availability of dwellings for victims of a major disaster, the authority may undertake the development and administration of housing projects for the federal government.
  - (b) Dwellings in any housing project under the jurisdiction of the authority may be made available to victims of a major disaster.
- (2) An authority may contract with the federal government or a public body for advance payment or reimbursement for the furnishing of housing to victims of a major disaster, including the furnishing of housing free of charge to needy disaster victims during any period covered by a determination of acute need by the authority.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-414 Property and funds of authority declared public property -- Exemption from taxes -- Alternative agreement with public body.**

- (1) The property and funds of an authority are declared to be public property used for essential public, governmental, and charitable purposes.
- (2)
  - (a) Subject to Subsections (2)(b) and (c), the property and authority are exempt from all taxes and special assessments of a public body.
  - (b) This tax exemption does not apply to any portion of a project used for a profit-making enterprise.

- (c) In taxing these portions appropriate allowance shall be made for any expenditure by an authority for utilities or other public services it provides to serve the property.
- (3) In lieu of taxes on its exempt property an authority may agree to make payments to a public body if the authority finds that making the payments is consistent with the maintenance of the low-rent character of housing projects and the achievement of the purposes of this part.

Amended by Chapter 278, 2013 General Session

**35A-8-415 Projects subject to local building regulations.**

A project of an authority is subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the project is situated.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-416 Bonds authorized -- Payment -- Security -- Liability -- Purpose -- Exemption from taxes except corporate franchise tax.**

- (1) An authority may:
  - (a) issue bonds for any of its corporate purposes;
  - (b) issue refunding bonds for the purpose of paying or retiring bonds previously issued by it;
  - (c) issue bonds on which the principal and interest are payable:
    - (i) exclusively from the income and revenues of the project financed with the proceeds of the bonds;
    - (ii) exclusively from the income and revenues of certain designated projects, whether or not they are financed in whole or in part with the proceeds of the bonds; or
    - (iii) from its revenues generally.
- (2) Bonds issued by the authority may be additionally secured by a pledge of any loan, grant, or contributions, in whole or in part, from the federal government or other source, or a pledge of any income or revenues of the authority.
- (3) The members of an authority and a person executing the bonds are not liable personally on the bonds.
- (4)
  - (a) The bonds and other obligations of an authority are not a debt of the city, county, state, or a political subdivision, and do not constitute indebtedness for purposes of any constitutional or statutory debt limitation or restrictions.
  - (b) A bond or other obligation of an authority shall include a statement on the face of the bond or other obligation that explains that the bond or other obligation is not a debt of the city, county, state, or a political subdivision, and does not constitute indebtedness for purposes of any constitutional or statutory debt limitation or restrictions.
- (5) The city, county, state, or political subdivision is not liable on the bonds or other obligations.
- (6) These bonds or obligations may not be payable out of funds or properties other than those of the authority.
- (7) Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest and income, are exempt from all taxes, except the corporate franchise tax.
- (8) The provisions of this part exempting from taxation the properties of an authority and its bonds and interests and income on them are part of the contract for the security of bonds and have the force of contract, by virtue of this part and without the necessity of this being restated in the

bonds, between the bondholders, including all transferees of the bonds, on the one hand and an authority and the state on the other.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-417 Bonds to be authorized by resolution -- Form -- Sale -- Negotiability -- Validity presumed.**

- (1) Bonds of an authority are authorized by resolution, may be issued in one or more series, and shall as provided by the resolution or its trust indenture:
  - (a) bear dates, including maturity dates;
  - (b) bear interest rates;
  - (c) be in denominations;
  - (d) be either coupon or registered;
  - (e) carry conversion or registration privileges;
  - (f) have rank or priority;
  - (g) be executed;
  - (h) be payable; and
  - (i) be subject to terms of redemption with or without premium.
- (2)
  - (a) The bonds may bear interest at a variable interest rate as provided by the resolution.
  - (b) The resolution may establish a method, formula, or index to determine the current interest rate on the bonds.
- (3) In connection with the bonds, the authority may authorize and enter into agreements or other arrangements with financial, banking, and other institutions for:
  - (a) letters of credit;
  - (b) standby letters of credit;
  - (c) surety bonds;
  - (d) reimbursement agreements;
  - (e) remarketing agreements;
  - (f) indexing agreements;
  - (g) tender agent agreements; and
  - (h) other agreements with respect to:
    - (i) securing the bonds;
    - (ii) enhancing the marketability and creditworthiness of the bonds;
    - (iii) determining a variable interest rate on the bonds; and
    - (iv) the payment from any legally available source, including proceeds of the bonds, fees, charges, or other amounts coming due from the agreements.
- (4) As provided by resolution, the bonds may be sold at a public or private sale at par value, in excess of par value, or below par value.
- (5) If a member or an officer of an authority whose signature appears on a bond or coupon ceases to be a member or an officer before the delivery of the bond or coupon, the signature is valid and sufficient for all purposes.
- (6) A bond issued under this part is fully negotiable.
- (7) In a suit, action, or proceeding involving the validity or enforceability of a bond of an authority or the security for it, a bond reciting in substance that it has been issued by the authority to aid in financing a project is conclusively considered to have been issued for that purpose, and the project is conclusively considered to have been planned, located, and carried out in accordance with this part.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-418 Bonds and other obligations -- Additional powers of authority.**

In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of bonds or obligations, an authority may:

- (1) pledge all or a part of its gross or net rents, fees, or revenues to which its right currently exists or will accrue;
- (2) mortgage all or a part of its real or personal property owned or acquired;
- (3) covenant against pledging all or a part of its rents, fees, and revenues, or against mortgaging all or a part of its real or personal property to which its right or title then exists or will accrue, or against permitting or suffering any lien on the revenues or property;
- (4) covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any housing project and covenant as to what other, or additional debts or obligations may be incurred by it;
- (5) covenant as to bonds to be issued and as to the issuance of bonds in escrow or otherwise, and as to the use and disposition of the bond proceeds;
- (6) provide for the replacement of lost, destroyed, or mutilated bonds;
- (7) covenant against extending the time for the payment of its bonds or interest on them;
- (8) covenant for the redemption of the bonds and provide the terms and conditions for them;
- (9) covenant, subject to the limitations contained in this part as to the rents and fees to be charged in the operation of a housing project, the amount to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition of the revenues;
- (10) authorize the creation of special funds for money held for construction or operating costs, debt service, reserves, or other purposes, and covenant as to the use and disposition of the money held in those funds;
- (11) prescribe the procedure by which the terms of a contract with bondholders may be amended or abrogated, the proportion of outstanding bonds which must consent to the action, and the manner in which consent shall be given;
- (12) covenant as to the use, maintenance, and replacement of any or all of its real or personal property, the insurance to be carried on it, and the use and disposition of insurance money;
- (13) covenant as to the rights, liabilities, powers, and duties arising upon breach by it of a covenant, condition, or obligation;
- (14) covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;
- (15) vest in an obligee of the authority, or a specified proportion of them, the right to enforce the payment of bonds or any covenants securing or relating to the bonds;
- (16) vest an obligee with the right after default by the authority to take possession of and use, operate, and manage any project or any part of it or any funds connected with them, collect the rents and revenues arising from them, and dispose of them in accordance with the agreement with the authority;
- (17) provide the powers and duties of an obligee and limit the obligee's liabilities;
- (18) provide the terms and conditions upon which an obligee may enforce any covenant or rights securing or relating to the bonds;
- (19) exercise all or any part or combination of the powers granted and make any covenants in addition to the covenants expressly authorized in this section;
- (20) do any acts necessary, convenient, or desirable to secure its bonds; and

(21) make any covenants or do any acts calculated to make the bonds more marketable.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-419 Issuance of bonds -- Other laws not to apply.**

- (1) This part constitutes full authority for the authorization and issuance of bonds.
- (2) No other law for the authorization or issuance of obligations or the deposit of their proceeds that requires a bond election or in any way impedes or restricts the carrying out of the acts authorized to be done shall be construed as applying to any proceedings taken or acts done under this part.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-420 Rights of obligees of authority.**

An obligee of an authority, in addition to all other rights conferred on the obligee subject to any contractual restrictions binding upon the obligee, may:

- (1) compel an authority, its officers, agents, or employees to perform each term, provision, and covenant contained in a contract of the authority for the benefit of the obligee and to require the carrying out of all covenants and agreements of the authority and the fulfillment of all duties imposed upon it by this part; and
- (2) enjoin any acts or things that may be unlawful, or the violation of any of the rights of an obligee of the authority.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-421 Obligees -- Additional rights conferred by authority.**

- (1) An authority may by resolution, trust indenture, mortgage, lease, or other contract, confer upon an obligee the right, in addition to all rights that may otherwise be conferred, upon default as defined in a resolution or instrument, by suit, action, or proceeding in a court of competent jurisdiction to:
  - (a) cause possession of a project, in whole or in part, to be surrendered to the obligee;
  - (b) obtain the appointment of a receiver of a project, in whole or in part, and of the rents and profits from the project; and
  - (c) require the authority and its officers, agents, and employees to account as if they were the trustees of an express trust.
- (2) The receiver:
  - (a) may enter and take possession of the project or any part of it;
  - (b) may operate and maintain the project;
  - (c) may collect and receive all fees, rents, revenues, or other charges arising from the project;
  - (d) shall keep the money collected from the project in a separate account; and
  - (e) shall use the money in accordance with the obligations of the authority as the court directs.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-422 Property of authority exempt from levy and sale -- Obligees excepted -- Waiver.**

- (1)
  - (a) Property, including money, acquired or held by an authority under this part shall be exempt from levy and sale by virtue of an execution.

- (b) An execution or other judicial process may not issue against the property.
- (c) A judgment against the authority is not a charge or lien upon the property.
- (2) This section does not apply to or limit the right of an obligee to pursue a remedy for the enforcement of a pledge or lien given by the authority on its rents, fees, or revenues or the right of the federal government to pursue a remedy conferred upon it under this part.
- (3) An authority may waive its exemption with respect to claims against a profit-making enterprise occupying a portion of a project if that waiver does not affect or impair the rights of any obligee of the authority.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-423 Financial assistance from federal government permitted.**

- (1) In addition to the powers conferred upon an authority by other provisions of this part, an authority may:
  - (a) borrow money or accept contributions, grants, or other financial assistance from the federal government in aid of a project or related activity concerning health, welfare, economic, educational, environmental, or related issues faced by persons of medium and low income;
  - (b) take over, lease, or manage a project or undertaking constructed or owned by the federal government; and
  - (c) comply with conditions and enter into contracts, covenants, mortgages, trust indentures, leases, or agreements considered necessary, convenient, or desirable to accomplish the purposes of Subsections (1)(a) and (b).
- (2)
  - (a) The purpose and intent of this part is to authorize an authority to do everything necessary or desirable to secure the financial aid or cooperation of the federal government in the provision of decent, safe, and sanitary dwellings and maintaining a wholesome living environment for persons of medium and low income.
  - (b) To accomplish the purpose of Subsection (2)(a) an authority may include in a contract for financial assistance with the federal government the provisions that the federal government may require as conditions to the federal government's financial aid unless those provisions are inconsistent with the purposes of this part.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-424 Defaults -- Conveyance of title to federal government.**

- (1) In a contract with the federal government for annual contributions, the authority may obligate itself to convey to the federal government possession of or title to the project upon the occurrence of a substantial default, as defined in the contract, with respect to the covenants and conditions to which the authority is subject.
- (2) This obligation is specifically enforceable and does not constitute a mortgage, notwithstanding any other laws.
- (3) In case of conveyance, the federal government may complete, operate, manage, lease, convey, or otherwise deal with the project and funds in accordance with the terms of the contract if the contract by its terms requires the federal government, as soon as practicable after it is satisfied that all defaults have been cured and that the project will be operated in accordance with the contract, to reconvey the project to the authority.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-425 Powers of public body aiding in project.**

- (1) For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of projects located within its jurisdiction, a public body may, with or without consideration:
  - (a) dedicate, sell, convey, or lease any of its interest in property, or grant easements, licenses, or other rights or privileges to a housing authority or the federal government;
  - (b) cause parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or other works that it is otherwise empowered to undertake to be furnished adjacent to or in connection with these projects;
  - (c) furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks, or other places that it is otherwise empowered to undertake;
  - (d) plan or replan, zone or rezone any parts of the public body, make exceptions from building regulations and ordinances, and make changes in its map;
  - (e) cause the same services to be furnished to a housing authority that the public body may furnish, and provide facilities and services, including feeding facilities and services for tenants, in connection with housing projects;
  - (f) enter into agreements with respect to the exercise by the public body of its powers relating to the repair, improvement, condemnation, closing, or demolition of unsafe, insanitary, or unfit buildings;
  - (g) notwithstanding the provisions of any other law, use any money belonging to or within the control of the public body, including money derived from the sale or furnishing of property or facilities to a housing authority, in the purchase of the bonds or other obligations of a housing authority and exercise any related rights;
  - (h) do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of any projects;
  - (i) incur the entire expense of public improvements made by a public body in exercising the powers granted in this part; and
  - (j) enter into agreements, that may extend over any period notwithstanding any provision or rule of law to the contrary, with a housing authority respecting action to be taken by a public body under any of the powers granted by this part.
- (2) If title to or possession of a project is held by a public governmental agency authorized by law to engage in the development or administration of low-rent housing or slum clearance projects, including an agency or instrumentality of the United States, the provisions of the agreements entered into under Subsection (1)(j) inure to the benefit of and may be enforced by that public body or governmental agency.
- (3) A sale, conveyance, lease, or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement, or public bidding, notwithstanding any other laws to the contrary.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-426 Agreement by public body to accept payment from authority in lieu of taxes.**

In connection with a project of a housing authority located wholly or partly within the area in which a public body is authorized to act, the public body may agree with the housing authority with respect to the payment by the authority of sums in lieu of taxes for any year or period of years that are determined by the authority to be consistent with the maintenance of the low-rent character of housing projects or the achievement of the purposes of this part.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-427 Public body may provide financial aid.**

In addition to other aids provided, a public body may provide financial aid to a housing authority by:

- (1) loan, donation, grant, contribution, and appropriation of money;
- (2) abatement or remission of taxes;
- (3) payments in lieu of taxes;
- (4) other charges; or
- (5) other means.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-428 Investment in authority authorized.**

- (1) The state, public officers, political subdivisions, public bodies, banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, other persons carrying on a banking or insurance business, executors, administrators, guardians, trustees, and other fiduciaries may legally invest money or funds belonging to them or within their control in any bonds or other obligations issued by a housing authority created under this part or issued by a public housing authority or agency in the United States, a United States Territory, the District of Columbia, Puerto Rico, Guam, or the Virgin Islands.
- (2) These bonds or other obligations shall be secured by a pledge of annual contributions or other financial assistance to be paid by the United States government or any of its agencies, or by an agreement between the United States government or any of its agencies and the public housing authority or agency in which the United States government or its agency agrees to lend to the public housing authority or agency, prior to the maturity of the bonds or other obligations, money in an amount which, together with any other money irrevocably committed to the payment of interest on the bonds or other obligations, will suffice to pay the principal of the bonds or other obligations with interest to maturity.
- (3) The money, under the terms of the agreement, is required to be used for this purpose, and the bonds and other obligations are authorized security for all public deposits and are fully negotiable in this state.
- (4) Nothing contained in this section relieves a person, firm, or corporation from any duty of exercising reasonable care in selecting securities.
- (5) The provisions of this section apply notwithstanding any restrictions on investments contained in other laws.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-429 Annual report -- Budget -- Minutes.**

- (1) At least once a year, an authority shall file with the clerk, with a copy given to the governing body, a report containing:
  - (a) its activities for the preceding year;
  - (b) its approved annual budget; and
  - (c) recommendations for legislation or other action considered necessary to carry out the purposes of this part.



- (2) An authority shall post electronically for public review its:
  - (a) annual approved budget; and
  - (b) minutes of all open meetings held by its board of commissioners.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-430 Provisions controlling -- Acts of governmental bodies deemed administrative.**

- (1) The provisions of this part are controlling, notwithstanding anything to the contrary in any other law of this state, city charter, or local ordinance.
- (2) An action of a city, county, or governing body in carrying out the purposes of this part, whether by resolution, ordinance, or otherwise, is considered administrative in character, and no public notice or publication is required with respect to that action.

Renumbered and Amended by Chapter 212, 2012 General Session

**Part 5**  
**Olene Walker Housing Loan Fund**

**35A-8-501 Definitions.**

As used in this part:

- (1) "Affordable housing" means housing occupied or reserved for occupancy by households whose incomes are at or below certain income requirements at rental rates affordable to such households.
- (2) "Board" means the Housing Board created by this part.
- (3) "Fund" means the Olene Walker Housing Loan Fund created by this part.
- (4)
  - (a) "Housing sponsor" means a person who constructs, develops, rehabilitates, purchases, or owns a housing development that is or will be subject to legally enforceable restrictive covenants that require the housing development to provide, at least in part, affordable housing.
  - (b) "Housing sponsor" may include:
    - (i) a local public body;
    - (ii) a nonprofit, limited profit, or for profit corporation;
    - (iii) a limited partnership;
    - (iv) a limited liability company;
    - (v) a joint venture;
    - (vi) a subsidiary of the Utah Housing Corporation;
    - (vii) a cooperative;
    - (viii) a mutual housing organization;
    - (ix) a local government;
    - (x) a local housing authority;
    - (xi) a regional or statewide nonprofit housing or assistance organization; or
    - (xii) any other entity that helps provide affordable housing.
- (5) "Rural" means a county in the state other than Utah, Salt Lake, Davis, or Weber.

Amended by Chapter 279, 2017 General Session

**35A-8-502 Creation and administration.**

- (1)
  - (a) There is created an enterprise fund known as the Olene Walker Housing Loan Fund, administered by the executive director or the executive director's designee.
  - (b) The department is the administrator of the fund.
- (2) There shall be deposited into the fund:
  - (a) grants, paybacks, bonuses, entitlements, and other money received by the department from the federal government to preserve, rehabilitate, build, restore, or renew housing or for other activities authorized by the fund;
  - (b) transfers, grants, gifts, bequests, and money made available from any source to implement this part; and
  - (c) money appropriated to the fund by the Legislature.
- (3) The money in the fund shall be invested by the state treasurer according to the procedures and requirements of Title 51, Chapter 7, State Money Management Act, except that all interest or other earnings derived from money in the fund shall be deposited in the fund.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-503 Housing loan fund board -- Duties -- Expenses.**

- (1) There is created the Olene Walker Housing Loan Fund Board.
- (2) The board is composed of 11 voting members.
  - (a) The governor shall appoint the following members to four-year terms:
    - (i) two members from local governments;
    - (ii) two members from the mortgage lending community;
    - (iii) one member from real estate sales interests;
    - (iv) one member from home builders interests;
    - (v) one member from rental housing interests;
    - (vi) one member from housing advocacy interests;
    - (vii) one member of the manufactured housing interest;
    - (viii) one member with expertise in transit-oriented developments; and
    - (ix) one member who represents rural interests.
  - (b) The director or the director's designee serves as the secretary of the board.
  - (c) The members of the board shall annually elect a chair from among the voting membership of the board.
- (3)
  - (a) Notwithstanding the requirements of Subsection (2), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
  - (b) When a vacancy occurs in the membership for any reason, the replacement is appointed for the unexpired term.
- (4)
  - (a) The board shall:
    - (i) meet regularly, at least quarterly to conduct business of the board, on dates fixed by the board;
    - (ii) meet twice per year, with at least one of the meetings in a rural area of the state, to provide information to and receive input from the public regarding the state's housing policies and needs;

- (iii) keep minutes of its meetings; and
- (iv) comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings Act.
- (b) Six members of the board constitute a quorum, and the governor, the chair, or a majority of the board may call a meeting of the board.
- (5) The board shall:
  - (a) review the housing needs in the state;
  - (b) determine the relevant operational aspects of any grant, loan, or revenue collection program established under the authority of this chapter;
  - (c) determine the means to implement the policies and goals of this chapter;
  - (d) select specific projects to receive grant or loan money; and
  - (e) determine how fund money shall be allocated and distributed.
- (6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 327, 2019 General Session

**35A-8-504 Distribution of fund money.**

- (1) The executive director shall:
  - (a) make grants and loans from the fund for any of the activities authorized by Section 35A-8-505, as directed by the board;
  - (b) establish the criteria with the approval of the board by which loans and grants will be made; and
  - (c) determine with the approval of the board the order in which projects will be funded.
- (2) The executive director shall distribute, as directed by the board, any federal money contained in the fund according to the procedures, conditions, and restrictions placed upon the use of the money by the federal government.
- (3)
  - (a) The executive director shall distribute, as directed by the board, any funds received under Section 17C-1-412 to pay the costs of providing income targeted housing within the community that created the community reinvestment agency under Title 17C, Limited Purpose Local Government Entities - Community Reinvestment Agency Act.
  - (b) As used in Subsection (3)(a):
    - (i) "Community" means the same as that term is defined in Section 17C-1-102.
    - (ii) "Income targeted housing" means the same as that term is defined in Section 17C-1-102.
- (4) Except for federal money and money received under Section 17C-1-412, the executive director shall distribute, as directed by the board, money in the fund according to the following requirements:
  - (a) the executive director shall distribute at least 30% of the money in the fund to rural areas of the state;
  - (b) the executive director shall distribute at least 70% of the money in the fund to benefit persons whose annual income is at or below 50% of the median family income for the state;
  - (c) the executive director may not use more than 3% of the revenues of the fund to offset department or board administrative expenses;

- (d) the executive director shall distribute any remaining money in the fund to benefit persons whose annual income is at or below 80% of the median family income for the state; and
  - (e) if the executive director or the executive director's designee makes a loan in accordance with this section, the interest rate of the loan shall be based on the borrower's ability to pay.
- (5) The executive director may, with the approval of the board:
- (a) enact rules to establish procedures for the grant and loan process by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
  - (b) service or contract, under Title 63G, Chapter 6a, Utah Procurement Code, for the servicing of loans made by the fund.

Amended by Chapter 131, 2016 General Session

Amended by Chapter 350, 2016 General Session

**35A-8-505 Activities authorized to receive fund money -- Powers of the executive director.**

At the direction of the board, the executive director may:

- (1) provide fund money to any of the following activities:
- (a) the acquisition, rehabilitation, or new construction of low-income housing units;
  - (b) matching funds for social services projects directly related to providing housing for special-need renters in assisted projects;
  - (c) the development and construction of accessible housing designed for low-income persons;
  - (d) the construction or improvement of a shelter or transitional housing facility that provides services intended to prevent or minimize homelessness among members of a specific homeless subpopulation;
  - (e) the purchase of an existing facility to provide temporary or transitional housing for the homeless in an area that does not require rezoning before providing such temporary or transitional housing;
  - (f) the purchase of land that will be used as the site of low-income housing units; and
  - (g) other activities that will assist in minimizing homelessness or improving the availability or quality of housing in the state for low-income persons;
- (2) do any act necessary or convenient to the exercise of the powers granted by this part or reasonably implied from those granted powers, including:
- (a) making or executing contracts and other instruments necessary or convenient for the performance of the executive director and board's duties and the exercise of the executive director and board's powers and functions under this part, including contracts or agreements for the servicing and originating of mortgage loans;
  - (b) procuring insurance against a loss in connection with property or other assets held by the fund, including mortgage loans, in amounts and from insurers it considers desirable;
  - (c) entering into agreements with a department, agency, or instrumentality of the United States or this state and with mortgagors and mortgage lenders for the purpose of planning and regulating and providing for the financing and refinancing, purchase, construction, reconstruction, rehabilitation, leasing, management, maintenance, operation, sale, or other disposition of residential housing undertaken with the assistance of the department under this part;
  - (d) proceeding with a foreclosure action, to own, lease, clear, reconstruct, rehabilitate, repair, maintain, manage, operate, assign, encumber, sell, or otherwise dispose of real or personal property obtained by the fund due to the default on a mortgage loan held by the fund in preparation for disposition of the property, taking assignments of leases and rentals,

proceeding with foreclosure actions, and taking other actions necessary or incidental to the performance of its duties; and

- (e) selling, at a public or private sale, with public bidding, a mortgage or other obligation held by the fund.

Amended by Chapter 327, 2019 General Session

**35A-8-506 Authority of the executive director.**

The executive director, with the approval of the board, may grant or lend fund money to a housing sponsor.

Amended by Chapter 279, 2017 General Session

**35A-8-507 Application process and priorities.**

- (1)
  - (a) In each calendar year that money is available from the fund for distribution by the executive director under the direction of the board, the executive director shall, at least once in that year, announce a grant and loan application period by sending notice to interested persons.
  - (b) The executive director shall accept applications that are received in a timely manner.
- (2) The executive director shall give priority to applications for projects and activities in the following order:
  - (a) first, to applications for projects and activities intended to minimize homelessness;
  - (b) second, to applications for projects and activities that use existing privately owned housing stock, including privately owned housing stock purchased by a nonprofit public development authority; and
  - (c) third, to all other applications.
- (3) Within each level of priority described in Subsection (2), the executive director shall give preference to applications that demonstrate the following:
  - (a) a high degree of leverage with other sources of financing;
  - (b) high recipient contributions to total project costs, including allied contributions from other sources such as professional, craft, and trade services and lender interest rate subsidies;
  - (c) high local government project contributions in the form of infrastructure improvements, or other assistance;
  - (d) projects that encourage ownership, management, and other project-related responsibility opportunities;
  - (e) projects that demonstrate a strong probability of serving the original target group or income level for a period of at least 15 years;
  - (f) projects where the applicant has demonstrated the ability, stability, and resources to complete the project;
  - (g) projects that appear to serve the greatest need;
  - (h) projects that provide housing for persons and families with the lowest income;
  - (i) projects that promote economic development benefits;
  - (j) projects that align with a local government plan to address housing and homeless services; and
  - (k) projects that would mitigate or correct existing health, safety, or welfare problems.
- (4) The executive director may give consideration to projects that increase the supply of accessible housing.

Amended by Chapter 131, 2016 General Session

**35A-8-508 Annual accounting.**

- (1) The executive director shall monitor the activities of recipients of grants and loans issued under this part on a yearly basis to ensure compliance with the terms and conditions imposed on the recipient by the executive director with the approval of the board or by this part.
- (2) An entity that receives a grant or loan under this part shall provide the executive director with an annual accounting of how the money the entity received from the fund has been spent.
- (3) The executive director shall make an annual report to the board accounting for the expenditures authorized by the board.
- (4) The board shall submit a report to the department for inclusion in the annual written report described in Section 35A-1-109:
  - (a) accounting for expenditures authorized by the board; and
  - (b) evaluating the effectiveness of the program.

Amended by Chapter 371, 2014 General Session

**35A-8-509 Economic Revitalization and Investment Fund.**

- (1) There is created an enterprise fund known as the "Economic Revitalization and Investment Fund."
- (2) The Economic Revitalization and Investment Fund consists of money from the following:
  - (a) money appropriated to the account by the Legislature;
  - (b) private contributions;
  - (c) donations or grants from public or private entities; and
  - (d) money returned to the department under Section 35A-8-512.
- (3) The Economic Revitalization and Investment Fund shall earn interest, which shall be deposited into the Economic Revitalization and Investment Fund.
- (4) The executive director may distribute money from the Economic Revitalization and Investment Fund to one or more projects that:
  - (a) include affordable housing units for households:
    - (i) whose income is no more than 30% of the area median income for households of the same size in the county or municipality where the project is located; and
    - (ii) at rental rates no greater than the rates described in Subsection 35A-8-511(2)(b); and
  - (b) have been approved by the board in accordance with Section 35A-8-510.
- (5)
  - (a) A housing sponsor may apply to the department to receive a distribution in accordance with Subsection (4).
  - (b) The application shall include:
    - (i) the location of the project;
    - (ii) the number, size, and tenant income requirements of affordable housing units described in Subsection (4)(a) that will be included in the project; and
    - (iii) a written commitment to enter into a deed restriction that reserves for a period of 30 years the affordable housing units described in Subsection (5)(b)(ii) or their equivalent for occupancy by households that meet the income requirements described in Subsection (5)(b)(ii).
  - (c) The commitment in Subsection (5)(b)(iii) shall be considered met if a housing unit is:
    - (i)

- (A) occupied or reserved for occupancy by a household whose income is no more than 30% of the area median income for households of the same size in the county or municipality where the project is located; or
- (B) occupied by a household whose income is no more than 60% of the area median income for households of the same size in the county or municipality where the project is located if that household met the income requirement described in Subsection (4)(a) when the household originally entered into the lease agreement for the housing unit; and
- (ii) rented at a rate no greater than the rate described in Subsection 35A-8-511(2)(b).
- (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make additional rules providing procedures for a person to apply to the department to receive a distribution described in Subsection (4).

Enacted by Chapter 279, 2017 General Session

**35A-8-510 Housing loan fund board approval.**

- (1) The board shall review the project applications described in Subsection 35A-8-509(5).
- (2) The board may approve a project that meets the requirements of Subsections 35A-8-509(4) and (5) to receive funds from the Economic Revitalization and Investment Fund.
- (3) The board shall give preference to projects:
  - (a) that include significant additional or matching funds from an individual, private organization, or local government entity;
  - (b) that include significant contributions by the applicant to total project costs, including contributions secured by the applicant from other sources such as professional, craft, and trade services and lender interest rate subsidies;
  - (c) with significant local government contributions in the form of infrastructure, improvements, or other assistance;
  - (d) where the applicant has demonstrated the ability, stability, and resources to complete the project;
  - (e) that will serve the greatest need;
  - (f) that promote economic development benefits;
  - (g) that allow integration into a local government housing plan;
  - (h) that would mitigate or correct existing health, safety, or welfare concerns; or
  - (i) that remedy a gap in the supply of and demand for affordable housing.

Enacted by Chapter 279, 2017 General Session

**35A-8-511 Activities authorized to receive account money.**

- (1) The executive director may distribute funds from the Economic Revitalization and Investment Fund for any of the following activities undertaken as part of an approved project:
  - (a) the acquisition, rehabilitation, or new construction of a building that includes affordable housing units;
  - (b) the purchase of land for the construction of a building that will include affordable housing units; or
  - (c) pre-development work, including planning, studies, design, and site work for a building that will include affordable housing units.
- (2) The maximum amount of money that may be distributed from the Economic Revitalization and Investment Fund for each affordable housing unit that has been committed in accordance with Subsection 35A-8-509(5)(b)(iii) is the present value, based on the current market interest rate

as determined by the board for a multi-family mortgage loan in the county or metropolitan area where the project is located, of 360 monthly payments equal to the difference between:

- (a) the most recent United States Department of Housing and Urban Development fair market rent for a unit of the same size in the county or metropolitan area where the project is located; and
- (b) an affordable rent equal to 30% of the income requirement described in Subsection 35A-8-509(5)(b)(ii) for a household of:
  - (i) one person if the unit is an efficiency unit;
  - (ii) two people if the unit is a one-bedroom unit;
  - (iii) four people if the unit is a two-bedroom unit;
  - (iv) five people if the unit is a three-bedroom unit;
  - (v) six people if the unit is a four-bedroom unit; or
  - (vi) eight people if the unit is a five-bedroom or larger unit.

Enacted by Chapter 279, 2017 General Session

**35A-8-512 Repayment of funds.**

- (1) Upon the earlier of 30 years from the date an approved project is placed in service or the sale or transfer of the affordable housing units acquired, constructed, or rehabilitated as part of an approved project funded under Section 35A-8-511, the housing sponsor shall remit to the department:
  - (a) the total amount of money distributed by the department to the housing sponsor for the project; and
  - (b) an additional amount of money determined by contract with the department prior to the initial disbursement of money from the Economic Revitalization and Investment Fund.
- (2) Any claim arising under Subsection (1) is a lien against the real property funded under this chapter.
- (3) Any money returned to the department under Subsection (1) shall be deposited in the Economic Revitalization and Investment Fund.

Enacted by Chapter 279, 2017 General Session

**35A-8-513 Annual accounting.**

- (1) The executive director shall monitor the activities of recipients of funds from the Economic Revitalization and Investment Fund on a yearly basis to ensure compliance with the terms and conditions imposed on the recipient by the executive director with the approval of the board.
- (2) A housing sponsor that receives funds from the Economic Revitalization and Investment Fund shall provide the executive director with an annual accounting of how the money the entity received from the Economic Revitalization and Investment Fund has been spent and evidence that the commitment described in Subsection 35A-8-509(5) has been met.
- (3) The executive director shall make an annual report to the board accounting for the expenditures authorized by the board.
- (4) The board shall submit a report to the department for inclusion in the annual written report described in Section 35A-1-109 that includes:
  - (a) an accounting for expenditures authorized by the board; and
  - (b) an evaluation of the effectiveness of the program.

Enacted by Chapter 279, 2017 General Session



## Part 6 Homeless Coordinating Committee

### **35A-8-601 Creation.**

- (1) There is created within the division the Homeless Coordinating Committee.
- (2)
  - (a) The committee shall consist of the following members :
    - (i) the lieutenant governor or the lieutenant governor's designee;
    - (ii) the state planning coordinator or the coordinator's designee;
    - (iii) the state superintendent of public instruction or the superintendent's designee;
    - (iv) the chair of the board of trustees of the Utah Housing Corporation or the chair's designee;
    - (v) the executive director of the Department of Workforce Services or the executive director's designee;
    - (vi) the executive director of the Department of Corrections or the executive director's designee;
    - (vii) the executive director of the Department of Health or the executive director's designee;
    - (viii) the executive director of the Department of Human Services or the executive director's designee;
    - (ix) the mayor of Salt Lake City or the mayor's designee;
    - (x) the mayor of Salt Lake County or the mayor's designee;
    - (xi) the mayor of Ogden or the mayor's designee;
    - (xii) the mayor of Midvale or the mayor's designee;
    - (xiii) the mayor of St. George or the mayor's designee; and
    - (xiv) the mayor of South Salt Lake or the mayor's designee.
  - (b)
    - (i) The lieutenant governor shall serve as the chair of the committee.
    - (ii) The lieutenant governor may appoint a vice chair from among committee members, who shall conduct committee meetings in the absence of the lieutenant governor.
- (3) The governor may appoint as members of the committee:
  - (a) representatives of local governments, local housing authorities, local law enforcement agencies;
  - (b) representatives of federal and private agencies and organizations concerned with the homeless, persons with a mental illness, the elderly, single-parent families, persons with a substance use disorder, and persons with a disability; and
  - (c) a resident of Salt Lake County.
- (4)
  - (a) Except as required by Subsection (4)(b), as terms of current committee members appointed under Subsection (3) expire, the governor shall appoint each new member or reappointed member to a four-year term.
  - (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.
  - (c) A member appointed under Subsection (3) may not be appointed to serve more than three consecutive terms.

- (5) When a vacancy occurs in the membership for any reason, the replacement is appointed for the unexpired term.
- (6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 251, 2018 General Session

Amended by Chapter 312, 2018 General Session

**35A-8-602 Purposes of Homeless Coordinating Committee -- Uses of Pamela Atkinson Homeless Account.**

- (1) The Homeless Coordinating Committee shall work to ensure that services provided to the homeless by state agencies, local governments, and private organizations are provided in a cost-effective and service efficient manner by:
  - (a) preparing and implementing a statewide strategic plan to minimize homelessness in the state that:
    - (i) outlines specific goals and measurable benchmarks for progress;
    - (ii) identifies gaps in service delivery to the variety of homeless populations;
    - (iii) provides recommendations to the governor and the Legislature on strategies, policies, procedures, and programs to address the needs of the homeless populations in the state; and
    - (iv) identifies best practices and recommends improvements in coordinating service delivery to the variety of homeless populations through the use of electronic databases and through data sharing among service providers;
  - (b) evaluating annually the progress made toward achieving the goals outlined in the plan described in Subsection (1)(a); and
  - (c) designating local oversight bodies that are responsible to:
    - (i) develop a common agenda and vision for reducing homelessness in the local oversight bodies' respective region;
    - (ii) develop a spending plan that coordinates the funding supplied to local stakeholders;
    - (iii) monitor the progress toward achieving state and local goals; and
    - (iv) align local funding to projects that are improving outcomes and targeting specific needs in the community.
- (2)
  - (a) Programs funded by the committee shall emphasize emergency housing and self-sufficiency, including placement in meaningful employment or occupational training activities and, where needed, special services to meet the unique needs of the homeless who:
    - (i) have families with children;
    - (ii) have a disability or a mental illness; or
    - (iii) suffer from other serious challenges to employment and self-sufficiency.
  - (b) The committee may also fund treatment programs to ameliorate the effects of substance abuse or a disability.
- (3) The committee members designated in Subsection 35A-8-601(2) shall:
  - (a) award contracts funded by the Pamela Atkinson Homeless Account with the advice and input of those designated in Subsection 35A-8-601(3);
  - (b) in the evaluation of contract awards, consider whether:

- (i) the proposed award addresses the needs identified in the strategic plan described in Subsection (1);
  - (ii) the proposed award is aligned with the process described in Subsection (1); and
  - (iii) the proposed contractor has a policy to share client-level service information with other entities in accordance with state and federal law to enhance coordinated services for those experiencing homelessness; and
- (c) identify specific targets and benchmarks for each contract that align with the strategic plan described in Subsection (1).
- (4)
- (a) In any fiscal year, no more than 80% of the funds in the Pamela Atkinson Homeless Account may be allocated to organizations that provide services only in Salt Lake, Davis, Weber, and Utah Counties.
  - (b) The committee may:
    - (i) expend up to 3% of its annual appropriation for administrative costs associated with the allocation of funds from the Pamela Atkinson Homeless Account, and up to 2% of its annual appropriation for marketing the account and soliciting donations to the account; and
    - (ii) pay for the initial costs of the State Tax Commission in implementing Section 59-10-1306 from the account.
- (5) If there are decreases in contributions to the account, the committee may expend money held in the account to provide program stability, but the committee shall reimburse the amount of those expenditures to the account.
- (6) The committee shall make an annual report to the department regarding the progress made implementing the strategic plan described in Subsection (1) for inclusion in the annual written report described in Section 35A-1-109.
- (7) The committee shall update the strategic plan described in Subsection (1)(a) on an annual basis.
- (8) The state treasurer shall invest the money in the Pamela Atkinson Homeless Account according to the procedures and requirements of Title 51, Chapter 7, State Money Management Act, except that interest and other earnings derived from the restricted account shall be deposited in the restricted account.

Amended by Chapter 234, 2019 General Session

**35A-8-603 Creation of Pamela Atkinson Homeless Account.**

- (1) There is created a restricted account within the General Fund known as the "Pamela Atkinson Homeless Account."
- (2) Private contributions received under this section and Section 59-10-1306 shall be deposited into the restricted account to be used only for programs described in Section 35A-8-602.
- (3) Money shall be appropriated from the restricted account to the State Homeless Coordinating Committee in accordance with Title 63J, Chapter 1, Budgetary Procedures Act.
- (4) The State Homeless Coordinating Committee may accept transfers, grants, gifts, bequests, or money made available from any source to implement this part.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-604 Uses of Homeless to Housing Reform Restricted Account.**

- (1) With the concurrence of the division and in accordance with this section, the Homeless Coordinating Committee members designated in Subsection 35A-8-601(2) may award ongoing

or one-time grants or contracts funded from the Homeless to Housing Reform Restricted Account created in Section 35A-8-605.

- (2) Before final approval of a grant or contract awarded under this section, the Homeless Coordinating Committee and the division shall provide written information regarding the grant or contract to, and shall consider the recommendations of, the Executive Appropriations Committee.
- (3) As a condition of receiving money, including any ongoing money, from the restricted account, an entity awarded a grant or contract under this section shall provide detailed and accurate reporting on at least an annual basis to the division and the Homeless Coordinating Committee that describes:
  - (a) how money provided from the restricted account has been spent by the entity; and
  - (b) the progress towards measurable outcome-based benchmarks agreed to between the entity and the Homeless Coordinating Committee before the awarding of the grant or contract.
- (4) In determining the awarding of a grant or contract under this section, the Homeless Coordinating Committee, with the concurrence of the division, shall:
  - (a) ensure that the services to be provided through the grant or contract will be provided in a cost-effective manner;
  - (b) consider the advice of committee members designated in Subsection 35A-8-601(3);
  - (c) give priority to a project or contract that will include significant additional or matching funds from a private organization, nonprofit organization, or local government entity;
  - (d) ensure that the project or contract will target the distinct housing needs of one or more at-risk or homeless subpopulations, which may include:
    - (i) families with children;
    - (ii) transitional-aged youth;
    - (iii) single men or single women;
    - (iv) veterans;
    - (v) victims of domestic violence;
    - (vi) individuals with behavioral health disorders, including mental health or substance use disorders;
    - (vii) individuals who are medically frail or terminally ill;
    - (viii) individuals exiting prison or jail; or
    - (ix) individuals who are homeless without shelter;
  - (e) consider whether the project will address one or more of the following goals:
    - (i) diverting homeless or imminently homeless individuals and families from emergency shelters by providing better housing-based solutions;
    - (ii) meeting the basic needs of homeless individuals and families in crisis;
    - (iii) providing homeless individuals and families with needed stabilization services;
    - (iv) decreasing the state's homeless rate;
    - (v) implementing a coordinated entry system with consistent assessment tools to provide appropriate and timely access to services for homeless individuals and families;
    - (vi) providing access to caseworkers or other individualized support for homeless individuals and families;
    - (vii) encouraging employment and increased financial stability for individuals and families being diverted from or exiting homelessness;
    - (viii) creating additional affordable housing for state residents;
    - (ix) providing services and support to prevent homelessness among at-risk individuals and adults;

- (x) providing services and support to prevent homelessness among at-risk children, adolescents, and young adults;
  - (xi) preventing the reoccurrence of homelessness among individuals and families exiting homelessness; and
  - (xii) providing medical respite care for homeless individuals where the homeless individuals can access medical care and other supportive services; and
  - (f) address the needs identified in the strategic plan described in Subsection 35A-8-602(1)(a) for inclusion in the annual written report described in Section 35A-1-109.
- (5) In addition to the other provisions of this section, in determining the awarding of a grant or contract under this section to design, build, create, or renovate a facility that will provide shelter or other resources for the homeless, the Homeless Coordinating Committee, with the concurrence of the division, may consider whether the facility will be:
- (a) located near mass transit services;
  - (b) located in an area that meets or will meet all zoning regulations before a final dispersal of funds;
  - (c) safe and welcoming both for individuals using the facility and for members of the surrounding community; and
  - (d) located in an area with access to employment, job training, and positive activities.
- (6) In accordance with Subsection (5), and subject to the approval of the Homeless Coordinating Committee with the concurrence of the division, the following may recommend a site location, acquire a site location, and hold title to real property, buildings, fixtures, and appurtenances of a facility that provides or will provide shelter or other resources for the homeless:
- (a) the county executive of a county of the first class on behalf of the county of the first class, if the facility is or will be located in the county of the first class in a location other than Salt Lake City;
  - (b) the state;
  - (c) a nonprofit entity approved by the Homeless Coordinating Committee with the concurrence of the division; and
  - (d) a mayor of a municipality on behalf of the municipality where a facility is or will be located.
- (7)
- (a) As used in this Subsection (7) and in Subsection (8), "homeless shelter" means a facility that:
    - (i) is located within a municipality; and
    - (ii) provides temporary shelter year-round to homeless individuals, including an emergency shelter or medical respite facility.
  - (b) In addition to the other provisions of this section, the Homeless Coordinating Committee, with the concurrence of the division, may award a grant or contract:
    - (i) to a municipality to improve sidewalks, pathways, or roadways near a homeless shelter to provide greater safety to homeless individuals; and
    - (ii) to a municipality to hire one or more peace officers to provide greater safety to homeless individuals.
- (8)
- (a) If a homeless shelter commits to provide matching funds equal to the total grant awarded under this Subsection (8), the Homeless Coordinating Committee, with the concurrence of the division, may award a grant for the ongoing operations of the homeless shelter.
  - (b) In awarding a grant under this Subsection (8), the Homeless Coordinating Committee, with the concurrence of the division, shall consider the number of beds available at the homeless shelter and the number and quality of the homeless services provided by the homeless shelter.

- (9) The division may expend money from the restricted account to offset actual division and Homeless Coordinating Committee expenses related to administering this section.

Amended by Chapter 53, 2019 General Session  
Amended by Chapter 94, 2019 General Session  
Amended by Chapter 234, 2019 General Session

**35A-8-605 Homeless to Housing Reform Restricted Account.**

- (1) There is created a restricted account within the General Fund known as the Homeless to Housing Reform Restricted Account.
- (2) The restricted account shall be administered by the division for the purposes described in Section 35A-8-604.
- (3) The state treasurer shall invest the money in the restricted account according to the procedures and requirements of Title 51, Chapter 7, State Money Management Act, except that interest and other earnings derived from the restricted account shall be deposited in the restricted account.
- (4) The restricted account shall be funded by:
  - (a) appropriations made to the account by the Legislature; and
  - (b) private donations, grants, gifts, bequests, or money made available from any other source to implement this section and Section 35A-8-604.
- (5) Subject to appropriation, the director shall use restricted account money as described in Section 35A-8-604.
- (6) The Homeless Coordinating Committee, in cooperation with the division, shall submit an annual written report to the department that gives a complete accounting of the use of money from the restricted account for inclusion in the annual report described in Section 35A-1-109.

Amended by Chapter 251, 2018 General Session

**35A-8-606 Homeless Shelter Cities Mitigation Restricted Account.**

- (1) As used in this section:
  - (a) "Annual local contribution" means:
    - (i) for a participating local government, the lesser of \$200,000 or an amount equal to 1.8% of the participating local government's tax revenue distribution amount under Subsection 59-12-205(2)(a) for the previous fiscal year; or
    - (ii) for an eligible municipality or a grant eligible entity that is certified in accordance with Section 35A-8-609, \$0.
  - (b) "Eligible municipality" means the same as that term is defined in Section 35A-8-607.
  - (c) "Grant eligible entity" means the same as that term is defined in Section 35A-8-608.
  - (d) "Participating local government" means a county or municipality, as defined in Section 10-1-104, that is not an eligible municipality or grant eligible entity as certified by the department in accordance with Section 35A-8-609.
- (2) There is created a restricted account within the General Fund known as the Homeless Shelter Cities Mitigation Restricted Account.
- (3) The account shall be funded by:
  - (a) local sales and use tax revenue deposited into the account in accordance with Section 59-12-205; and
  - (b) interest earned on the account.
- (4)

- (a) The department shall administer the account.
- (b) Subject to appropriation, the department shall disburse funds from the account to:
  - (i) eligible municipalities in accordance with Sections 35A-8-607 and 63J-1-802; and
  - (ii) grant eligible entities in accordance with Sections 35A-8-608 and 63J-1-802.

Enacted by Chapter 312, 2018 General Session

**35A-8-607 Eligible municipality application process for Homeless Shelter Cities Mitigation Restricted Account funds.**

- (1) As used in this section:
  - (a) "Account" means the restricted account created in Section 35A-8-606.
  - (b) "Committee" means the Homeless Coordinating Committee created in this part.
  - (c) "Eligible municipality" means a city of the third, fourth, or fifth class, a town, or a metro township that:
    - (i) has, or is proposed to have, a homeless shelter within the city's, town's, or metro township's geographic boundaries;
    - (ii) due to the location of a homeless shelter within the city's, town's, or metro township's geographic boundaries, needs more public safety services than the city, town, or metro township needed before the location of the homeless shelter within the city's, town's, or metro township's geographic boundaries; and
    - (iii) is certified as an eligible municipality in accordance with Section 35A-8-609.
  - (d) "Homeless shelter" means a facility that:
    - (i) provides or is proposed to provide temporary shelter to homeless individuals;
    - (ii) has or is proposed to have the capacity to provide temporary shelter to at least 200 individuals per night; and
    - (iii) operates year-round and is not subject to restrictions that limit the hours, days, weeks, or months of operation.
  - (e) "Public safety services" means law enforcement, emergency medical services, and fire protection.
- (2)
  - (a) An eligible municipality may request account funds to employ and equip additional personnel to provide public safety services in and around a homeless shelter within the eligible municipality's geographic boundaries.
  - (b)
    - (i) An eligible municipality that builds or has proposed to build a homeless shelter on or after July 1, 2018, shall be eligible to receive at least 40% of the account funds, if the eligible municipality meets the requirements of this section.
    - (ii) An eligible municipality that built a homeless shelter on or before June 30, 2018, shall be eligible to receive at least 20% of the account funds, if the eligible municipality meets the requirements of this section.
- (3)
  - (a) This Subsection (3) applies to an eligible municipality's request for account funds for the fiscal year beginning on July 1, 2018, only.
  - (b) An eligible municipality may make a request for account funds by:
    - (i) sending an electronic copy of the request to the committee before the first meeting of the committee on or after July 1, 2018; and
    - (ii) appearing at the first meeting of the committee on or after July 1, 2018, to present the request.

- (c) The request described in Subsection (3)(b) shall contain:
    - (i) data relating to the eligible municipality's public safety services for the last fiscal year before a homeless shelter was located or proposed to be located within the eligible municipality's boundaries, including:
      - (A) crime statistics; and
      - (B) calls for public safety services;
    - (ii) data showing the eligible municipality's need for public safety services in the next fiscal year;
    - (iii) a summary of the eligible municipality's proposed use of account funds; and
    - (iv) a copy of the eligible municipality's budget, which includes a request in a specific amount for additional personnel to provide public safety services.
  - (d) The committee shall evaluate a request made in accordance with this Subsection (3) using the following factors:
    - (i) the strength and reliability of the data that the eligible municipality provides to support the request;
    - (ii) the availability of alternative funding for the eligible municipality to address the eligible municipality's need for public safety services; and
    - (iii) any other considerations identified by the committee.
  - (e)
    - (i) After making the evaluation described in Subsection (3)(d) and subject to appropriation, the committee shall vote to:
      - (A) fund the eligible municipality's request; or
      - (B) fund the eligible municipality's request at a reduced level, as determined by the committee.
    - (ii) The committee shall support the vote described in Subsection (3)(e)(i) with findings on each of the factors described in Subsection (3)(d).
  - (f)
    - (i) An eligible municipality that receives an award of account funds under this Subsection (3) shall submit an invoice of the eligible municipality's expenses, with supporting documentation, to the department monthly for reimbursement.
    - (ii) Each month, beginning in January 2019, the department shall disburse the revenue in the account to reimburse the eligible municipality that submits the information described in Subsection (3)(f)(i) for the amount on the invoice or contract.
- (4)
- (a) This Subsection (4) applies to a fiscal year beginning on or after July 1, 2019.
  - (b)
    - (i) The committee shall set aside time on the agenda of a committee meeting that occurs on or after July 1 and on or before November 30 to allow an eligible municipality to present a request for account funds for the next fiscal year.
    - (ii) An eligible municipality may present a request for account funds by:
      - (A) sending an electronic copy of the request to the committee before the meeting; and
      - (B) appearing at the meeting to present the request.
  - (c) The request described in Subsection (4)(b) shall contain:
    - (i) data relating to the eligible municipality's public safety services for the last fiscal year before a homeless shelter was located or proposed to be located within the eligible municipality's boundaries, including:
      - (A) crime statistics; and
      - (B) calls for public safety services;
    - (ii) data showing the eligible municipality's need for public safety services in the next fiscal year;



- (iii) a summary of the eligible municipality's proposed use of account funds; and
  - (iv) a copy of the eligible municipality's budget, which includes a request in a specific amount for additional personnel to provide public safety services.
- (d)
- (i) On or before November 30, an eligible municipality that received account funds during the previous fiscal year shall file electronically with the committee a report that includes:
    - (A) a summary of the amount of account funds that the eligible municipality expended and the eligible municipality's specific use of those funds;
    - (B) an evaluation of the eligible municipality's effectiveness in using the account funds to address the eligible municipality's public safety needs; and
    - (C) any proposals for improving the eligible municipality's effectiveness in using account funds that the eligible municipality may receive in future fiscal years.
  - (ii) The committee may request additional information as needed to make the evaluation described in Subsection (4)(e).
- (e) The committee shall evaluate a request made in accordance with this Subsection (4) using the following factors:
- (i) the strength and reliability of the data that the eligible municipality provided to support the request;
  - (ii) if the eligible municipality received account funds during the previous fiscal year, the efficiency with which the eligible municipality used any account funds during the previous fiscal year;
  - (iii) the availability of alternative funding for the eligible municipality to address the eligible municipality's need for public safety services; and
  - (iv) any other considerations identified by the committee.
- (f)
- (i) After making the evaluation described in Subsection (4)(e) and subject to other provisions of this Subsection (4)(f), the committee shall vote to recommend that an eligible municipality's request be:
    - (A) funded as requested; or
    - (B) funded at a reduced level, as determined by the committee.
  - (ii) The committee shall support the recommendation described in Subsection (4)(f)(i) with findings on each of the factors described in Subsection (4)(e).
- (g) The committee shall submit the recommendation described in Subsection (4)(f) to:
- (i) the governor for inclusion in the governor's budget to be submitted to the Legislature; and
  - (ii) the Social Services Appropriations Subcommittee of the Legislature for approval in accordance with Section 63J-1-802.
- (h)
- (i) An eligible municipality that is approved to receive account funds under Section 63J-1-802 shall submit an invoice of the eligible municipality's expenses, with supporting documentation, to the department monthly for reimbursement.
  - (ii) Each month, the department shall disburse the revenue in the account to reimburse an eligible municipality that submits the information described in Subsection (4)(h)(i) for the amount on the invoice or contract.
- (5) On or before October 1, the department, in cooperation with the committee, shall:
- (a) submit an annual written report electronically to the Social Services Appropriations Subcommittee of the Legislature that gives a complete accounting of the department's disbursement of the money from the account under this section for the previous fiscal year; and

- (b) include information regarding the disbursement of money from the account under this section in the annual report described in Section 35A-1-109.

Enacted by Chapter 312, 2018 General Session

**35A-8-608 Grant eligible entity application process for Homeless Shelter Cities Mitigation Restricted Account funds.**

(1) As used in this section:

- (a) "Account" means the restricted account created in Section 35A-8-606.
- (b) "Committee" means the Homeless Coordinating Committee created in this part.
- (c) "Grant" means an award of funds from the account.
- (d) "Grant eligible entity" means:
  - (i) the Department of Public Safety; or
  - (ii) a city, town, or metro township that:
    - (A) has a homeless shelter within the city's, town's, or metro township's geographic boundaries;
    - (B) has increased community, social service, or public safety service needs due to the location of a homeless shelter within the city's, town's, or metro township's geographic boundaries; and
    - (C) is certified as a grant eligible entity in accordance with Section 35A-8-609.
- (e) "Homeless shelter" means a facility that:
  - (i) provides temporary shelter to homeless individuals;
  - (ii) has the capacity to provide temporary shelter to:
    - (A) for a county of the first or second class, at least 60 individuals per night; or
    - (B) for a county of the third, fourth, fifth, or sixth class, at least 25 individuals per night; and
  - (iii) operates year-round and is not subject to restrictions that limit the hours, days, weeks, or months of operation.
- (f) "Public safety services" means law enforcement, emergency medical services, and fire protection.

(2) Subject to the availability of funds, a grant eligible entity may request a grant to mitigate the impacts of the location of a homeless shelter:

- (a) through employment of additional personnel to provide public safety services in and around a homeless shelter; or
- (b) for a grant eligible entity that is a city, town, or metro township, through:
  - (i) development of a community and neighborhood program within the city's, town's, or metro township's boundaries; or
  - (ii) provision of social services within the city's, town's, or metro township's boundaries.

(3)

- (a) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the department shall make rules governing:
  - (i) the process for determining whether there is sufficient revenue to the account to offer a grant program for the next fiscal year; and
  - (ii) the process for notifying grant eligible entities about the availability of grants for the next fiscal year.

(b)

- (i) If the committee offers a grant program for the next fiscal year, the committee shall set aside time on the agenda of a committee meeting that occurs on or after July 1 and on or before

November 30 to allow a grant eligible entity to present a request for account funds for the next fiscal year.

- (ii) A grant eligible entity may present a request for account funds by:
  - (A) sending an electronic copy of the request to the committee before the meeting; and
  - (B) appearing at the meeting to present the request.
- (c) The request described in Subsection (3)(b) shall contain:
  - (i) for a grant request to develop a community and neighborhood program:
    - (A) a proposal outlining the components of a community and neighborhood program;
    - (B) a summary of the grant eligible entity's proposed use of any grant awarded; and
    - (C) the amount requested;
  - (ii) for a grant request to provide social services:
    - (A) a proposal outlining the need for additional social services;
    - (B) a summary of the grant eligible entity's proposed use of any grant awarded; and
    - (C) the amount requested;
  - (iii) for a grant request to employ additional personnel to provide public safety services:
    - (A) data relating to the grant eligible entity's public safety services for the current fiscal year, including crime statistics and calls for public safety services;
    - (B) data showing an increase in the grant eligible entity's need for public safety services in the next fiscal year;
    - (C) a summary of the grant eligible entity's proposed use of any grant awarded; and
    - (D) the amount requested; or
  - (iv) for a grant request to provide some combination of the activities described in Subsections (3)(c)(i) through (iii), the information required by this Subsection (3) for each activity for which the grant eligible entity requests a grant.
- (d)
  - (i) On or before November 30, a grant eligible entity that received a grant during the previous fiscal year shall file electronically with the committee a report that includes:
    - (A) a summary of the amount of the grant that the grant eligible entity received and the grant eligible entity's specific use of those funds;
    - (B) an evaluation of the grant eligible entity's effectiveness in using the grant to address the grant eligible entity's increased needs due to the location of a homeless shelter; and
    - (C) any proposals for improving the grant eligible entity's effectiveness in using a grant that the grant eligible entity may receive in future fiscal years.
  - (ii) The committee may request additional information as needed to make the evaluation described in Subsection (3)(e).
- (e) The committee shall evaluate a grant request made in accordance with this Subsection (3) using the following factors:
  - (i) the strength of the proposal that the grant eligible entity provides to support the request;
  - (ii) if the grant eligible entity received a grant during the previous fiscal year, the efficiency with which the grant eligible entity used the grant during the previous fiscal year;
  - (iii) the availability of alternative funding for the grant eligible entity to address the grant eligible entity's needs due to the location of a homeless shelter; and
  - (iv) any other considerations identified by the committee.
- (f)
  - (i) After making the evaluation described in Subsection (3)(e) for each grant eligible entity that makes a grant request and subject to other provisions of this Subsection (3)(f), the committee shall vote to:
    - (A) prioritize the grant requests; and

- (B) recommend a grant amount for each grant eligible entity.
- (ii) The committee shall support the prioritization and recommendation described in Subsection (3)(f)(i) with findings on each of the factors described in Subsection (3)(e).
- (g) The committee shall submit a list that prioritizes the grant requests and recommends a grant amount for each grant eligible entity that requested a grant to:
  - (i) the governor for inclusion in the governor's budget to be submitted to the Legislature; and
  - (ii) the Social Services Appropriations Subcommittee of the Legislature for approval in accordance with Section 63J-1-802.
- (4)
  - (a) Subject to Subsection (4)(b), the department shall disburse the revenue in the account as a grant to a grant eligible entity:
    - (i) after making the disbursements required by Section 35A-8-607; and
    - (ii) subject to the availability of funds in the account:
      - (A) in the order of priority that the Legislature gives to each eligible grant entity under Section 63J-1-802; and
      - (B) in the amount that the Legislature approves to a grant eligible entity under Section 63J-1-802.
  - (b) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the department shall make rules governing the process for the department to determine the timeline within the fiscal year for funding the grants.
- (5) On or before October 1, the department, in cooperation with the committee, shall:
  - (a) submit an annual written report electronically to the Social Services Appropriations Subcommittee of the Legislature that gives a complete accounting of the department's disbursement of the money from the account under this section for the previous fiscal year; and
  - (b) include information regarding the disbursement of money from the account under this section in the annual report described in Section 35A-1-109.

Amended by Chapter 17, 2019 General Session  
Amended by Chapter 53, 2019 General Session  
Amended by Chapter 136, 2019 General Session

**35A-8-609 Certification of eligible municipality or grant eligible entity.**

- (1) The department shall certify each year, on or after July 1 and before the first meeting of the Homeless Coordinating Committee after July 1, the cities or towns that meet the requirements of an eligible municipality or a grant eligible entity as of July 1.
- (2) On or before October 1, the department shall provide a list of the cities, towns, or metro townships that the department has certified as meeting the requirements of an eligible municipality or a grant eligible entity for the year to the State Tax Commission.

Amended by Chapter 17, 2019 General Session  
Amended by Chapter 136, 2019 General Session

**Part 8**  
**Housing Coordination and Planning Act**

**35A-8-801 Title.**

This part is known as the "Housing Coordination and Planning Act."

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-802 Legislative policy and purpose.**

- (1)
  - (a) The Legislature declares that it is the policy of the state that to promote the general welfare of its citizens it is necessary to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of medium and low income, in urban and rural areas.
  - (b) The conditions described in Subsection (1)(a) cause an increase and spread of disease and crime, and constitute a menace to the health, safety, morals, and welfare of the state.
- (2) The Legislature declares that it is the policy of the state:
  - (a) to make adequate provision of affordable housing for:
    - (i) persons of medium or low income who are unable to provide themselves with decent housing including:
      - (A) elderly persons;
      - (B) persons with disabilities;
      - (C) veterans;
      - (D) special needs populations;
      - (E) low income persons living on tribal trust lands;
      - (F) persons receiving public assistance under self-sufficiency programs; or
      - (G) low income persons living in mobile homes, as defined in Section 70D-2-102; and
    - (ii) during limited periods, for disaster victims; and
  - (b) that the provision of safe and sanitary dwelling accommodations at rents or prices that persons of medium and low income can afford will materially assist in developing more desirable neighborhoods and alleviating the effects of poverty in this state.
- (3) The purposes of this part and Part 4, Housing Authorities, are to meet these problems by:
  - (a) providing low-cost housing for medium and low income persons; and
  - (b) encouraging cooperation between political subdivisions and the nonprofit sector to make available low-cost housing in all areas of the state.
- (4) It is in the public interest to use the broad financial resources and technical services available to government in cooperation with the ingenuity and expertise of private enterprise to alleviate this lack of safe and sanitary dwellings while stimulating local industry, according to the following principles:
  - (a) The private sector, including nonprofit entities, shall be the primary source of developing and providing affordable housing with state and local incentives to encourage housing development.
  - (b) State money used in the development of housing shall:
    - (i) be heavily leveraged when possible;
    - (ii) be primarily invested as loans;
    - (iii) be primarily spent on housing production; and
    - (iv) give priority to needs of persons of medium or low income who are unable to provide themselves with decent housing including:
      - (A) elderly persons;
      - (B) persons with disabilities;
      - (C) veterans;

- (D) special needs populations;
  - (E) low income persons living on tribal trust lands;
  - (F) persons receiving public assistance under self-sufficiency programs; and
  - (G) low income persons living in mobile homes, as defined in Section 70D-2-102.
- (c) When possible based on economic feasibility and effectiveness, state housing programs shall encourage:
- (i) mixed income developments;
  - (ii) socio-economic diversity in neighborhoods; and
  - (iii) new, multifamily construction.
- (d) State resources may be used in partnership with political subdivisions or the private sector to promote affordable housing.
- (e) Within appropriations from the Legislature, the state may provide training and technical assistance to Utah's political subdivision, quasi-governmental, and nonprofit housing providers.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-803 Division -- Functions.**

- (1) In addition to any other functions the governor or Legislature may assign:
- (a) the division shall:
    - (i) provide a clearinghouse of information for federal, state, and local housing assistance programs;
    - (ii) establish, in cooperation with political subdivisions, model plans and management methods to encourage or provide for the development of affordable housing that may be adopted by political subdivisions by reference;
    - (iii) undertake, in cooperation with political subdivisions, a realistic assessment of problems relating to housing needs, such as:
      - (A) inadequate supply of dwellings;
      - (B) substandard dwellings; and
      - (C) inability of medium and low income families to obtain adequate housing;
    - (iv) provide the information obtained under Subsection (1)(a)(iii) to:
      - (A) political subdivisions;
      - (B) real estate developers;
      - (C) builders;
      - (D) lending institutions;
      - (E) affordable housing advocates; and
      - (F) others having use for the information;
    - (v) advise political subdivisions of serious housing problems existing within their jurisdiction that require concerted public action for solution;
    - (vi) assist political subdivisions in defining housing objectives and in preparing for adoption a plan of action covering a five-year period designed to accomplish housing objectives within their jurisdiction; and
    - (vii) for municipalities or counties required to submit an annual moderate income housing report to the department as described in Section 10-9a-408 or 17-27a-408:
      - (A) assist in the creation of the reports; and
      - (B) evaluate the reports for the purposes of Subsections 72-2-124(5) and (6); and
  - (b) within legislative appropriations, the division may accept for and on behalf of, and bind the state to, any federal housing or homeless program in which the state is invited, permitted, or

- authorized to participate in the distribution, disbursement, or administration of any funds or service advanced, offered, or contributed in whole or in part by the federal government.
- (2) The administration of any federal housing program in which the state is invited, permitted, or authorized to participate in distribution, disbursement, or administration of funds or services, except those administered by the Utah Housing Corporation, is governed by Sections 35A-8-501 through 35A-8-508.
  - (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules describing the evaluation process for moderate income housing reports described in Subsection (1)(a)(vii).

Amended by Chapter 327, 2019 General Session

**35A-8-804 Technical assistance to political subdivisions for housing plan.**

- (1) Within appropriations from the Legislature, the division shall establish a program to assist municipalities to comply with the moderate income housing requirements described in Section 10-9a-403 and counties to comply with the moderate income housing requirements described in Section 17-27a-403.
- (2) Assistance under this section may include:
  - (a) financial assistance for the cost of developing a plan for low and moderate income housing;
  - (b) information on how to meet present and prospective needs for low and moderate income housing; and
  - (c) technical advice and consultation on how to facilitate the creation of low and moderate income housing.
- (3) The division shall submit an annual report to the department regarding the scope, amount, and type of assistance provided to municipalities and counties under this section, including the number of low and moderate income housing units constructed or rehabilitated within the state, for inclusion in the department's annual written report described in Section 35A-1-109.

Amended by Chapter 218, 2018 General Session

**35A-8-805 Reporting requirements.**

- (1) As used in this section:
  - (a) "Affordable housing" means, as determined by the department, the number of housing units within a county or municipality where a household whose income is at or below 50% of area median income is able to live in a unit without spending more than 30% of their income on housing costs.
  - (b) "County" means the unincorporated area of a county.
  - (c) "Low-income housing" means, as determined by the department, the number of Section 42, Internal Revenue Code, housing units within a county or municipality.
  - (d) "Municipality" means a city, town, or metro township.
- (2)
  - (a) On or before October 1 of each year, the division shall provide a report to the department for inclusion in the department's annual report described in Section 35A-1-109.
  - (b) The report shall include:
    - (i) an estimate of how many affordable housing units and how many low-income housing units are available in each county and municipality in the state;
    - (ii) a determination of the percentage of affordable housing available in each county and municipality in the state as compared to the statewide average;

- (iii) a determination of the percentage of low-income housing available in each county and municipality in the state as compared to the statewide average; and
- (iv) a description of how information in the report was calculated.

Enacted by Chapter 251, 2018 General Session

## **Part 9 Domestic Violence Shelters**

### **35A-8-901 Assistance to domestic violence shelters -- Rulemaking authority.**

- (1)
  - (a) The Division of Child and Family Services within the Department of Human Services has statutory responsibility to provide violence services, including temporary shelter, to victims of domestic violence under the provisions of Sections 62A-4a-101 and 62A-4a-105.
  - (b) The division may assist the Division of Child and Family Services by providing for the development, construction, and improvement of shelters for victims of domestic violence, as described in Section 77-36-1, through loans and grants to nonprofit and governmental entities.
- (2) The division shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules establishing:
  - (a) procedures for applying for loans and grants;
  - (b) criteria for awarding loans and grants; and
  - (c) requirements for the repayment of loans.
- (3) The division may appoint an advisory panel to:
  - (a) assist the division in developing rules under Subsection (2); and
  - (b) recommend how available funds should be disbursed.
- (4) The division shall make loans and grants with money specifically appropriated for that purpose.
- (5) The division shall coordinate with the Division of Child and Family Services in complying with the provisions of this section.

Renumbered and Amended by Chapter 212, 2012 General Session

## **Part 10 State Community Services Act**

### **35A-8-1001 Title.**

This part is known as the "State Community Services Act."

Renumbered and Amended by Chapter 212, 2012 General Session

### **35A-8-1002 Definitions.**

As used in this part:

- (1) "Community action agency" means a local subdivision of the state, a combination of political subdivisions, a separate public agency, or a private nonprofit agency, which:



- (a) has the authority under its applicable charter or laws to receive funds to support community action activities and other appropriate measures designed to identify and deal with the causes of poverty in the state; and
  - (b) is designated as a community action agency by federal law, federal regulations, or the governor.
- (2) "Community action program budget" means state funds, federal block grants, and federal categorical grants that are received by the state for community action activities.
  - (3) "Community action statewide organization" means community action programs, organized on a statewide basis, to enhance the capability of community action agencies.
  - (4) "Community Services Block Grant" means the Federal Community Services Block Grant Act, 42 U.S.C. Sec. 9901 et seq., and any corresponding federal regulations.
  - (5) "Local share" means cash or in-kind goods and services donated to a community action agency to carry out its responsibilities.
  - (6) "Low-income person" means a person who is a member of a household with a gross annual income equal to or less than 125% of the poverty standard accepted by the federal agency designated to establish poverty guidelines.
  - (7) "Office" means the State Community Services Office created in Section 35A-8-1003.
  - (8) "Service area" means the geographical area within the jurisdiction of a community action agency or a community action statewide organization.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-1003 State Community Services Office created -- Purpose.**

- (1) There is created within the Housing and Community Development Division the State Community Services Office.
- (2) The office shall strengthen communities by reducing poverty and improving the quality of life for low-income persons in this state.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-1004 Duties of office.**

The office shall:

- (1) coordinate state activities designed to reduce poverty;
- (2) encourage entities in the private sector to participate in efforts to ameliorate poverty in the community;
- (3) cooperate with agencies of local, state, and the federal government in reducing poverty and implementing community, social, and economic programs;
- (4) receive and expend funds for the purposes outlined in this part;
- (5) enter into contracts with and award grants to public and private nonprofit agencies and organizations;
- (6) develop a state plan based on needs identified by community action agencies and community action statewide organizations;
- (7) designate community action agencies to receive funds through the Community Services Block Grant program;
- (8) fund community action agencies and community action statewide organizations;
- (9) make rules in conjunction with the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the purposes of this part;

- (10) provide assistance to local governments or private organizations for the purpose of establishing and operating a community action agency;
- (11) provide technical assistance to community action agencies to improve program planning, program development, administration, and the mobilization of public and private resources;
- (12) convene public meetings that provide citizens the opportunity to comment on public policies and programs to reduce poverty;
- (13) advise the governor and Legislature of the nature and extent of poverty in the state and make recommendations concerning changes in state and federal policies and programs;
- (14) encourage Utah's nonprofit humanitarian assistance agencies serving low-income persons by facilitating, coordinating, training, and providing technical assistance to address the needs of Utah's low-income persons by enhancing management, improving service and program delivery, facilitating partnerships, and preserving flexibility and local initiative;
- (15) develop and implement management goals that fulfill the Community Services Block Grant mission, state requirements, and the mandates of federal legislation;
- (16) prepare a Community Services Block Grant plan that contains provisions describing how the state will carry out the assurances of the Community Services Block Grant Act;
- (17) act as the state agency responsible for the evaluation and improvement of emergency food assistance services in the state;
- (18) monitor the impact of social policies on the emergency food network;
- (19) provide training and technical assistance to grantees to assist their:
  - (a) program development and implementation;
  - (b) compliance with state and federal regulations; and
  - (c) reporting and management information systems;
- (20) make the distributions required by Section 35A-8-1009; and
- (21) administer other programs to alleviate poverty that are assigned to the office.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-1005 Distribution of Community Services Block Grant funds.**

Community Services Block Grant funds received by the office shall be distributed as follows:

- (1) 90% to community action agencies;
- (2) 5% to:
  - (a) organizations with a statewide focus to accomplish specific objectives that complement the Community Services Block Grant poverty programs;
  - (b) provide training and technical assistance for grantees of Community Services Block Grant funds; or
  - (c) supplement anti-poverty projects; and
- (3) 5% to reimburse costs incurred by the office in administration of this part.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-1006 Evaluations -- Reports.**

- (1) The office shall periodically evaluate grantees of Community Services Block Grant funds as established by rule by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) A grantee of Community Services Block Grant funds shall submit to the office a year-end report, covering a reporting period consistent with the federal fiscal year, which provides an

account of the grantee's programs operated with or supported by Community Services Block Grant funds, including:

- (a) the types of programs operated by the grantee;
  - (b) the outcome of each program;
  - (c) the number of persons served by each program;
  - (d) the number of times service was given by each program; and
  - (e) an accounting of the Community Services Block Grant funds expended by the grantee.
- (3) The office shall report annually to the appropriate legislative appropriations subcommittee on the distribution and expenditure of Community Services Block Grant funds.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-1007 Program development by grantees.**

Grantees of Community Services Block Grant funds shall develop specific programs and goals, consistent with the Community Services Block Grant Act, designed to provide the most effective solutions to the problems of poverty identified in their communities within the constraints of available funding, including projects related to:

- (1) employment;
- (2) education;
- (3) income management;
- (4) housing;
- (5) emergency assistance;
- (6) nutrition;
- (7) linkages and coordination with other programs;
- (8) health; and
- (9) self-sufficiency.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-1008 Recognition of community action agencies.**

The office may:

- (1) recognize eligible organizations as community action agencies;
- (2) withdraw the recognition or terminate funding of a designated community action agency for cause, as established by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
- (3) change the boundaries and the number of recognized community action agencies, provided that the governing board of each affected community action agency concurs in the action.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-1009 Qualified Emergency Food Agencies Fund -- Expenditure of revenues.**

(1) As used in this section:

- (a) "Association of governments" means the following created under the authority of Title 11, Chapter 13, Interlocal Cooperation Act:
  - (i) an association of governments; or
  - (ii) a regional council that acts as an association of governments.
- (b) "Food and food ingredients" means the same as that term is defined in Section 59-12-102.
- (c) "Qualified emergency food agency" means an organization that:

- (i) is:
    - (A) exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code;
    - (B) an association of governments; or
    - (C) a food pantry operated by a municipality located within the state;
  - (ii) as part of its activities operates a program that has as the program's primary purpose to:
    - (A) warehouse and distribute food to other agencies and organizations providing food and food ingredients to low-income persons; or
    - (B) provide food and food ingredients directly to low-income persons; and
  - (iii) the office determines to be a qualified emergency food agency.
- (2) There is created an expendable special revenue fund known as the Qualified Emergency Food Agencies Fund.
- (3)
- (a) The Qualified Emergency Food Agencies Fund shall be funded by the sales and use tax revenues described in:
    - (i) Section 59-12-103;
    - (ii) Section 59-12-204; and
    - (iii) Section 59-12-1102.
  - (b) Any interest earned on the Qualified Emergency Food Agencies Fund shall be deposited into the General Fund.
- (4) The office shall for a fiscal year distribute money deposited into the Qualified Emergency Food Agencies Fund to qualified emergency food agencies within the state as provided in this section.
- (5) A qualified emergency food agency shall file an application with the office before the qualified emergency food agency may receive a distribution under this section.
- (6) A qualified emergency food agency may expend a distribution received in accordance with this section only for a purpose related to:
- (a) warehousing and distributing food and food ingredients to other agencies and organizations providing food and food ingredients to low-income persons; or
  - (b) providing food and food ingredients directly to low-income persons.
- (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Housing and Community Development Division may make rules providing procedures for implementing the distributions required by this section, including:
- (a) standards for determining and verifying the amount of a distribution that a qualified emergency food agency may receive;
  - (b) procedures for a qualified emergency food agency to apply for a distribution, including the frequency with which a qualified emergency food agency may apply for a distribution; and
  - (c) consistent with Subsection (1)(c), determining whether an entity is a qualified emergency food agency.

Amended by Chapter 223, 2017 General Session

**Part 12**  
**State Small Business Credit Initiative Program Fund**

**35A-8-1201 Creation and administration.**

- (1) There is created an enterprise fund known as the "State Small Business Credit Initiative Program Fund" administered by the director of the division or the director's designee.
- (2) The division is the administrator of the fund.
- (3) Revenues deposited into the fund shall consist of:
  - (a) grants, pay backs, bonuses, entitlements, and other money received from the federal government to implement the State Small Business Credit Initiative; and
  - (b) transfers, grants, gifts, bequests, and other money made available from any source to implement this part.
- (4)
  - (a) The state treasurer shall invest the money in the fund according to the procedures and requirements of Title 51, Chapter 7, State Money Management Act.
  - (b) Interest and other earnings derived from the fund money shall be deposited in the fund.
- (5) The division may use fund money for administration of the fund, but not to exceed 4% of the annual receipts to the fund.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-1202 Distribution of fund money.**

- (1)
  - (a) The director shall make loans and loan guarantees from the fund for the Small Business Credit Initiative created under the federal government's Small Business Jobs Act of 2010, to use federal money for programs that leverage private lending to help finance small businesses and manufacturers that are creditworthy but not receiving the loans needed to expand and create jobs.
  - (b) In making loans and loan guarantees under this part, the director shall give due consideration to small businesses in underserved communities throughout the state that have been deeply impacted by recession and not seen a comparable resurgence in their economies.
- (2) The director shall distribute federal money in the fund according to the procedures, conditions, and restrictions placed upon the use of the money by the federal government.
- (3) The director may, with the approval of the executive director of the department:
  - (a) enact rules to establish procedures for the loan and loan guarantee process by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
  - (b) service or contract, under Title 63G, Chapter 6a, Utah Procurement Code, for the servicing of loans made by the fund.

Renumbered and Amended by Chapter 212, 2012 General Session

Amended by Chapter 347, 2012 General Session

**35A-8-1203 Annual accounting.**

- (1) The director shall monitor the activities of recipients of the loans and loan guarantees issued under this part on a yearly basis to ensure compliance with the terms and conditions imposed on the recipient by the director under this part.
- (2) An entity receiving a loan or loan guarantee under this part shall provide the director with an annual accounting of how the money it received from the fund was spent.
- (3) The director shall provide the following information to the department for inclusion in the department's annual written report described in Section 35A-1-109:
  - (a) an accounting of expenditures made from the fund; and

- (b) an evaluation of the effectiveness of the loan and loan guarantee program.

Amended by Chapter 371, 2014 General Session

### **Part 13**

#### **Intermountain Weatherization Training Fund**

##### **35A-8-1301 Creation and administration.**

- (1) There is created an expendable special revenue fund known as the "Intermountain Weatherization Training Fund."
- (2) The Intermountain Weatherization Training Fund shall consist of:
  - (a) private contributions;
  - (b) donations or grants from public or private entities;
  - (c) fees;
  - (d) any money appropriated by the Legislature; and
  - (e) interest and earnings on fund money.
- (3) The division shall authorize the expenditure of fund money to the Weatherization Training Center for the administration, operation, maintenance, and support of the center subject to:
  - (a) money available in the fund; and
  - (b) rules established under Subsection (5).
- (4) Administrative costs of the Intermountain Weatherization Fund shall be paid from the fund.
- (5) The division shall:
  - (a) administer the money deposited in the Intermountain Weatherization Training Fund;
  - (b) distribute the money in the Intermountain Weatherization Training Fund in accordance with Subsection (5)(c); and
  - (c) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing:
    - (i) the procedures for awarding fund money; and
    - (ii) the procedure for the Weatherization Training Center to apply for money from the Intermountain Weatherization Training Fund.

Amended by Chapter 400, 2013 General Session

### **Part 14**

#### **Home Energy Assistance Target (heat) Program Act**

##### **35A-8-1401 Title.**

This part is known as the "Home Energy Assistance Target (HEAT) Program Act."

Renumbered and Amended by Chapter 212, 2012 General Session

##### **35A-8-1402 Assistance to low-income persons -- Contracts -- Administration.**

- (1)
  - (a) The department may assist certain low-income families and individuals in the payment of home energy costs.

- (b) Assistance given under this part shall be made available to households throughout the state, irrespective of the source of household energy supply.
- (2) The department may contract with one or more public or private agencies to distribute and administer these funds subject to the criteria established by the department.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-1403 Eligibility criteria.**

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules establishing eligibility criteria for recipients of assistance under this part.
- (2) A recipient of assistance under this part shall demonstrate:
  - (a) that the recipient's family, household, or individual income is 150% of the federal poverty level or less;
  - (b) that the recipient is responsible for paying the recipient's home energy costs; and
  - (c) compliance with any rules established by the department under this section.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-1404 Guidelines for private contributions -- Assuring equitable distribution.**

The department shall coordinate with private contributors to home energy assistance programs, such as REACH and Lend-a-Hand, to help assure equitable statewide distribution of assistance to eligible customers of all vendors of energy services.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-1405 Payment method.**

Direct payments for home energy costs shall be made jointly to the responsible householder and to the vendor of energy services to whom the family or individual served owes a payment except in certain cases, as established by rule by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, where payments may be made directly to the responsible householder.

Renumbered and Amended by Chapter 212, 2012 General Session

**Part 15**  
**Moratorium on Involuntary Termination of Utility Services**

**35A-8-1501 Moratorium on involuntary termination for nonpayment of utility bills -- Eligibility criteria -- Department to establish and certify.**

- (1)
  - (a) The department shall establish a program for a seasonal moratorium for involuntary termination for nonpayment by residential customers of essential utility bills.
  - (b) An essential utility is a utility regulated by the Public Service Commission under Title 54, Public Utilities, which is in the business of the retail distribution of electricity or natural gas.
  - (c) A residential customer is a customer defined as in a residential class by the Public Service Commission.

- (2) A residential customer shall meet the following criteria to qualify for the program:
- (a) gross household income is less than 125% of the federal poverty level or the household has suffered a medical or other emergency, loss of employment, or is experiencing other circumstances which have resulted in a substantial loss of income;
  - (b) the customer has made application to public and private energy assistance programs;
  - (c) the customer is willing to make a good faith effort to pay these utility bills on a consistent basis; and
  - (d) any additional information required by the department.
- (3)
- (a) A residential customer may file with a local department office an affidavit attesting eligibility under the criteria in Subsection (2).
  - (b) The department shall certify that the customer has met the eligibility requirements and forward a copy of the affidavit to the effected utility.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-1502 Contesting a customer's eligibility -- Department to determine case.**

When a utility contests the eligibility of any residential customer to participate in the program, the executive director or the executive director's designee shall act as an administrative law judge to make a determination on the case.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-1503 Premoratorium customers' eligibility for moratorium -- Criteria.**

A residential customer that has had service of an essential utility discontinued for nonpayment prior to the time the moratorium takes effect shall have service restored and continued during the period of the moratorium if the customer meets the requirements of Section 35A-8-1501 and the customer has entered into a deferred payment agreement with the utility as to arrearages.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-1504 Effective period of moratorium -- Extension by rule.**

- (1) The moratorium shall be in effect from November 15 to March 15 of each year.
- (2) The department may, by rule, begin the moratorium at an earlier date or extend it to a later date when severe weather conditions warrant that action.

Renumbered and Amended by Chapter 212, 2012 General Session

**Part 16**  
**Uintah Basin Revitalization Fund and Board**

**35A-8-1601 Definitions.**

As used in this part:

- (1) "Board" means the Uintah Basin Revitalization Fund Board.
- (2) "Capital projects" means expenditures for land, improvements on the land, and equipment intended to have long-term beneficial use.



- (3) "County" means:
  - (a) Duchesne County; or
  - (b) Uintah County.
- (4) "Division" means the Housing and Community Development Division.
- (5) "Revitalization Fund" means the Uintah Basin Revitalization Fund.
- (6) "Tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

Amended by Chapter 136, 2019 General Session

**35A-8-1602 Legislative intent -- Uintah Basin Revitalization Fund -- Deposits and contents.**

- (1) In order to maximize the long-term benefit of severance taxes derived from lands held in trust by the United States for the Tribe and its members by fostering funding mechanisms that will, consistent with sound financial practices, result in the greatest use of financial resources for the greatest number of citizens of the Uintah Basin, and in order to promote cooperation and coordination between the state, its political subdivisions, Indian tribes, and individuals, firms, and business organizations engaged in the development of oil and gas interests held in trust for the Tribe and its members, there is created an expendable special revenue fund entitled the "Uintah Basin Revitalization Fund."
- (2) The fund consists of all money deposited to the Revitalization Fund under this part and Section 59-5-116.
- (3)
  - (a) The Revitalization Fund shall earn interest.
  - (b) All interest earned on fund money shall be deposited into the fund.

Amended by Chapter 400, 2013 General Session

**35A-8-1603 Uintah Basin Revitalization Fund Board created -- Members -- Terms -- Chair -- Quorum -- Expenses.**

- (1) There is created within the division the Revitalization Board composed of five members as follows:
  - (a) the governor or his designee;
  - (b) a Uintah County commissioner;
  - (c) a Duchesne County commissioner; and
  - (d) two representatives of the Business Committee of the Tribe.
- (2) The terms of office for the members of the board shall run concurrently with the terms of office for the governor, commissioners, and Business Committee of the Tribe.
- (3) The governor, or his designee, shall be the chair of the board.
- (4) Four board members are a quorum.
- (5) All decisions of the board require four affirmative votes.
- (6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-1604 Duties -- Loans -- Interest.**

- (1) The board shall:
  - (a) subject to the other provisions of this part and an agreement entered into under Title 11, Chapter 13, Interlocal Cooperation Act, among the state, the counties, and the Tribe, make recommendations to the division for grants and loans from the revitalization fund to county agencies and the Tribe that are or may be socially or economically impacted, directly or indirectly, by mineral resource development;
  - (b) establish procedures for application for and award of grants and loans including:
    - (i) eligibility criteria;
    - (ii) subject to Subsection 35A-8-1606(2)(b), a preference that capital projects, including subsidized and low-income housing, and other one-time need projects and programs have priority over other projects;
    - (iii) a preference for projects and programs that are associated with the geographic area where the oil and gas were produced; and
    - (iv) coordination of projects and programs with other projects and programs funded by federal, state, and local governmental entities;
  - (c) determine the order in which projects will be funded;
  - (d) allocate the amount to be distributed from the revitalization fund for grants or loans to each county and the Tribe during a fiscal year as follows:
    - (i) up to and including the first \$3,000,000 that is approved for distribution by the board during a fiscal year, the board may allocate the amount in accordance with the interlocal agreement described by Subsection (1)(a), except that the board may not allocate less than 75% of the amount under the interlocal agreement to the Tribe unless the interlocal agreement is further modified by statute; and
    - (ii) beginning with fiscal year 2007-08, any amount approved for distribution by the board during that fiscal year in excess of \$3,000,000 shall be allocated equally amongst each county and the Tribe so that each receives 1/3 of the amount approved for distribution by the board in excess of \$3,000,000;
  - (e) qualify for, accept, and administer grants, gifts, loans, or other funds from the federal government and from other sources, public or private; and
  - (f) perform other duties assigned to it under the interlocal agreement described in Subsection (1)
    - (a) that are not prohibited by law or otherwise modified by this part.
- (2) The board shall ensure that loan repayments and interest are deposited into the revitalization fund.
- (3) The interlocal agreement described in Subsection (1)(a) shall be consistent with the following statutes, including any subsequent amendments to those statutes:
  - (a) this part;
  - (b) Title 11, Chapter 13, Interlocal Cooperation Act;
  - (c) Section 59-5-116; and
  - (d) any other applicable provision of this Utah Code.

Amended by Chapter 136, 2019 General Session

**35A-8-1605 Powers.**

- (1) The board may:
  - (a) appoint a hearing examiner or administrative law judge with authority to conduct any hearings, make determinations, and enter appropriate findings of facts, conclusions of law, and orders under authority of the Interlocal Cooperation Act; and

- (b) make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if necessary to perform its responsibilities.
- (2) The board shall:
  - (a) be subject to the procedures and requirements under Title 52, Chapter 4, Open and Public Meetings Act; and
  - (b) be subject to the procedures and requirements under Title 51, Chapter 7, State Money Management Act.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-1606 Eligibility for assistance -- Applications -- Review by board -- Terms -- Security.**

- (1) Counties or the Tribe that wish to receive loans or grants from the board shall submit formal applications to the board containing the information required by the board.
- (2) The board may not fund:
  - (a) start-up or operational costs of private business ventures; and
  - (b) general operating budgets of the counties or the Tribe, except that the Tribe may use a grant or loan to fund costs associated with the management and administration of energy or mineral development on:
    - (i) lands held in trust by the United States for the Tribe and its members; or
    - (ii) lands owned by the Tribe.
- (3)
  - (a) The board shall review each application for a loan or grant before approving it.
  - (b) The board may approve loan or grant applications subject to the applicant's compliance with certain conditions established by the board.
  - (c) The board shall:
    - (i) ensure that each loan specifies the terms for repayment; and
    - (ii) secure the loans by proceeds from any general obligation, special assessment, or revenue bonds, notes, or other obligations of the appropriate subdivision.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-1607 Division to distribute money -- Annual report -- Administration costs.**

- (1) The division shall distribute loan and grant money if the loan or grant is approved by the board.
- (2) The division shall provide an annual report to the department concerning the number and type of loans and grants made as well as a list of recipients of this assistance for inclusion in the department's annual written report described in Section 35A-1-109.
- (3) The division, with board approval, may use fund money for the administration of the fund, but this amount may not exceed 2% of the annual receipts to the fund.

Amended by Chapter 371, 2014 General Session

**35A-8-1608 Deposits into fund.**

- (1) Money required to be deposited into the Uintah Basin Revitalization Fund under Section 59-5-116 shall be deposited into the Uintah Basin Revitalization Fund if a business or activity fee or tax based on gross receipts has not been imposed by a county or the Tribe on oil and gas activities.
- (2)

- (a) Nothing in this section prohibits a county from imposing a charge described in Subsection (1) with respect to any gathering, transmission, or local distribution pipeline in which the county owns an interest.
- (b) Nothing in this section prohibits the Tribe from imposing a charge described in Subsection (1) with respect to any gathering, transmission, or local distribution pipeline in which the Tribe owns an interest.

Amended by Chapter 241, 2014 General Session

## **Part 17**

### **Navajo Revitalization Fund Act**

#### **35A-8-1701 Title.**

This part is known as the "Navajo Revitalization Fund Act."

Amended by Chapter 136, 2019 General Session

#### **35A-8-1702 Definitions.**

As used in this part:

- (1) "Board" means the Navajo Revitalization Fund Board.
- (2) "Capital project" means an expenditure for land, improvements on the land, or equipment intended to have long-term beneficial use.
- (3) "Division" means the Housing and Community Development Division.
- (4) "Eligible entity" means:
  - (a) the Navajo Nation;
  - (b) a department or division of the Navajo Nation;
  - (c) a Utah Navajo Chapter;
  - (d) the Navajo Utah Commission;
  - (e) an agency of the state or a political subdivision of the state; or
  - (f) a nonprofit corporation.
- (5) "Navajo Utah Commission" means the commission created by Resolution IGRJN-134-92 of the Intergovernmental Relations Committee of the Navajo Nation Council.
- (6) "Revitalization fund" means the Navajo Revitalization Fund.
- (7) "Utah Navajo Chapter" means any of the following chapters of the Navajo Nation:
  - (a) Aneth Chapter;
  - (b) Dennehotso Chapter;
  - (c) Mexican Water Chapter;
  - (d) Navajo Mountain Chapter;
  - (e) Oljato Chapter;
  - (f) Red Mesa Chapter; and
  - (g) Teec Nos Pos Chapter.

Amended by Chapter 136, 2019 General Session

#### **35A-8-1703 Legislative intent.**

- (1) The purpose of this part is to:

- (a) maximize the long-term benefit of state severance taxes derived from lands in Utah held in trust by the United States for the Navajo Nation and its members by fostering funding mechanisms that will, consistent with sound financial practices, result in the greatest use of financial resources for the greatest number of citizens of San Juan County; and
  - (b) promote cooperation and coordination between the state, its political subdivisions, Indian tribes, and individuals, firms, and business organizations engaged in the development of oil and gas interests in Utah held in trust by the United States for the Navajo Nation and its members.
- (2) Notwithstanding Subsection (1), the fund:
- (a) consists of state severance tax money to be spent at the discretion of the state; and
  - (b) does not constitute a trust fund.

Amended by Chapter 136, 2019 General Session

**35A-8-1704 Navajo Revitalization Fund.**

- (1)
- (a) There is created an expendable special revenue fund called the "Navajo Revitalization Fund."
  - (b) The revitalization fund shall consist of:
    - (i) money deposited to the revitalization fund under this part;
    - (ii) money deposited to the revitalization fund under Section 59-5-119; and
    - (iii) any loan repayment or interest on a loan issued under this part.
- (2)
- (a) The revitalization fund shall earn interest.
  - (b) The interest earned on revitalization fund money shall be deposited into the fund.
- (3) Beginning for fiscal year 2010-11, the division may use revitalization fund money for the administration of the revitalization fund, but this amount may not exceed 4% of the annual receipts to the revitalization fund.

Amended by Chapter 136, 2019 General Session

**35A-8-1705 Navajo Revitalization Fund Board.**

- (1) There is created within the division the Navajo Revitalization Fund Board composed of five members as follows:
- (a) the governor or the governor's designee;
  - (b) the two members of the San Juan County commission whose districts include portions of the Navajo Reservation;
  - (c) the chair of the Navajo Utah Commission or a member of the commission designated by the chair of the Navajo Utah Commission; and
  - (d) beginning July 1, 2008, a president of a Utah Navajo Chapter or an individual designated by the president under an annual rotation system of Utah Navajo Chapters as follows:
    - (i) the president of a Utah Navajo Chapter shall serve for one year;
    - (ii) the Utah Navajo Chapter is rotated in alphabetical order as provided in Subsection 35A-8-1702(7), except that the rotation will begin on July 1, 2008, with the Dennehotso Chapter;
    - (iii) if the president of a Utah Navajo Chapter under Subsection (1)(d)(ii) is the same individual as the individual listed in Subsection (1)(c):
      - (A) that Utah Navajo Chapter is skipped as part of that rotation; and

- (B) the president of the next Utah Navajo Chapter in the alphabetical rotation shall serve on the board.
- (2) The term of office for a member of the board described in Subsections (1)(a) through (c) runs concurrently with the term of office for the governor, county commissioner, or member of the Navajo Utah Commission.
- (3)
  - (a) The governor, or the governor's designee, is the chair of the board.
  - (b) The chair shall call necessary meetings.
- (4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (5) The per diem and travel expenses permitted under Subsection (4) may be included as costs of administration of the revitalization fund.
- (6) Four board members are a quorum.
- (7) An affirmative vote of each member of the board present at a meeting when a quorum is present is required for a board decision related to money in or disbursed from the revitalization fund.

Amended by Chapter 348, 2016 General Session

**35A-8-1706 Powers -- Duties.**

- (1) The board shall:
  - (a) direct the division regarding grants and loans from the revitalization fund to eligible entities to serve persons that are or may be socially or economically impacted, directly or indirectly, by mineral resource development;
  - (b) establish procedures for application for an award of grants and loans including eligibility criteria;
  - (c) coordinate projects and programs with other projects and programs funded by federal, state, and local government entities;
  - (d) determine the order in which projects will be funded; and
  - (e) be subject to the procedures and requirements under Title 52, Chapter 4, Open and Public Meetings Act.
- (2) The board may:
  - (a) qualify for, accept, and administer grants, gifts, loans, or other funds from the federal government and from other sources, public or private; and
  - (b) make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if necessary to perform its responsibilities.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-1707 Revitalization fund administered by board -- Eligibility for assistance -- Review by board -- Restrictions on loans and grants -- Division to distribute money.**

- (1)
  - (a) If an eligible entity wishes to receive a loan or grant from the board, the eligible entity shall file an application with the board that contains the information required by the board.

- (b) The board shall review an application for a loan or grant filed under Subsection (1)(a) before approving the loan or grant.
- (c) The board may approve a loan or grant application subject to the applicant's compliance with the one or more conditions established by the board.
- (2) In determining whether an eligible entity may receive a loan or grant, the board shall give priority to:
  - (a) a capital project or infrastructure, including:
    - (i) electrical power;
    - (ii) water; and
    - (iii) a one time need project;
  - (b) a housing project that consists of:
    - (i) the purchase of new housing;
    - (ii) the construction of new housing; or
    - (iii) a significant remodeling of existing housing; or
  - (c) a matching educational endowment that:
    - (i) promotes economic development within the Utah portion of the Navajo Reservation;
    - (ii) promotes the preservation of Navajo culture, history, and language; or
    - (iii) supports a postsecondary educational opportunity for a Navajo student enrolled in a course or program taught within the Utah portion of the Navajo Reservation.
- (3) A loan or grant issued under this part may not fund:
  - (a) a start-up or operational cost of a private business venture;
  - (b) a general operating budget of an eligible entity; or
  - (c) a project that will operate or be located outside of the Navajo Reservation in San Juan County, Utah, except for an educational endowment approved by the board under Subsection (2)(c).
- (4)
  - (a) The board may not approve a loan unless the loan:
    - (i) specifies the terms for repayment; and
    - (ii) is secured by proceeds from a general obligation, special assessment, or revenue bond, note, or other obligation.
  - (b) The division shall deposit a loan repayment or interest on a loan issued under this part into the revitalization fund.
- (5) The board shall give a priority to a loan or grant if the loan or grant includes matching money or in-kind services from:
  - (a) the Navajo Nation;
  - (b) San Juan County;
  - (c) the state;
  - (d) the federal government;
  - (e) a Utah Navajo Chapter; or
  - (f) other private or public organization.
- (6) The division shall distribute loan and grant money:
  - (a) if the loan or grant is approved by the board;
  - (b) in accordance with the instructions of the board, except that the board may not instruct that money be distributed in a manner:
    - (i) inconsistent with this part; or
    - (ii) in violation of a rule or procedure of the department; and
  - (c) in the case of a loan, in accordance with Section 63A-3-205.

Amended by Chapter 136, 2019 General Session

**35A-8-1708 Annual report.**

The division shall provide an annual report to the department concerning the number and type of loans and grants made as well as a list of recipients of this assistance for inclusion in the department's annual written report described in Section 35A-1-109.

Amended by Chapter 371, 2014 General Session

**Part 21  
Private Activity Bonds**

**35A-8-2101 Title -- Purpose.**

- (1) This part is known as "Private Activity Bonds."
- (2) This part establishes procedures to effectively and equitably allocate this state's private activity bond volume cap authorized by the Internal Revenue Code of 1986 in order to maximize the social and economic benefits to this state.

Renumbered and Amended by Chapter 182, 2018 General Session

**35A-8-2102 Definitions.**

As used in this part:

- (1) "Allocated volume cap" means a volume cap for which:
  - (a) a certificate of allocation is in effect; or
  - (b) bonds have been issued.
- (2) "Allotment accounts" means the various accounts created in Section 35A-8-2106.
- (3) "Board of review" means the Private Activity Bond Review Board created in Section 35A-8-2103.
- (4) "Bond" means any obligation for which an allocation of volume cap is required by the code.
- (5) "Code" means the Internal Revenue Code of 1986, as amended, and any related Internal Revenue Service regulations.
- (6) "Form 8038" means the Department of the Treasury tax form 8038 (OMB No. 1545-0720) or any other federal tax form or other method of reporting required by the Department of the Treasury under Section 149(e) of the code.
- (7) "Issuing authority" means:
  - (a) any county, city, or town in the state;
  - (b) any not-for-profit corporation or joint agency, or other entity acting on behalf of one or more counties, cities, towns, or any combination of these;
  - (c) the state; or
  - (d) any other entity authorized to issue bonds under state law.
- (8) "State" means the state of Utah and any of its agencies, institutions, and divisions authorized to issue bonds or certificates under state law.
- (9) "Volume cap" means the private activity bond volume cap for the state as computed under Section 146 of the code.
- (10) "Year" means each calendar year.



Renumbered and Amended by Chapter 182, 2018 General Session

**35A-8-2103 Private Activity Bond Review Board.**

- (1) There is created within the department the Private Activity Bond Review Board, composed of the following 11 members:
  - (a)
    - (i) the executive director of the department or the executive director's designee;
    - (ii) the executive director of the Governor's Office of Economic Development or the executive director's designee;
    - (iii) the state treasurer or the state treasurer's designee;
    - (iv) the chair of the Board of Regents or the chair's designee; and
    - (v) the chair of the Utah Housing Corporation or the chair's designee; and
  - (b) six local government members who are:
    - (i) three elected or appointed county officials, nominated by the Utah Association of Counties and appointed by the governor with the consent of the Senate; and
    - (ii) three elected or appointed municipal officials, nominated by the Utah League of Cities and Towns and appointed by the governor with the consent of the Senate.
- (2)
  - (a) Except as required by Subsection (2)(b), the terms of office for the local government members of the board of review shall be four-year terms.
  - (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board of review members are staggered so that approximately half of the board of review is appointed every two years.
  - (c) Members may be reappointed only once.
- (3)
  - (a) If a local government member ceases to be an elected or appointed official of the city or county the member is appointed to represent, that membership on the board of review terminates immediately and there shall be a vacancy in the membership.
  - (b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed within 30 days in the manner of the regular appointment for the unexpired term.
- (4)
  - (a) The chair of the board of review is the executive director of the department or the executive director's designee.
  - (b) The chair is nonvoting except in the case of a tie vote.
- (5) Six members of the board of review constitute a quorum.
- (6) Formal action by the board of review requires a majority vote of a quorum.
- (7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- (8) The chair of the board of review serves as the state official designated under state law to make certifications required to be made under Section 146 of the code including the certification required by Section 149(e)(2)(F) of the code.

Renumbered and Amended by Chapter 182, 2018 General Session

**35A-8-2104 Powers, functions, and duties of the board of review.**

The board of review shall:

- (1) make, subject to the limitations of the code, allocations of volume cap to issuing authorities;
- (2) determine the amount of volume cap to be allocated with respect to approved applications;
- (3) maintain a record of all applications filed by issuing authorities under Section 35A-8-2105 and all certificates of allocation issued under Section 35A-8-2107;
- (4) maintain a record of all bonds issued by issuing authorities during each year;
- (5) determine the amount of volume cap to be treated as a carryforward under Section 146(f) of the code and allocate this carryforward to one or more qualified carryforward purposes;
- (6) make available upon reasonable request a certified copy of all or any part of the records maintained by the board of review under this part or a summary of them, including information relating to the volume cap for each year and any amounts available for allocation under this part;
- (7) make rules for the allocation of volume cap under this part; and
- (8) charge reasonable fees for the performance of duties prescribed by this part, including application, filing, and processing fees.

Renumbered and Amended by Chapter 182, 2018 General Session

**35A-8-2105 Allocation of volume cap.**

- (1)
  - (a) Subject to Subsection (1)(b), the volume cap for each year shall be distributed by the board of review to the allotment accounts as described in Section 35A-8-2106.
  - (b) The board of review may distribute up to 50% of each increase in the volume cap for use in development that occurs in quality growth areas, depending upon the board's analysis of the relative need for additional volume cap between development in quality growth areas and the allotment accounts under Section 35A-8-2106.
- (2) To obtain an allocation of the volume cap, issuing authorities shall submit to the board of review an application containing information required by the procedures and processes of the board of review.
- (3)
  - (a) The board of review shall establish criteria for making allocations of volume cap that are consistent with the purposes of the code and this part.
  - (b) In making an allocation of volume cap the board of review shall consider the following:
    - (i) the principal amount of the bonds proposed to be issued;
    - (ii) the nature and the location of the project or the type of program;
    - (iii) the likelihood that the bonds will be sold and the timeframe of bond issuance;
    - (iv) whether the project or program could obtain adequate financing without an allocation of volume cap;
    - (v) the degree to which an allocation of volume cap is required for the project or program to proceed or continue;
    - (vi) the social, health, economic, and educational effects of the project or program on the local community and state as a whole;
    - (vii) the anticipated economic development created or retained within the local community and the state as a whole;
    - (viii) the anticipated number of jobs, both temporary and permanent, created or retained within the local community and the state as a whole;
    - (ix) if the project is a residential rental project, the degree to which the residential rental project:

- (A) targets lower income populations; and
  - (B) is accessible housing; and
  - (x) whether the project meets the principles of quality growth recommended by the Quality Growth Commission created in Section 11-38-201.
- (4) The board of review shall provide evidence of an allocation of volume cap by issuing a certificate in accordance with Section 35A-8-2107.
- (5)
- (a) From January 1 to June 30 of each year, the board of review shall set aside at least 50% of the Small Issue Bond Account that may only be allocated to manufacturing projects.
  - (b) From July 1 to August 15 of each year, the board of review shall set aside at least 50% of the Pool Account that may only be allocated to manufacturing projects.

Renumbered and Amended by Chapter 182, 2018 General Session

**35A-8-2106 Allotment accounts.**

- (1) There are created the following allotment accounts:
- (a) the Single Family Housing Account, for which eligible issuing authorities are those authorized under the code and state statute to issue qualified mortgage bonds under Section 143 of the code;
  - (b) the Student Loan Account, for which eligible issuing authorities are those authorized under the code and state statute to issue qualified student loan bonds under Section 144(b) of the code;
  - (c) the Small Issue Bond Account, for which eligible issuing authorities are those authorized under the code and state statute to issue:
    - (i) qualified small issue bonds under Section 144(a) of the code;
    - (ii) qualified exempt facility bonds for qualified residential rental projects under Section 142(d) of the code; or
    - (iii) qualified redevelopment bonds under Section 144(c) of the code;
  - (d) the Exempt Facilities Account, for which eligible issuing authorities are those authorized under the code and state statute to issue any bonds requiring an allocation of volume cap other than for purposes described in Subsections (1)(a), (b), or (c);
  - (e) the Pool Account, for which eligible issuing authorities are those authorized under the code and state statute to issue any bonds requiring an allocation of volume cap; and
  - (f) the Carryforward Account, for which eligible issuing authorities are those with projects or programs qualifying under Section 146(f) of the code.
- (2)
- (a) The volume cap shall be distributed to the allotment accounts on January 1 of each year on the following basis:
    - (i) 42% to the Single Family Housing Account;
    - (ii) 33% to the Student Loan Account;
    - (iii) 1% to the Exempt Facilities Account; and
    - (iv) 24% to the Small Issue Bond Account.
  - (b) From July 1 to September 30 of each year, the board of review may transfer any unallocated volume cap from the Exempt Facilities Account or the Small Issue Bond Account to the Pool Account.
  - (c) Upon written notification by the issuing authorities eligible for volume cap allocation from the Single Family Housing Account or the Student Loan Account that all or a portion of volume cap distributed into that allotment account will not be used, the board of review may transfer

the unused volume cap between the Single Family Housing Account and the Student Loan Account.

- (d) From October 1 to the third Friday of December of each year, the board of review shall transfer all unallocated volume cap into the Pool Account.
- (e) On the third Saturday of December of each year, the board of review shall transfer uncollected volume cap, or allocated volume cap for which bonds have not been issued prior to the third Saturday of December, into the Carryforward Account.
- (f) If the authority to issue bonds designated in any allotment account is rescinded by amendment to the code, the board of review may transfer any unallocated volume cap from that allotment account to any other allotment account.

Renumbered and Amended by Chapter 182, 2018 General Session

**35A-8-2107 Certificates of allocation.**

- (1)
  - (a) After an allocation of volume cap for a project or program is approved by the board of review, the board of review shall issue a numbered certificate of allocation stating the amount of the allocation, the allotment account for which the allocation is being made, and the expiration date of the allocation.
  - (b) The certificates of allocation shall be mailed to the issuing authority within 10 working days of the date of approval.
  - (c) Bonds are not entitled to any allocation of the volume cap unless the issuing authority received a certificate of allocation with respect to the bonds.
  - (d)
    - (i) Certificates of allocation shall remain in effect for a period of 90 days from the date of approval.
    - (ii) If bonds for which a certificate has been approved are not issued within the 90-day period, the certificate of allocation is void and volume cap shall be returned to the applicable allotment account for reallocation by the board of review.
- (2)
  - (a) An issuing authority receiving an allocation of volume cap from the Carryforward Account shall receive a certificate of allocation similar to the certificates of allocation described in Subsection (1) from the board of review stating the amount of allocation from the Carryforward Account that has been allocated to the issuing authority and the expiration of the allocation.
  - (b)
    - (i) If in the judgment of the board of review an issuing authority or a person or entity responsible for a project or program receiving an allocation from the Carryforward Account does not proceed with diligence in providing for the issuance of the bonds with respect to the project or program, and because of the lack of diligence the volume cap cannot be used, the board of review may exclude from the board of review's consideration for a given period of time, determined by the board of review, an application of the issuing authority, person, or entity.
    - (ii) The board of review may, at any time, review and modify the board of review's decisions relating to the exclusion described in this Subsection (2)(b).

Renumbered and Amended by Chapter 182, 2018 General Session

**35A-8-2108 Issuing authorities -- Limitations -- Duties.**

- (1)
  - (a) Notwithstanding any law to the contrary, an issuing authority issuing bonds without a certificate of allocation issued under Section 35A-8-2107, or an issuing authority issuing bonds after the expiration of a certificate of allocation, is not entitled to an allocation of the volume cap for those bonds.
  - (b) An issuing authority issuing bonds in excess of the amount set forth in the related certificate of allocation is not entitled to an allocation of the volume cap for the excess.
- (2) Each issuing authority shall:
  - (a) advise the board of review, within 15 days after the issuance of bonds, of the principal amount of bonds issued under each certificate of allocation by delivering to the board of review a copy of the Form 8038 that was delivered or shall be delivered to the Internal Revenue Service in connection with the bonds, or, if no Form 8038 is required to be delivered to the Internal Revenue Service, a completed copy of a Form 8038 prepared for the board of review with respect to the bonds; and
  - (b) if all or a stated portion of the bonds for which a certificate of allocation was received will not be issued, advise the board of review in writing, within 15 days of the earlier of:
    - (i) the final decision not to issue all or a stated portion of the bonds; or
    - (ii) the expiration of the certificate of allocation.
- (3) Failure by an issuing authority to notify the board of review under Subsection (2), including failure to timely deliver a Form 8038, may, in the sole discretion of the board of review, result in the board of review denying further consideration of applications from the issuing authority.

Renumbered and Amended by Chapter 182, 2018 General Session

**35A-8-2109 Procedures -- Adjudicative proceedings.**

The board of review shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in the board of review's adjudicative proceedings.

Renumbered and Amended by Chapter 182, 2018 General Session

**35A-8-2110 Duties of the department.**

- (1) The department is recognized as an issuing authority as defined in Section 35A-8-2102, entitled to issue bonds from the Small Issue Bond Account created in Subsection 35A-8-2106(1)(c) as a part of the state's private activity bond volume cap authorized by the Internal Revenue Code and computed under Section 146, Internal Revenue Code.
- (2) To promote and encourage the issuance of bonds from the Small Issue Bond Account for manufacturing projects, the department may:
  - (a) develop campaigns and materials that inform qualified small manufacturing businesses about the existence of the program and the application process;
  - (b) assist small businesses in applying for and qualifying for these bonds; and
  - (c) develop strategies to lower the cost to small businesses of applying for and qualifying for these bonds, including making arrangements with financial advisors, underwriters, bond counsel, and other professionals involved in the issuance process to provide services at a reduced rate when the department can provide such service providers with a high volume of applicants or issues.

Renumbered and Amended by Chapter 182, 2018 General Session

**Part 22**  
**Commission on Housing Affordability**

**35A-8-2201 Definitions.**

As used in this part:

- (1) "Commission" means the Commission on Housing Affordability created in Section 35A-8-2202.
- (2) "Housing affordability" means the ability of a household to occupy a housing unit paying no more than 30% of the household's income for gross housing costs, including utilities.

Enacted by Chapter 392, 2018 General Session

**35A-8-2202 Commission on Housing Affordability.**

- (1) There is created within the department the Commission on Housing Affordability.
- (2) The commission shall consist of 20 members as follows:
  - (a) one senator appointed by the president of the Senate;
  - (b) two representatives appointed by the speaker of the House of Representatives;
  - (c) the executive director of the department or the executive director's designee;
  - (d) the director of the division;
  - (e) the executive director of the Governor's Office of Economic Development or the executive director's designee;
  - (f) the president of the Utah Transit Authority or the president's designee;
  - (g) the president of the Utah Housing Corporation or the president's designee; and
  - (h) 12 members appointed by the governor as follows:
    - (i) one individual representing the land development community with experience and expertise in affordable, subsidized multi-family development, recommended by the Utah Homebuilders Association;
    - (ii) one individual representing the real estate industry, recommended by the Utah Association of Realtors;
    - (iii) one individual representing the banking industry, recommended by the Utah Bankers Association;
    - (iv) one individual representing public housing authorities, recommended by the director of the division;
    - (v) two individuals representing municipal government, recommended by the Utah League of Cities and Towns;
    - (vi) one individual representing redevelopment agencies and community reinvestment agencies, recommended by the Utah Redevelopment Association;
    - (vii) two individuals representing county government, recommended by the Utah Association of Counties, where:
      - (A) one of the individuals is from a county of the first class; and
      - (B) one of the individuals is from a county of the third, fourth, fifth, or sixth class;
    - (viii) one individual representing a nonprofit organization that addresses issues related to housing affordability;
    - (ix) one individual with expertise on housing affordability issues in rural communities; and
    - (x) one individual representing the Salt Lake Chamber, recommended by the Salt Lake Chamber.
- (3)

- (a) When a vacancy occurs in a position appointed by the governor under Subsection (2)(h), the governor shall appoint a person to fill the vacancy.
  - (b) Members appointed under Subsection (2)(h) may be removed by the governor for cause.
  - (c) A member appointed under Subsection (2)(h) shall be removed from the commission and replaced by an appointee of the governor if the member is absent for three consecutive meetings of the commission without being excused by a cochair of the commission.
  - (d) A member serves until the member's successor is appointed.
- (4)
- (a) The commission shall select two members to serve as cochairs, one of whom shall be a legislator.
  - (b) Subject to the other provisions of this Subsection (4), the cochairs are responsible for the call and conduct of meetings.
  - (c) The cochairs shall call and hold meetings of the commission at least four times each year.
  - (d) One or more additional meetings may be called upon request by a majority of the commission's members.
- (5)
- (a) A majority of the members of the commission constitutes a quorum.
  - (b) The action of a majority of a quorum constitutes the action of the commission.
- (6)
- (a) A member of the commission described in Subsections (2)(c) through (h) may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
    - (i) Section 63A-3-106;
    - (ii) Section 63A-3-107; and
    - (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
  - (b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.
- (7) The division shall provide staff support to the commission.

Enacted by Chapter 392, 2018 General Session

**35A-8-2203 Duties of the commission.**

- (1) The commission's duties include:
- (a) increasing public and government awareness and understanding of the housing affordability needs of the state and how those needs may be most effectively and efficiently met, through empirical study and investigation;
  - (b) identifying and recommending implementation of specific strategies, policies, procedures, and programs to address the housing affordability needs of the state;
  - (c) facilitating the communication and coordination of public and private entities that are involved in developing, financing, providing, advocating for, and administering affordable housing in the state;
  - (d) studying, evaluating, and reporting on the status and effectiveness of policies, procedures, and programs that address housing affordability in the state;
  - (e) studying and evaluating the policies, procedures, and programs implemented by other states that address housing affordability;
  - (f) providing a forum for public comment on issues related to housing affordability; and
  - (g) providing recommendations to the governor and Legislature on strategies, policies, procedures, and programs to address the housing affordability needs of the state.

- (2) To accomplish its duties, the commission may:
  - (a) request and receive from a state or local government agency or institution summary information relating to housing affordability, including:
    - (i) reports;
    - (ii) audits;
    - (iii) projections; and
    - (iv) statistics; and
  - (b) appoint one or more advisory groups to advise and assist the commission.
- (3)
  - (a) A member of an advisory group described in Subsection (2)(b):
    - (i) shall be appointed by the commission;
    - (ii) may be:
      - (A) a member of the commission; or
      - (B) an individual from the private or public sector; and
    - (iii) notwithstanding Section 35A-8-2202, may not receive reimbursement or pay for any work done in relation to the advisory group.
  - (b) An advisory group described in Subsection (2)(b) shall report to the commission on the progress of the advisory group.

Enacted by Chapter 392, 2018 General Session

**35A-8-2204 Annual report.**

- (1) The commission shall annually prepare a report for inclusion in the department's annual written report described in Section 35A-1-109.
- (2) The report described in Subsection (1) shall:
  - (a) describe how the commission fulfilled its statutory duties during the year; and
  - (b) contain recommendations on how the state should act to address issues relating to housing affordability.

Enacted by Chapter 392, 2018 General Session

**Chapter 9**  
**Intergenerational Poverty Mitigation Act**

**Part 1**  
**General Provisions**

**35A-9-101 Title.**

This chapter is known as the "Intergenerational Poverty Mitigation Act."

Enacted by Chapter 185, 2012 General Session

**35A-9-102 Definitions.**

As used in this chapter:



- (1) "Cycle of poverty" or "poverty cycle" means the set of factors or events by which the long-term poverty of a person is likely to continue and be experienced by each child of the person when the child becomes an adult unless there is outside intervention.
- (2)
  - (a) "Intergenerational poverty" means poverty in which two or more successive generations of a family continue in the cycle of poverty and government dependance.
  - (b) "Intergenerational poverty" does not include situational poverty.
- (3) "Poverty" means the state of a person who lacks a usual or socially acceptable amount of money or material possessions as demonstrated by the person's income level being at or below the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services in the Federal Register.
- (4) "Situational poverty" means temporary poverty that:
  - (a) is generally traceable to a specific incident or time period within the lifetime of a person; and
  - (b) is not continued to the next generation.

Enacted by Chapter 185, 2012 General Session

## **Part 2**

### **Intergenerational Poverty Tracking System**

#### **35A-9-201 Intergenerational poverty tracking system -- Data -- Analysis -- Annual report.**

- (1) The department shall establish and maintain a system to track intergenerational poverty.
- (2) The system shall:
  - (a) identify groups that have a high risk of experiencing intergenerational poverty;
  - (b) identify incidents, patterns, and trends that explain or contribute to intergenerational poverty;
  - (c) assist case workers, social scientists, and government officials in the study and development of effective and efficient plans and programs to help individuals and families in the state to break the cycle of poverty; and
  - (d) gather and track available local, state, and national data on:
    - (i) official poverty rates;
    - (ii) child poverty rates;
    - (iii) years spent by individuals in childhood poverty;
    - (iv) years spent by individuals in adult poverty; and
    - (v) related poverty information.
- (3) The department shall:
  - (a) use available data in the tracking system, including public assistance data, census data, and other data made available to the department;
  - (b) develop and implement methods to integrate, compare, analyze, and validate the data for the purposes described in Subsection (2);
  - (c) protect the privacy of individuals living in poverty by using and distributing data within the tracking system in compliance with:
    - (i) federal requirements; and
    - (ii) the provisions of Title 63G, Chapter 2, Government Records Access and Management Act; and

- (d) include in the annual written report described in Section 35A-1-109, a report on the data, findings, and potential uses of the tracking system.

Amended by Chapter 371, 2014 General Session

### **Part 3**

## **Utah Intergenerational Welfare Reform Commission**

### **35A-9-301 Creation of the Utah Intergenerational Welfare Reform Commission.**

There is created the Utah Intergenerational Welfare Reform Commission composed of the following seven members:

- (1) the lieutenant governor;
- (2) the executive director of the Department of Workforce Services or the deputy director if designated by the executive director;
- (3) the executive director of the Department of Health or the deputy director if designated by the executive director;
- (4) the executive director of the Department of Human Services or the deputy director if designated by the executive director;
- (5) the state superintendent of public education or the deputy state superintendent if designated by the superintendent;
- (6) the state juvenile court administrator; and
- (7) the chair of the Intergenerational Poverty Advisory Committee created in Section 35A-9-304.

Amended by Chapter 296, 2016 General Session

### **35A-9-302 Chair of commission -- Meetings -- Quorum -- Staff support.**

- (1) The lieutenant governor shall serve as chair of the commission.
- (2) The executive director of the Department of Workforce Services, or the deputy director of the Department of Workforce Services if designated by the executive director, shall serve as vice chair of the commission.
- (3) The chair:
  - (a) is responsible for the call and conduct of meetings;
  - (b) shall call and hold meetings of the commission at least quarterly;
  - (c) shall call additional meetings upon request by a majority of the commission's members; and
  - (d) may delegate duties to the vice chair.
- (4) A majority of the members of the commission constitutes a quorum of the commission at any meeting and the action of the majority of members present is the action of the commission.
- (5) The Department of Workforce Services shall provide staff support to the commission.

Amended by Chapter 296, 2016 General Session

### **35A-9-303 Purpose and duties of commission.**

- (1) The commission's purpose is to:
  - (a) collaborate in sharing and analyzing data and information regarding intergenerational poverty in the state with a primary focus on data and information regarding children who are at risk of continuing the cycle of poverty and welfare dependency unless outside intervention is made;

- (b) examine and analyze shared data and information regarding intergenerational poverty, including the data provided by the intergenerational poverty report described in Section 35A-9-201, to identify and develop effective and efficient plans, programs, and recommendations to help at-risk children in the state escape the cycle of poverty and welfare dependency, which may include avoiding homelessness among children at risk of remaining in poverty;
  - (c) implement data-driven policies and programs addressing poverty, public assistance, education, and other areas as needed to measurably reduce the incidence of children in the state who remain in the cycle of poverty and welfare dependency as they become adults;
  - (d) establish and facilitate improved cooperation between state agencies down to the case worker level in rescuing children from intergenerational poverty and welfare dependency; and
  - (e) encourage participation and input from the Intergenerational Poverty Advisory Committee established in Section 35A-9-304 and other community resources, including academic experts, advocacy groups, nonprofit corporations, local governments, and religious institutions in exploring strategies and solutions to help children in the state who are victims of intergenerational poverty escape the cycle of poverty and welfare dependency.
- (2) The commission shall:
- (a) fulfill the commission's purposes as listed in Subsection (1);
  - (b) study, evaluate, and report on the status and effectiveness of policies, procedures, and programs that provide services to children in the state affected by intergenerational poverty and welfare dependency;
  - (c) study and evaluate the policies, procedures, and programs implemented by other states and nongovernmental entities that address the needs of children affected by intergenerational poverty and welfare dependency;
  - (d)
    - (i) identify policies, procedures, and programs, including any lack of interagency data sharing, lack of policy coordination, or current federal requirements, that are impeding efforts to help children in the state affected by intergenerational poverty escape the poverty cycle and welfare dependency; and
    - (ii) implement and recommend changes to those policies and procedures;
  - (e) create an ongoing five- and ten-year plan, which is updated annually, containing:
    - (i) measurable goals and benchmarks, including future action needed to attain those goals and benchmarks, for:
      - (A) decreasing the incidence of intergenerational poverty among the state's children, including reducing the incidence of homelessness among children affected by intergenerational poverty; and
      - (B) increasing the number of the state's children who escape the poverty cycle and welfare dependency;
    - (ii) implement policy, procedure, and program changes to address the needs of children affected by intergenerational poverty and help those children escape the poverty cycle and welfare dependency, including, as available over time, data to track the effectiveness of each change; and
    - (iii) recommend policy, procedure, and program changes to address the needs of children affected by intergenerational poverty and to help those children escape the poverty cycle and welfare dependency, including the steps that will be required to make the recommended changes and whether further action is required by the Legislature or the federal government;
  - (f) ensure that each change and recommended change to a policy, procedure, or program, which is made by the commission, is supported by verifiable data;

- (g) protect the privacy of individuals living in poverty by using and distributing the data it collects or examines in compliance with:
    - (i) federal requirements; and
    - (ii) the provisions of Title 63G, Chapter 2, Government Records Access and Management Act; and
  - (h) provide a forum for public comment and participation in efforts to help children in the state escape the cycle of poverty and welfare dependency.
- (3) To accomplish its duties, the commission may:
- (a) request and receive from any state or local governmental agency or institution, information relating to poverty in the state, including:
    - (i) reports;
    - (ii) audits;
    - (iii) data;
    - (iv) projections; and
    - (v) statistics; and
  - (b) appoint special committees, in addition to the advisory committee described in Section 35A-9-304, to advise and assist the commission.
- (4)
- (a) Members of a special committee described in Subsection (3)(b):
    - (i) shall be appointed by the commission;
    - (ii) may be:
      - (A) members of the commission; or
      - (B) individuals from the private or public sector; and
    - (iii) notwithstanding Section 35A-9-305, may not receive reimbursement or pay for work done in relation to the special committee.
  - (b) A special committee described in Subsection (3)(b) shall report to the commission on the progress of the special committee.

Amended by Chapter 407, 2017 General Session

**35A-9-304 Intergenerational Poverty Advisory Committee -- Creation -- Duties.**

- (1) To assist the commission, there is created the Intergenerational Poverty Advisory Committee.
- (2) The advisory committee shall be composed of no more than 11 members.
- (3) Members of the advisory committee shall be appointed by the chair of the commission, with the approval of the commission, and shall include at least one member from each of the following groups:
  - (a) advocacy groups that focus on childhood poverty issues;
  - (b) advocacy groups that focus on education issues;
  - (c) academic experts in childhood poverty or education issues;
  - (d) faith-based organizations that address childhood poverty or education issues; and
  - (e) local government representatives that address childhood poverty or education issues.
- (4) Subject to Subsection (5), each member of the advisory committee shall be appointed for a four-year term unless a member is appointed to complete an unexpired term.
- (5) The commission chair may adjust the length of term at the time of appointment or reappointment so that approximately half of the advisory committee is appointed every two years.
- (6) The commission chair may remove an advisory committee member:
  - (a) if the member is unable or unwilling to carry out the member's assigned responsibilities; or

- (b) for good cause.
- (7) If a vacancy occurs in the advisory committee membership for any reason, a replacement may be appointed for the unexpired term.
- (8) The commission chair shall select a chair of the advisory committee on an annual basis.
- (9) A majority of the advisory committee constitutes a quorum of the advisory committee at any meeting and the action of the majority of members present are the action of the advisory committee.
- (10) The advisory committee shall:
  - (a) meet at least twice a year at the request of the commission chair or the chair of the advisory committee;
  - (b) make recommendations to the commission on how the commission and the state can effectively address the needs of children affected by intergenerational poverty and achieve the purposes and duties of the commission as described in Section 35A-9-303; and
  - (c) ensure that the advisory committee's recommendations to the commission are supported by verifiable data.
- (11) The Department of Workforce Services shall provide staff support to the advisory committee.

Enacted by Chapter 59, 2013 General Session

**35A-9-305 Annual report by the commission.**

- (1) The commission shall provide a report to the department for inclusion in the department's annual written report described in Section 35A-1-109.
- (2) The report shall:
  - (a) include the five and 10-year plans described in Subsection 35A-9-303(2)(e);
  - (b) describe how the commission fulfilled its statutory purposes and duties during the year;
  - (c) describe policies, procedures, and programs that have been implemented or modified to help break the cycle of poverty and end welfare dependency for children in the state affected by intergenerational poverty; and
  - (d) contain recommendations on how the state should act to address issues relating to breaking the cycle of poverty and ending welfare dependency for children in the state affected by intergenerational poverty.

Amended by Chapter 371, 2014 General Session

**35A-9-306 Members serve without pay -- Reimbursement for expenses.**

A member of the commission or the advisory committee may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

- (1) Section 63A-3-106;
- (2) Section 63A-3-107; and
- (3) rules by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Enacted by Chapter 59, 2013 General Session

**Part 5**  
**Intergenerational Poverty Plan Implementation Pilot Program**

**35A-9-501 Intergenerational Poverty Plan Implementation Pilot Program.**

- (1) As used in this section:
  - (a) "Commission" means the Utah Intergenerational Welfare Reform Commission created in Section 35A-9-301.
  - (b) "Intergenerational poverty" means the same as that term is defined in Section 35A-9-102.
  - (c) "Program" means the Intergenerational Poverty Plan Implementation Pilot Program created in this section.
- (2) There is created the Intergenerational Poverty Plan Implementation Pilot Program to provide funding for counties to implement local solutions to address intergenerational poverty.
- (3)
  - (a) A county or a group of contiguous counties may submit a proposal to the department to participate in the program.
  - (b) A proposal described in Subsection (3)(a) shall:
    - (i) specify:
      - (A) outcomes that will address intergenerational poverty that the funding would be used to achieve;
      - (B) indicators that would be used to measure progress toward the specified outcomes;
      - (C) baseline measurements for each specified outcome and indicator against which progress will be measured; and
      - (D) the total amount of money needed to achieve the specified outcomes;
    - (ii) align with the goals of the commission's five- and ten-year plan described in Subsection 35A-9-303(2)(e); and
    - (iii) include any other information requested by the department.
- (4) The department may:
  - (a) specify the format for a proposal;
  - (b) set a deadline for a county or group of counties to submit a proposal;
  - (c) define criteria for selecting a county or group of counties to participate in the program, which may include:
    - (i) a significant number of individuals within the county or group of counties experiencing intergenerational poverty;
    - (ii) an established strategic plan to address intergenerational poverty;
    - (iii) evidence of strong engagement and leadership;
    - (iv) partnerships with agencies overseeing:
      - (A) human services;
      - (B) early childhood services;
      - (C) public health;
      - (D) public education;
      - (E) workforce development;
      - (F) economic development;
      - (G) higher education;
      - (H) behavioral health; and
      - (I) juvenile justice; and
    - (v) partnerships with organizations representing families experiencing poverty.
- (5) During fiscal year 2019, the department shall:
  - (a)

- (i) except as provided in Subsection (5)(a)(ii), select at least one county of the second class and at least one county or group of counties of the third, fourth, fifth, or sixth class to receive a grant; or
- (ii) if the department receives an appropriation for the program that is not sufficient to have a significant impact on reducing intergenerational poverty in more than one region, as determined by the department, select one county or group of counties to receive a grant;
- (b) award grants under this Subsection (5):
  - (i) on a competitive basis;
  - (ii) using criteria described in Subsection (4)(c); and
  - (iii) upon considering recommendations from the commission regarding grant applicants; and
- (c) subject to legislative appropriations, determine the value of each grant awarded under this Subsection (5).
- (6) During fiscal year 2020, if funding allows, the department may select additional counties to participate in the program.
- (7) A county or group of counties that receives a grant under the program shall:
  - (a) provide a cash or in-kind match that is equal to at least 25% of the amount of the grant;
  - (b) use the funds provided by the program and the cash or in-kind match for purposes described in Subsection (3)(b)(i) and approved by the department; and
  - (c) report quarterly to the department on progress regarding the indicators and outcomes described in Subsection (3)(b)(i).
- (8) The department shall include, in the department's annual report described in Section 35A-1-109, a description of the program, including the number and amounts of grants awarded, the recipients of the grants, and an evaluation of the progress grant recipients have made toward the indicators and outcomes described in Subsection (3)(b)(i).
- (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules to administer this section.

Enacted by Chapter 232, 2018 General Session

## **Chapter 11**

### **Women in the Economy Commission Act**

#### **Part 1**

#### **General Provisions**

#### **35A-11-101 Title.**

This chapter is known as the "Women in the Economy Commission Act."

Enacted by Chapter 127, 2014 General Session

#### **35A-11-102 Definitions.**

As used in this chapter:

- (1) "Commission" means the Women in the Economy Commission created in Section 35A-11-201.
- (2) "State institution of higher education" means the same as that term is defined in Section 53B-3-102.

Amended by Chapter 43, 2016 General Session

## Part 2 Commission

### **35A-11-201 Women in the Economy Commission created.**

- (1) There is created within the department a commission known as the "Women in the Economy Commission."
- (2) The commission shall consist of 11 members as follows:
  - (a) one senator appointed by the president of the Senate;
  - (b) one senator appointed by the minority leader of the Senate;
  - (c) one representative appointed by the speaker of the House of Representatives;
  - (d) one representative appointed by the minority leader of the House of Representatives;
  - (e) the executive director of the department, or the executive director's designee; and
  - (f) six members appointed by the governor as follows:
    - (i) a representative of a business with fewer than 50 employees that has been awarded for work flexibility or work-life balance;
    - (ii) a representative of a business with 50 or more employees, but fewer than 500 employees, that has been awarded for work flexibility or work-life balance;
    - (iii) a representative of a business with 500 or more employees that has been awarded for work flexibility or work-life balance;
    - (iv) an individual who has experience in demographic work and is employed by a state institution of higher education;
    - (v) one individual from a nonprofit organization that addresses issues related to domestic violence; and
    - (vi) one individual with managerial experience with organized labor.
- (3)
  - (a) When a vacancy occurs in a position appointed by the governor under Subsection (2)(f), the governor shall appoint a person to fill the vacancy.
  - (b) Members appointed under Subsection (2)(f) may be removed by the governor for cause.
  - (c) A member appointed under Subsection (2)(f) shall be removed from the commission and replaced by the governor if the member is absent for three consecutive meetings of the commission without being excused by the chair of the commission.
  - (d) A member serves until the member's successor is appointed and qualified.
- (4) In appointing the members under Subsection (2)(f), the governor shall:
  - (a) take into account the geographical makeup of the commission; and
  - (b) strive to appoint members who are knowledgeable or have an interest in issues related to women in the economy.
- (5)
  - (a) The commission shall select two members to serve as cochair, one of which shall be a legislator.
  - (b) Subject to the other provisions of this Subsection (5), the cochair are responsible for the call and conduct of meetings.
  - (c) The cochair shall call and hold meetings of the commission at least every two months.



- (d) One of the bimonthly meetings described in Subsection (5)(c) shall be held while the Legislature is convened in its annual general session.
- (e) One or more additional meetings may be called upon request by a majority of the commission's members.
- (6)
  - (a) A majority of the members of the commission constitutes a quorum.
  - (b) The action of a majority of a quorum constitutes the action of the commission.
- (7)
  - (a) A member of the commission described in Subsection (2)(e) or (f) may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
    - (i) Section 63A-3-106;
    - (ii) Section 63A-3-107; and
    - (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
  - (b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.
- (8) The department shall provide staff support to the commission.

Enacted by Chapter 127, 2014 General Session

**35A-11-202 Purpose -- Powers and duties of the commission.**

- (1) The commission's purpose is to:
  - (a) increase public and government understanding of the current and future impact and needs of the state's women in the economy and how those needs may be most effectively and efficiently met;
  - (b) identify and recommend implementation of specific policies, procedures, and programs to respond to the rights, needs, and impact of women in the economy; and
  - (c) facilitate coordination of the functions of public and private entities concerned with women in the economy.
- (2) The commission shall:
  - (a) facilitate the communication and coordination of public and private entities that provide services to women or protect the rights of women;
  - (b) study, evaluate, and report on the status and effectiveness of policies, procedures, and programs that provide services to women or protect the rights of women;
  - (c) study and evaluate the policies, procedures, and programs implemented by other states that address the needs of women in the economy or protect the rights of women;
  - (d) facilitate and conduct the research and study of issues related to women in the economy;
  - (e) provide a forum for public comment on issues related to women in the economy;
  - (f) provide public information on women in the economy and the services available to women; and
  - (g) encourage state and local governments to analyze, plan, and prepare for the impact of women in the economy on services and operations.
- (3) To accomplish its duties, the commission may:
  - (a) request and receive from a state or local government agency or institution summary information relating to women in the economy, including:
    - (i) reports;
    - (ii) audits;
    - (iii) projections; and

- (iv) statistics;
  - (b) apply for and accept grants or donations for uses consistent with the duties of the commission from public or private sources; and
  - (c) appoint one or more special committees to advise and assist the commission.
- (4) Money received under Subsection (3)(b) shall be:
- (a) accounted for and expended in compliance with the requirements of federal and state law; and
  - (b) continuously available to the commission to carry out the commission's duties.
- (5)
- (a) A member of a special committee described in Subsection (3)(c):
    - (i) shall be appointed by the commission;
    - (ii) may be:
      - (A) a member of the commission; or
      - (B) an individual from the private or public sector; and
    - (iii) notwithstanding Section 35A-11-201, may not receive reimbursement or pay for any work done in relation to the special committee.
  - (b) A special committee described in Subsection (3)(c) shall report to the commission on the progress of the special committee.

Enacted by Chapter 127, 2014 General Session

**35A-11-203 Annual report.**

- (1) The commission shall annually prepare a report for inclusion in the department's annual written report described in Section 35A-1-109.
- (2) The report described in Subsection (1) shall:
  - (a) describe how the commission fulfilled its statutory purposes and duties during the year; and
  - (b) contain recommendations on how the state should act to address issues relating to women in the economy.

Amended by Chapter 43, 2016 General Session

Amended by Chapter 222, 2016 General Session

Amended by Chapter 296, 2016 General Session

**Chapter 12**  
**Achieving a Better Life Experience Program Act**

**Part 1**  
**General Provisions**

**35A-12-101 Title.**

This chapter is known as the "Achieving a Better Life Experience Program Act."

Enacted by Chapter 460, 2015 General Session

**35A-12-102 Definitions.**

As used in this chapter:

- (1) "Account" means an account in a qualified ABLE program .
- (2) "Qualified ABLE program" means the same as that term is defined in 26 U.S.C. Sec. 529A.
- (3) "State Achieving a Better Life Experience Program" means the program created by this chapter.

Amended by Chapter 222, 2017 General Session

## **Part 2**

### **State Achieving a Better Life Experience Program**

#### **35A-12-201 Creation of program.**

- (1) There is created the state Achieving a Better Life Experience Program.
- (2) The department shall do one of the following:
  - (a) administer the state Achieving a Better Life Experience Program in compliance with:
    - (i) 26 U.S.C. Sec. 529A; and
    - (ii) regulations, if any, issued by the United States Department of the Treasury;
  - (b) enter into a contract with a state that maintains a qualified ABLE program to provide Utah residents access to that state's qualified ABLE program; or
  - (c) inform eligible individuals and parents or legal guardians of eligible individuals about qualified ABLE programs offered by other states to which Utah residents may apply.
- (3) This chapter may not be interpreted to:
  - (a) authorize or provide a disability-related service to an eligible individual;
  - (b) be a factor in establishing residency; or
  - (c) provide that contributions made into an account are sufficient to cover the qualified disability expenses of an eligible individual.
- (4) An account is not insured or guaranteed by the state.
- (5) The state does not guarantee the rate or payment of interest or other return on an account.

Amended by Chapter 222, 2017 General Session

## **Chapter 13**

### **Utah State Office of Rehabilitation Act**

#### **Part 1**

#### **General Provisions**

#### **35A-13-101 Title.**

- (1) This chapter is known as the "Utah State Office of Rehabilitation Act."
- (2) This part is known as "General Provisions."

Renumbered and Amended by Chapter 271, 2016 General Session

#### **35A-13-102 Definitions.**

As used in this chapter:

- (1) "Blind" means an individual:
  - (a) whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses;  
or
  - (b) whose visual acuity is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends to an angle of no greater than 20 degrees.
- (2) "Deaf" means an individual with a diagnosed auditory deficit that renders the individual unable to comprehend spoken language through audition only, even with medical intervention or amplification, and that results in functional limitations in one or more areas of daily living.
- (3) "Director" means the director of the Utah State Office of Rehabilitation.
- (4) "Disability" means a physical or mental condition which materially limits, contributes to limiting, or, if not corrected, will probably result in materially limiting an individual's activities or functioning.
- (5) "Eligible individual" means an individual determined to be eligible to receive services under laws or rules governing eligibility for the program in question.
- (6) "Hard of hearing" means an individual with a diagnosed auditory deficit ranging from mild to profound that results in functional limitations in one or more areas of daily living.
- (7) "Independent living rehabilitation services" means goods and services reasonably necessary to enable an individual with a severe disability to maintain or increase functional independence.
- (8) "Office" means the Utah State Office of Rehabilitation created in Section 35A-1-202.
- (9) "Visually impaired" means an individual with a diagnosed impairment of visual function that if not corrected constitutes a material limitation to normal activities or functioning.
- (10) "Vocational rehabilitation services" means goods and services reasonably necessary to enable an individual with a disability to obtain and retain employment.

Renumbered and Amended by Chapter 271, 2016 General Session

**35A-13-103 Office authority.**

- (1) The Utah State Office of Rehabilitation created in Section 35A-1-202 is under the direction of the department and under the direction and general supervision of the executive director.
- (2) The department is the sole state agency designated to administer the state plans for vocational rehabilitation and independent living rehabilitation programs.
- (3) The office is the sole state unit designated to carry out the state plans and other duties assigned by law or the department, including the following:
  - (a) determining eligibility for vocational rehabilitation services;
  - (b) providing vocational rehabilitation services to eligible individuals;
  - (c) determining the types and scope of vocational rehabilitation services provided by the office;
  - (d) determining employment outcomes related to vocational rehabilitation services if required;  
and
  - (e) determining the appropriate uses of federal rehabilitation funding.
- (4) The office may not delegate the duties described in Subsection (3) to any other state government entity.
- (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in accordance with the provisions of this chapter, the department in collaboration with the office may make rules related to administering the state plan for vocational rehabilitation, including determining eligibility for vocational rehabilitation services and establishing priorities in providing vocational rehabilitation services.

Amended by Chapter 223, 2017 General Session

**35A-13-104 Appointment of director -- Administration of the office.**

- (1) The executive director of the department shall appoint the director of the office.
- (2) The director shall administer the office in accordance with the direction of the executive director and applicable state and federal laws and regulations.

Renumbered and Amended by Chapter 271, 2016 General Session

**35A-13-105 Public funding of vocational rehabilitation and independent living rehabilitation services.**

- (1) Public funding of vocational rehabilitation and independent living rehabilitation services provided under this chapter may only be provided to eligible individuals.
- (2) The director shall establish priorities for use in determining services to be provided to eligible individuals under this chapter if the demand for services exceeds available funds.
- (3) Rights established under this chapter are not transferable or assignable.

Renumbered and Amended by Chapter 271, 2016 General Session

**35A-13-106 Personally identifiable information -- Nondisclosure -- Penalty.**

- (1) Personally identifiable information obtained by the office, its employees, or agents concerning individuals applying for or receiving services under this chapter may not be disclosed without the prior written consent of the individual or the individual's legal representative, except as required for administration of programs or services under this chapter, or as otherwise authorized by law.
- (2) Unauthorized disclosure of personally identifiable information obtained under this chapter, or use of such information for unauthorized purposes, is a class B misdemeanor.

Renumbered and Amended by Chapter 271, 2016 General Session

**35A-13-107 Acceptance and use of gifts -- Not subject to appropriation.**

- (1) The director may, with the approval of the executive director, accept and use a gift to the office made unconditionally by will or otherwise for carrying out the purposes of this chapter.
- (2) A gift to the office made under conditions that the executive director finds to be consistent with this chapter may be accepted and used in accordance with the conditions of the gift.
- (3) A gift to the office as described in this section is not subject to appropriation by the Legislature.

Renumbered and Amended by Chapter 271, 2016 General Session

**35A-13-108 Delegation of duties and responsibilities of the office.**

The director may, in accordance with applicable law and regulations and with the consent of the executive director, organize the office and assign duties and responsibilities to the office's employees to enable the office to better serve individuals with disabilities and to increase the efficiency and effectiveness of operations.

Renumbered and Amended by Chapter 271, 2016 General Session

**35A-13-109 Office duties to individuals with disabilities.**

In administering this chapter, the office:

- (1) shall ensure that individuals with disabilities are assisted, so far as reasonably possible, to take their rightful place in open society as independent and self-supporting individuals; and
- (2) may not assist or support any activity that results in unnecessary continuation of a dependent or isolated state or unnecessarily separates individuals with disabilities from open society.

Renumbered and Amended by Chapter 271, 2016 General Session

## **Part 2**

### **Office Responsibilities**

#### **35A-13-201 Title.**

This part is known as "Office Responsibilities."

Enacted by Chapter 271, 2016 General Session

#### **35A-13-202 Functions of the office.**

The office may:

- (1) apply for, receive, administer, and distribute funds made available through programs of federal, state, or local governments;
- (2) cooperate with federal, state, or local governmental entities to administer programs and program funds;
- (3) contract or cooperate with public or private entities or individuals;
- (4) as designated by the responsible authority, and with the approval of the department, perform any functions or services for the federal or state government that relate to individuals with disabilities;
- (5) establish subordinate administrative units necessary to increase efficiency and improve the delivery of services to individuals with disabilities;
- (6) establish and operate community service centers, rehabilitation facilities, and workshops, and make grants to public and nonprofit organizations for those purposes;
- (7) determine eligibility for, and the nature and scope of, services to be provided under the state plan for vocational rehabilitation or other programs administered by the office;
- (8) assist individuals with severe disabilities to establish and operate vending machine services and other small businesses, and perform services authorized under Title 55, Chapter 5, Blind Persons Operating Vending Stands - Food Services, and Title 55, Chapter 5a, Blind Products Sales;
- (9) furnish materials, tools, equipment, initial stocks and supplies, and occupational licenses needed by rehabilitation facilities, workshops, and small businesses established under this chapter, and develop and execute marketing plans for materials produced by those operations;
- (10) place money received by the office through sale of products or services as authorized under this chapter into a fund managed by the office and used to support additional training, production, and sales activities;
- (11) conduct studies and investigations, give demonstrations and make reports, and provide training and instruction related to the work of the office;
- (12) establish and maintain research fellowships and traineeships, including necessary stipends and allowances for those receiving training and instruction;

- (13) institute and supervise programs to encourage the conservation of sight and hearing and assist in overcoming and preventing disabling conditions;
- (14) provide diagnostic, placement, vocational rehabilitation, training, adjustment, and independent living services; and
- (15) do all other things necessary to carry out assignments made by law or the department in assisting and rehabilitating individuals with disabilities.

Renumbered and Amended by Chapter 271, 2016 General Session

**35A-13-203 Employment first emphasis on the provision of services.**

- (1) When providing services to an individual with a disability under this chapter, the office shall, within funds appropriated by the Legislature and in accordance with the requirements of federal and state law, give priority to providing services that assist the individual in obtaining and retaining meaningful and gainful employment that enables the individual to:
  - (a) purchase goods and services;
  - (b) establish self-sufficiency; and
  - (c) exercise economic control of the individual's life.
- (2) The office shall develop a written plan to implement the policy described in Subsection (1) that includes:
  - (a) assessing the strengths and needs of an individual with a disability;
  - (b) customizing strength-based approaches to obtaining employment;
  - (c) setting expectations, providing appropriate services toward, and recognizing success in:
    - (i) integrated employment in the workplace at competitive wages and benefits; and
    - (ii) self-employment;
  - (d) developing partnerships with potential employers;
  - (e) providing appropriate employment training opportunities;
  - (f) coordinating services with other government agencies and community resources;
  - (g) to the extent possible, eliminating practices and policies that interfere with the policy described in Subsection (1); and
  - (h) arranging for alternative work experience leading to competitive, integrated employment, including work-based training, volunteer work, and internships.
- (3) The office shall, on an annual basis:
  - (a) set goals to implement the policy described in Subsection (1) and the plan described in Subsection (2);
  - (b) determine whether the goals for the previous year have been met; and
  - (c) modify the plan described in Subsection (2) as needed.

Renumbered and Amended by Chapter 271, 2016 General Session

**Part 3**  
**Governor's Committee on Employment of People with Disabilities**

**35A-13-301 Title.**

This part is known as the "Governor's Committee on Employment of People with Disabilities."

Enacted by Chapter 271, 2016 General Session

**35A-13-302 Governor's Committee on Employment of People with Disabilities.**

- (1) There is created the Governor's Committee on Employment of People with Disabilities, composed of the following 19 members:
  - (a) the director of the office;
  - (b) the state superintendent of public instruction or the superintendent's designee;
  - (c) the commissioner of higher education or the commissioner's designee;
  - (d) the executive director of the Department of Human Resource Management or the executive director's designee;
  - (e) the executive director of the Department of Human Services or the executive director's designee;
  - (f) the executive director of the Department of Health or the executive director's designee; and
  - (g) the following 13 members appointed by the governor:
    - (i) a representative of individuals who are blind or visually impaired;
    - (ii) a representative of individuals who are deaf or hard of hearing;
    - (iii) a representative of individuals who have disabilities;
    - (iv) seven representatives of business or industry;
    - (v) a representative experienced in job training and placement;
    - (vi) a representative of veterans; and
    - (vii) a representative experienced in medical, health, or insurance professions.
- (2)
  - (a)
    - (i) Except as provided in Subsection (2)(a)(ii), the governor shall appoint the committee members described in Subsection (1)(g) to serve four-year terms.
    - (ii) In making the initial appointments to the committee, the governor shall appoint approximately one-half of the members to two-year terms and one-half of the members to four-year terms.
  - (b) Committee members shall serve until their successors are appointed and qualified.
  - (c) The governor shall fill any vacancy that occurs on the committee for any reason by appointing a person according to the procedures of this section for the unexpired term of the vacated member.
  - (d) The director of the office shall select a chair of the committee from the membership.
  - (e) Ten members of the committee are a quorum for the transaction of business.
- (3)
  - (a) The committee shall:
    - (i) promote employment opportunities for individuals with disabilities;
    - (ii) serve as the designated state liaison to the President's Committee on Employment of People with Disabilities;
    - (iii) provide training and technical assistance to employers in implementing the Americans with Disabilities Act;
    - (iv) develop and disseminate appropriate information through workshops, meetings, and other requests in response to needs to employers and others regarding employment of individuals with disabilities;
    - (v) establish contacts with various community representatives to identify and resolve barriers to full participation in employment and community life;
    - (vi) formally recognize exemplary contributions in the areas of employment, job placement, training, rehabilitation, support services, medicine, media or public relations, and personal achievements made by individuals with disabilities;



- (vii) advise, encourage, and motivate individuals with disabilities who are preparing for or seeking employment to reach their full potential as qualified employees;
  - (viii) advocate for policies and practices that promote full and equal rights for individuals with disabilities;
  - (ix) advise the office, the department, and the governor on issues that affect employment and other requests for information on disability issues; and
  - (x) prepare an annual report on the progress, accomplishments, and future goals of the committee and present the report to the department for inclusion in the department's annual report described in Section 35A-1-109.
- (b) The committee may, by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, receive and accept federal funds, and may receive and accept state funds, private gifts, donations, and funds from any source to carry out its purposes.
- (4) The office shall staff the committee.

Amended by Chapter 223, 2017 General Session

**35A-13-303 State rehabilitation council.**

- (1) The executive director shall appoint a state rehabilitation advisory council to advise the office and the department concerning the needs of individuals with disabilities and the provision of vocational rehabilitation services.
- (2) A majority of the membership of the advisory council shall consist of individuals with disabilities.
- (3) A member of the council may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance in accordance with Sections 63A-3-106 and 63A-3-107.

Renumbered and Amended by Chapter 271, 2016 General Session

**Part 4**  
**Services for the Blind and Visually Impaired**

**35A-13-401 General provisions.**

- (1) This part is known as "Services for the Blind and Visually Impaired."
- (2) For the purposes of this part:
  - (a) "Assistant director" means the assistant director of the division.
  - (b) "Division" means the program called the Division of Services for the Blind and Visually Impaired created in Section 35A-13-402.

Enacted by Chapter 271, 2016 General Session

**35A-13-402 The Division of Services for the Blind and Visually Impaired.**

- (1) There is created as a program within the office the Division of Services for the Blind and Visually Impaired.

- (2) The director, with the approval of the executive director and after consultation with members of the community to be served by the division, shall appoint an assistant director to administer the services provided by the division.
- (3) The assistant director shall administer the division in accordance with:
  - (a) the direction of the director and the executive director; and
  - (b) applicable state and federal laws and regulations.

Enacted by Chapter 271, 2016 General Session

**35A-13-403 Services provided by the division.**

The division may:

- (1) provide:
  - (a) a business enterprise program;
  - (b) workshops, employment, and training; and
  - (c) vocational rehabilitation, training and adjustment, sight conservation, prevention of blindness, low vision lenses, and recreational services;
- (2) establish and operate community service centers, rehabilitation facilities, and workshops; and
- (3) perform other duties assigned by the director or the executive director.

Amended by Chapter 87, 2019 General Session

**35A-13-404 Appointment of advisory council.**

- (1) The executive director shall appoint an advisory council to advise and assist the division, the office, and the department in matters relating to the needs of and provision of services to individuals who are blind or have visual impairments.
- (2) At least one-half of the members of the council shall be individuals who are blind or have visual impairments.
- (3) A member of the council may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance in accordance with Sections 63A-3-106 and 63A-3-107.

Renumbered and Amended by Chapter 271, 2016 General Session

**Part 5**  
**Services for the Deaf and Hard of Hearing**

**35A-13-501 General provisions.**

- (1) This part is known as "Services for the Deaf and Hard of Hearing."
- (2) For the purposes of this part:
  - (a) "Assistant director" means the assistant director of the division.
  - (b) "Division" means the program called the Division of Services for the Deaf and Hard of Hearing created in Section 35A-13-502.

Enacted by Chapter 271, 2016 General Session

**35A-13-502 The Division of Services for the Deaf and Hard of Hearing.**

- (1) There is created as a program within the office the Division of Services for the Deaf and Hard of Hearing.
- (2) The director, with the approval of the executive director and after consultation with members of the community to be served by the division, shall appoint an assistant director to administer the services provided by the division.
- (3) The assistant director shall administer the division in accordance with:
  - (a) the direction of the director and the executive director; and
  - (b) applicable state and federal laws and regulations.

Enacted by Chapter 271, 2016 General Session

**35A-13-503 Services provided by the division.**

The division may:

- (1) provide training and adjustment services for adults who are deaf or hard of hearing;
- (2) assist public education officials in the discharge of their duties towards children who are deaf or hard of hearing;
- (3) maintain a register of qualified interpreters;
- (4) provide training in the use of telecommunication devices for the deaf, and install and maintain those devices;
- (5) operate community centers for individuals who are deaf or hard of hearing; and
- (6) perform other duties assigned by the director or the executive director.

Renumbered and Amended by Chapter 271, 2016 General Session

**35A-13-504 Appointment of advisory council.**

- (1) The executive director shall appoint an advisory council to advise and assist the division, the office, and the department in matters relating to the needs of and provision of services to individuals who are deaf or hard of hearing.
- (2) At least one-half of the members of the council shall be individuals who are deaf or hard of hearing.
- (3) A member of the council may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance in accordance with Sections 63A-3-106 and 63A-3-107.

Renumbered and Amended by Chapter 271, 2016 General Session

**Part 6**  
**Interpreter Services for the Deaf and Hard of Hearing Act**

**35A-13-601 Title.**

- (1) This part is known as the "Interpreter Services for the Deaf and Hard of Hearing Act."

- (2) All rules made under this part shall be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Renumbered and Amended by Chapter 271, 2016 General Session

**35A-13-602 Definitions.**

As used in this part:

- (1) "Advisory board" or "board" means the Interpreter Certification Board created in Section 35A-13-603.
- (2) "Assistant director" means the assistant director who administers the program called the Division of Services for the Deaf and Hard of Hearing created in Section 35A-13-502.
- (3) "Certified interpreter" means an individual who is certified as meeting the certification requirements of this part.
- (4) "Interpreter services" means services that facilitate effective communication between a hearing individual and an individual who is deaf or hard of hearing through American Sign Language or a language system or code that is modeled after American Sign Language, in whole or in part, or is in any way derived from American Sign Language.

Amended by Chapter 89, 2019 General Session

**35A-13-603 Board.**

- (1) There is created to assist the director of the office the Interpreter Certification Board consisting of the following 11 members:
  - (a) a designee of the assistant director;
  - (b) a designee of the State Board of Regents;
  - (c) a designee of the State Board of Education;
  - (d) four professional interpreters, recommended by the assistant director; and
  - (e) four individuals who are deaf or hard of hearing, recommended by the assistant director.
- (2)
  - (a) The director shall make all appointments to the board.
  - (b) In making appointments under Subsections (1)(d) and (e), the director shall give consideration to recommendations by certified interpreters and members of the deaf and hard of hearing community.
- (3)
  - (a) Board members shall serve three-year terms, except that for the initial terms of board members, three shall serve one-year terms, four shall serve two-year terms, and four shall serve three-year terms.
  - (b) An individual may not serve more than two three-year consecutive terms.
  - (c) If a vacancy occurs on the board for a reason other than the expiration of a term, the director shall appoint a replacement for the remainder of the term in accordance with Subsections (1) and (2).
- (4) The director may remove a board member for cause, which may include misconduct, incompetence, or neglect of duty.
- (5) The board shall annually elect a chair and vice chair from among its members.
- (6) The board shall meet as often as necessary to accomplish the purposes of this part, but not less than quarterly.
- (7) A member of the board may not receive compensation or benefits for the member's service, but may receive travel expenses in accordance with:

- (a) Section 63A-3-107; and
- (b) rules made by the Division of Finance in accordance with Section 63A-3-107.

Amended by Chapter 89, 2019 General Session

**35A-13-604 Powers and duties of the board.**

- (1) The board shall function as an advisory board to the director and under the director's direction shall perform the following duties concerning the certification of interpreters:
  - (a) make recommendations to the director regarding:
    - (i) appropriate rules;
    - (ii) policy and budgetary matters;
    - (iii) the appropriate passing score for applicant examinations; and
    - (iv) standards of supervision for individuals in training to become certified interpreters;
  - (b) screen applicants for certification and make written recommendations to the director regarding certification, renewal, reinstatement, and recertification actions; and
  - (c) act as the presiding officer in conducting hearings associated with adjudicative proceedings and in issuing recommended orders as designated by the director.
- (2) The director, with the collaboration and assistance of the advisory board, shall:
  - (a) prescribe certification qualifications;
  - (b) prescribe rules governing applications for certification;
  - (c) provide for a fair and impartial method for the examination of applicants;
  - (d) define unprofessional conduct, by rule, to supplement the definition under this part; and
  - (e) establish conditions for reinstatement and renewal of certification.
- (3)
  - (a) The advisory board shall designate one of its members on a permanent or rotating basis to:
    - (i) assist the director in reviewing complaints involving the unlawful or unprofessional conduct of a certified interpreter; and
    - (ii) advise the director when investigating complaints.
  - (b) An advisory board member who has, under Subsection (3)(a), reviewed or investigated a complaint is disqualified from participating with the advisory board if the board serves as a presiding officer of an administrative proceeding concerning the complaint.

Renumbered and Amended by Chapter 271, 2016 General Session

**35A-13-605 Certification required -- Classes of certification.**

- (1) Except as specifically provided in Section 35A-13-609, an individual is required to be certified as a certified interpreter if that individual provides interpreter services and a state or federal law requires the interpreter to be certified or qualified.
- (2) The director shall issue a certification to an individual who qualifies under this chapter in classifications determined by the director based upon recommendations from the advisory board.

Renumbered and Amended by Chapter 271, 2016 General Session

**35A-13-606 Qualifications for certification.**

Each applicant for certification under this part shall:

- (1) submit an application in a form prescribed by the director;

- (2) pay a fee determined by the director under Section 63J-1-504 to help offset the costs of implementing this part for the administration of examinations for certification and for the issuance of certificates;
- (3) be of good moral character; and
- (4) comply with any other qualifications for certification established by the director in accordance with Subsection 35A-13-604(2).

Renumbered and Amended by Chapter 271, 2016 General Session

**35A-13-607 Certification term -- Expiration -- Renewal.**

- (1)
  - (a) The director shall issue each certificate under this part in accordance with a three-year renewal cycle established by rule.
  - (b) The director may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.
- (2) At the time of renewal, the certified interpreter must show satisfactory evidence of compliance with renewal conditions established by the director in accordance with Subsection 35A-13-604(2).
- (3) Each certificate automatically expires on the expiration date shown on the certificate unless the certified interpreter renews it in accordance with the conditions prescribed by the director.

Renumbered and Amended by Chapter 271, 2016 General Session

**35A-13-608 Continuing education.**

- (1)
  - (a) As a condition for renewal of certification, each certified interpreter shall, during each three-year certification cycle or other cycle defined by rule, complete a number of hours of qualified continuing professional education in accordance with standards defined by rule.
  - (b) The director shall determine the number of hours based upon recommendations from the advisory board.
- (2) If the renewal cycle is extended or shortened under Section 35A-13-607, the continuing education hours determined for renewal under Subsection (1) shall be increased or decreased proportionately.

Renumbered and Amended by Chapter 271, 2016 General Session

**35A-13-609 Exemptions from certification -- Temporary or restricted certification.**

- (1) The following individuals may engage in the practice of a certified interpreter, subject to the stated circumstances and limitations, without being certified under this chapter:
  - (a) an individual serving in or employed by the Armed Forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agency and who is engaged in activities regulated under this part as a part of the individual's service or employment with that federal agency, if the individual holds a valid certificate or license to provide interpreter services issued by another state or jurisdiction recognized by the director;
  - (b) a student engaged in providing interpreter services while in training in a recognized school approved by the director to the extent the student's activities are supervised by qualified faculty, staff, or a designee, and the services are a defined part of the training program;

- (c) an individual engaged in an internship, residency, apprenticeship, or on-the-job training program approved by the director while under the supervision of a qualified individual;
  - (d) an individual residing in another state and certified or licensed to provide interpreter services in that state, who is called in for a consultation by an individual certified to provide interpreter services in this state, and the services provided are limited to that consultation;
  - (e) an individual who is invited by a recognized school, association, or other body approved by the director to conduct a lecture, clinic, or demonstration on interpreter services, if the individual does not establish a place of business or regularly engage in the practice of providing interpreter services in this state;
  - (f) an individual licensed in another state or country who is in this state temporarily to attend to the needs of an athletic team or group, except that the individual may only attend to the needs of the team or group and individuals who travel with the team or group, not including spectators; or
  - (g) an individual who is providing interpreter services for a religious entity, to the extent that the religious entity is specifically exempted from liability under federal law.
- (2)
- (a) An individual temporarily in this state who is exempted from certification under Subsection (1) shall comply with each requirement of the jurisdiction from which the individual derives authority to provide interpreter services.
  - (b) Violation of any limitation imposed by this section is grounds for removal of exempt status, denial of certification, or another disciplinary proceeding.
- (3)
- (a) Upon the declaration of a national, state, or local emergency, the director, in collaboration with the advisory board, may suspend the requirements for permanent or temporary certification of individuals who are certified or licensed in another state.
  - (b) Individuals exempt under Subsection (3)(a) shall be exempt from certification for the duration of the emergency while engaged in providing interpreter services for which they are certified or licensed in the other state.
- (4) The director, after consulting with the advisory board, may adopt rules for the issuance of temporary or restricted certifications if their issuance is necessary to or justified by:
- (a) a lack of necessary available interpretive services in any area or community of the state, if the lack of services might be reasonably considered to materially jeopardize compliance with state or federal law; or
  - (b) a need to first observe an applicant for certification in a monitored or supervised practice of providing interpretive services before a decision is made by the board either to grant or deny the applicant a regular certification.

Renumbered and Amended by Chapter 271, 2016 General Session

**35A-13-610 Grounds for denial of certification -- Disciplinary proceedings.**

- (1) The director shall refuse to issue a certificate to an applicant and shall refuse to renew or shall revoke, suspend, restrict, place on probation, or otherwise act upon the certificate of a certified interpreter who does not meet the qualifications for certification under this part.
- (2) The director may refuse to issue a certificate to an applicant, refuse to renew a certificate, revoke, suspend, restrict, or place on probation the certificate of a certified interpreter, issue a public or private reprimand to a certified interpreter, and issue a cease and desist order in any of the following circumstances:

- (a) the applicant or certified interpreter has engaged in unprofessional conduct as defined in this part or by rule under this part;
  - (b) the applicant or certified interpreter has engaged in unlawful conduct as defined in this part;
  - (c) the applicant or certified interpreter has been determined to be mentally incompetent for any reason by a court of competent jurisdiction; or
  - (d) the applicant or certified interpreter is unable to provide interpretive services with reasonable skill and safety because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a result of any other mental or physical condition, when the individual's condition demonstrates a threat or potential threat to public health, safety, or welfare.
- (3) An individual whose certificate has been suspended, revoked, or restricted under Subsection (1) may apply for reinstatement at reasonable intervals and upon compliance with conditions imposed by the director.
- (4) The director may issue cease and desist orders:
- (a) to a certified interpreter or applicant who is subject to discipline under Subsection (1);
  - (b) to an individual who engages or represents that the individual is engaged in the profession of a certified interpreter; and
  - (c) to an individual who otherwise violates this part or rules adopted under this part.

Renumbered and Amended by Chapter 271, 2016 General Session

**35A-13-611 Unlawful conduct.**

"Unlawful conduct" means conduct by an individual that is defined as unlawful under this part and includes:

- (1) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in the profession of a certified interpreter if the individual is:
  - (a) not certified to do so and is not exempted from certification under this chapter; or
  - (b) restricted from doing so by a restricted, suspended, revoked, temporary, probationary, or inactive certification;
- (2) impersonating another certified interpreter or practicing as a certified interpreter under a false or assumed name, except as permitted by law;
- (3) knowingly employing an individual to practice or engage in or attempt to practice or engage in the profession of a certified interpreter, if the employee is not certified to do so under this chapter;
- (4) knowingly permitting the individual's authority to engage in the profession of a certified interpreter to be used by another individual, except as permitted by law; or
- (5) applying for certification under this part, obtaining certification under this part, or otherwise dealing with the director through the use of fraud, forgery, or intentional deception, misrepresentation, misstatement, or omission.

Renumbered and Amended by Chapter 271, 2016 General Session

**35A-13-612 Unprofessional conduct.**

"Unprofessional conduct" means conduct by a certified interpreter that is defined as unprofessional conduct under this part or under any rules adopted under this part and includes:

- (1) violating, or aiding or abetting an individual in violating, any provision of this part, rule adopted under this part, or order regulating certified interpreters;



- (2) violating, or aiding or abetting an individual in violating, any generally accepted professional or ethical standard applicable to the profession of a certified interpreter; or
- (3) physically, mentally, or sexually abusing or exploiting an individual through conduct connected with a certified interpreter's practice under this part.

Renumbered and Amended by Chapter 271, 2016 General Session

**35A-13-613 Penalty for unlawful conduct.**

An individual who violates Section 35A-13-611 is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 271, 2016 General Session

## **Chapter 14 Utah Data Research Center**

### **Part 1 General Provisions**

**35A-14-101 Title.**

This chapter is known as "Utah Data Research Center."

Enacted by Chapter 375, 2017 General Session

**35A-14-102 Definitions.**

As used in this chapter:

- (1) "Advisory board" means the Utah Data Research Advisory Board created in Section 35A-14-203.
- (2) "Center" means the Utah Data Research Center.
- (3) "Data" means any information about a person stored in a physical or electronic record.
- (4) "Data research program" means the data maintained by the center in accordance with Section 35A-14-301.
- (5) "De-identified data" means data about a person that cannot, without additional information, identify the person to another person or machine.
- (6) "Director" means the director of the Workforce Research and Analysis Division.
- (7) "Participating entity" means:
  - (a) the State Board of Education, which includes the director as defined in Section 53E-10-701;
  - (b) the State Board of Regents;
  - (c) the Utah System of Technical Colleges Board of Trustees;
  - (d) the Department of Workforce Services; and
  - (e) the Department of Health.

Amended by Chapter 315, 2018 General Session, (Coordination Clause)

Amended by Chapter 341, 2018 General Session

## Part 2 Utah Data Research Authority Governance

### **35A-14-201 Utah Data Research Center -- Creation.**

The Utah Data Research Center is created within the Workforce Research and Analysis Division within the department.

Enacted by Chapter 375, 2017 General Session

### **35A-14-202 Utah Data Research Center -- Powers.**

The center may:

- (1) employ staff necessary to carry out the center's duties;
- (2) purchase, own, create, or maintain equipment necessary to:
  - (a) collect data from the participating entities;
  - (b) connect and de-identify data collected by the center;
  - (c) store connected and de-identified data; or
  - (d) conduct research on data stored or obtained by the center; or
- (3) contract with a private entity, another state or federal entity, or a political subdivision of the state to carry out the center's duties as provided in this chapter.

Enacted by Chapter 375, 2017 General Session

### **35A-14-203 Utah Data Research Advisory Board -- Composition -- Appointment.**

- (1) There is created the Utah Data Research Advisory Board in accordance with this section.
- (2) The Utah Data Research Advisory Board is composed of the following members:
  - (a) the state superintendent of the State Board of Education or the state superintendent's designee;
  - (b) the commissioner of higher education or the commissioner of higher education's designee;
  - (c) the commissioner of technical education or the commissioner's designee;
  - (d) the executive director of the Department of Workforce Services or the executive director's designee; and
  - (e) the director of the Department of Health or the director's designee.
- (3) The executive director shall serve as chair.
- (4) A member of the board:
  - (a) except to the extent a member's service on the board is related to the member's duties outside of the board, may not receive compensation or benefits for the member's service; and
  - (b) may receive per diem and travel expenses in accordance with:
    - (i) Section 63A-3-106;
    - (ii) Section 63A-3-107; and
    - (iii) rules made by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

Enacted by Chapter 375, 2017 General Session

### **35A-14-204 Director -- Additional staff -- Administrative support.**

- (1) The director shall manage the day-to-day operations of the center.
- (2) The director may, with the department's approval, hire staff, including:
  - (a) data scientists;

- (b) data technology experts; and
- (c) data security experts.

Enacted by Chapter 375, 2017 General Session

### **Part 3 Data Research Program**

#### **35A-14-301 Data research center.**

- (1) The center shall establish a data research program for the purpose of analyzing data that is:
  - (a) collected over time;
  - (b) aggregated from multiple sources; and
  - (c) connected and de-identified.
- (2) The center may, in order to establish the data research program described in Subsection (1):
  - (a) acquire property or equipment in order to store aggregated, connected, and de-identified data derived from data contributed by the participating entities; or
  - (b) contract with a private entity in accordance with Title 63G, Chapter 6a, Utah Procurement Code, or with a state government entity to:
    - (i) store aggregated, connected, and de-identified data derived from data contributed by the participating entities; or
    - (ii) utilize existing aggregated, connected, and de-identified data maintained by a state government entity.
- (3) A participating entity shall contribute data to the data research program described in Subsection (1) within guidelines established by the center.
- (4) The center may only release data maintained by the center in accordance with the procedures described in this chapter.
- (5) The data research program is not subject to Title 63G, Chapter 2, Government Records Access and Management Act.

Enacted by Chapter 375, 2017 General Session

#### **35A-14-302 Center duties -- Data studies.**

- (1) The center shall use data that the center maintains or that a participating entity contributes to the data research program under Section 35A-14-301 to conduct research for the purpose of developing public policy for the state.
- (2) The director, with consultation by the advisory board, shall create a prioritized list of data research for the center to conduct using the data research program each year.
- (3)
  - (a) In developing the list described in Subsection (2), the center shall accept data research requests from:
    - (i) a legislative committee or a legislative staff office;
    - (ii) the governor or an executive branch agency;
    - (iii) the State Board of Education;
    - (iv) the State Board of Regents; and
    - (v) the Utah College of Applied Technology.

- (b) The department shall begin accepting the data research requests described in Subsection (3) (a) on July 1, 2017.
- (c) The center shall report the list described in Subsection (2) to the Education Interim Committee before December 1 of each year.
- (4) In addition to conducting data research in accordance with the prioritized list described in Subsection (2), the center may use additional resources to prepare data research at the request of:
  - (a) a state government entity;
  - (b) a political subdivision of the state;
  - (c) a private entity; or
  - (d) a member of the public.
- (5) The director, with approval by the board, shall determine, for a data research request described in Subsection (4):
  - (a) whether the center has the resources to complete the data research request;
  - (b) the order in which the center shall complete the data research request, if at all; and
  - (c) a reasonable estimated cost for the request.
- (6) The center, after evaluating a request under Subsection (5), shall:
  - (a) provide the person that requested the data research with a cost estimate; and
  - (b) require, before accepting a data research request, that the person that submitted the data research request agree to pay, once the data research is complete, the full cost of completing the data research request as determined by the center under Subsection (5).
- (7) The center shall make available to the public, on a website maintained by the center, any data research request that the center completes under this section.
- (8) The center shall ensure that any data contained in a completed data research request is de-identified.
- (9) The center shall:
  - (a) establish, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
    - (i) procedures for submitting a data research request under this section;
    - (ii) criteria to determine how to prioritize data research requests; and
    - (iii) minimum standards for information a person is required to include in a data research request; and
  - (b) create a fee schedule in accordance with Section 63J-1-504 for completing a data research request.
- (10) In addition to submitting a data research request under Subsection (4), a participating entity, executive branch agency, or legislative staff office may request, and the center may release, a data set from the data research program if the data set is:
  - (a) connected;
  - (b) aggregated; and
  - (c) de-identified.
- (11)
  - (a) The center shall use any fee the center collects under this section to cover the center's costs to administer this chapter.
  - (b) The center shall deposit any fee the center collects under this section not used to cover the center's costs into the General Fund.

Enacted by Chapter 375, 2017 General Session

**35A-14-303 Data visualization access.**

- (1) In addition to performing data research and responding to data research requests under Section 35A-14-302, the center shall create an online data visualization portal that provides access to the public to connected, aggregated, and de-identified data in the program.
- (2) The data visualization portal described in Subsection (1) shall include role-based dashboards that:
  - (a) allow a user to query data in the program;
  - (b) integrate real-time data; and
  - (c) allow a user to view queried data in a customizable environment.

Enacted by Chapter 375, 2017 General Session

**35A-14-304 Reporting.**

- (1) The center shall report to the Education Interim Committee:
  - (a) before July 1 of each year regarding the center's:
    - (i) research priorities for the year; and
    - (ii) completed research from the previous year; and
  - (b) before December 1 of each year, the center's ongoing data research priority list described in Subsection 35A-14-302(2).
- (2) The Education Interim Committee shall provide the center ongoing input regarding the center's data research priorities.

Enacted by Chapter 375, 2017 General Session

**Chapter 15  
Preschool Programs**

**Part 1  
General Provisions**

**35A-15-101 Title.**

This chapter is known as "Preschool Programs."

Enacted by Chapter 342, 2019 General Session

**35A-15-102 Definitions.**

As used in this chapter:

- (1) "Board" means the School Readiness Board, created in Section 35A-15-201.
- (2) "Economically disadvantaged" means to be eligible to receive free or reduced price lunch.
- (3) "Eligible home-based educational technology provider" means a provider that offers a home-based educational technology program to develop the school readiness skills of an eligible student.
- (4)

- (a) "Eligible LEA" means an LEA that has a data system capacity to collect longitudinal academic outcome data, including special education use by student, by identifying each student with a statewide unique student identifier.
  - (b) "Eligible LEA" includes a program exempt from licensure under Subsection 26-39-403(2)(c).
- (5)
- (a) "Eligible private provider" means a child care program that:
    - (i) is licensed under Title 26, Chapter 39, Utah Child Care Licensing Act; or
    - (ii) except as provided in Subsection (5)(b)(ii), is exempt from licensure under Section 26-39-403.
  - (b) "Eligible private provider" does not include:
    - (i) residential child care, as defined in Section 26-39-102; or
    - (ii) a program exempt from licensure under Subsection 26-39-403(2)(c).
- (6) "Eligible student" means a student:
- (a)
    - (i) who is age three, four, or five; and
    - (ii) is not eligible for enrollment under Subsection 53G-4-402(6); and
  - (b)
    - (i)
      - (A) who is economically disadvantaged; and
      - (B) whose parent or legal guardian reports that the student has experienced at least one risk factor; or
    - (ii) is an English learner.
- (7) "Evaluation" means an evaluation conducted in accordance with Section 35A-15-303.
- (8) "High quality school readiness program" means a preschool program that:
- (a) is provided by an eligible LEA, eligible private provider, or eligible home-based educational technology provider; and
  - (b) meets the elements of a high quality school readiness program described in Section 35A-15-202.
- (9) "Investor" means a person that enters into a results-based contract to provide funding to a high quality school readiness program on the condition that the person will receive payment in accordance with Section 35A-15-402 if the high quality school readiness program meets the performance outcome measures included in the results-based contract.
- (10) "Kindergarten assessment" means the kindergarten entry assessment described in Section 53F-4-205.
- (11) "Kindergarten transition plan" means a plan that supports the smooth transition of a preschool student to kindergarten and includes communication and alignment among the preschool, program, parents, and K-12 personnel.
- (12) "Local Education Agency" or "LEA" means a school district or charter school.
- (13) "Performance outcome measure" means:
- (a) indicators, as determined by the board, on the school readiness assessment and the kindergarten assessment; or
  - (b) for a results-based contract, the indicators included in the contract.
- (14) "Results-based contract" means a contract that:
- (a) is entered into in accordance with Section 35A-15-402;
  - (b) includes a performance outcome measure; and
  - (c) is between the board, a provider of a high quality school readiness program, and an investor.
- (15) "Risk factor" means:
- (a) having a mother who was 18 years old or younger when the child was born;

- (b) a member of a child's household is incarcerated;
  - (c) living in a neighborhood with high violence or crime;
  - (d) having one or both parents with a low reading ability;
  - (e) moving at least once in the past year;
  - (f) having ever been in foster care;
  - (g) living with multiple families in the same household;
  - (h) having exposure in a child's home to:
    - (i) physical abuse or domestic violence;
    - (ii) substance abuse;
    - (iii) the death or chronic illness of a parent or sibling; or
    - (iv) mental illness;
  - (i) the primary language spoken in a child's home is a language other than English; or
  - (j) having at least one parent who has not completed high school.
- (16) "School readiness assessment" means the same as that term is defined in Section 53E-4-314.
- (17) "Tool" means the tool developed in accordance with Section 35A-15-303.

Amended by Chapter 136, 2019 General Session

Amended by Chapter 186, 2019 General Session

Amended by Chapter 342, 2019 General Session, (Coordination Clause)

Renumbered and Amended by Chapter 342, 2019 General Session

## **Part 2**

### **School Readiness Board and Account**

#### **35A-15-201 Establishment of the School Readiness Board -- Membership -- Funding prioritization.**

- (1) There is created the School Readiness Board within the department composed of:
- (a) the executive director or the executive director's designee;
  - (b) one member appointed by the State Board of Education;
  - (c) one member appointed by the chair of the State Charter School Board;
  - (d) two members who have research experience in the area of early childhood development, with:
    - (i) one member who is not a legislator and is appointed by the speaker of the House of Representatives; and
    - (ii) one member who represents the Utah Data Research Center appointed by the executive director;
  - (e) one member, who is not a legislator and is appointed by the president of the Senate, who:
    - (i) has expertise in results-based contracts; or
    - (ii) represents a financial institution that has experience managing a portfolio that meets the requirements of the Community Reinvestment Act, 12 U.S.C. Sec. 2901 et seq.;
  - (f) one member, appointed by the executive director, who has expertise in early childhood education;
  - (g) one member, appointed by the state superintendent, who has expertise in early childhood education;
  - (h) one member, appointed by the governor, who represents a nonprofit corporation that focuses on early childhood education; and

- (i) one member, appointed by the executive director, who owns and operates a licensed child care center located in the state.
- (2)
- (a) A member described in Subsection (1)(b), (c), (d), (e), (f), (g), or (h) shall serve for a term of two years.
  - (b) If a vacancy occurs for a member described in Subsection (1)(b), (c), (d), (e), (f), (g), or (h), the individual appointing the member shall appoint a replacement to serve the remainder of the member's term.
- (3)
- (a) A member may not receive compensation or benefits for the member's service.
  - (b) A member may serve more than one term.
- (4) The department shall provide staff support to the board.
- (5)
- (a) The board members shall elect a chair of the board from the board's membership.
  - (b) The board shall meet upon the call of the chair or a majority of the board members.
- (6) In allocating funding received under this chapter, the board shall:
- (a) give first priority to repayment of an investor who is a party to a results-based contract under the Laws of Utah, 2014, Chapter 304, Section 10; and
  - (b) determine prioritization of funding for the remaining programs described in this chapter.

Amended by Chapter 246, 2019 General Session

Renumbered and Amended by Chapter 342, 2019 General Session

Amended by Chapter 342, 2019 General Session, (Coordination Clause)

**35A-15-202 Elements of a high quality school readiness program.**

- (1) A high quality school readiness program run by an eligible LEA or eligible private provider shall include the following components:
- (a) an evidence-based curriculum that is aligned with all of the developmental domains and academic content areas defined in the Utah Early Childhood Standards adopted by the State Board of Education that incorporates:
    - (i) intentional and differentiated instruction in whole group, small group, and child-directed learning; and
    - (ii) explicit instruction in key areas of literacy and numeracy, as determined by the State Board of Education, that:
      - (A) is teacher led or through a partnership with a contractor as defined in Section 53F-4-401;
      - (B) includes specific literary and numeracy skills, such as phonological awareness; and
      - (C) includes provider monitoring and ongoing professional learning and coaching;
  - (b) ongoing, focused, and intensive professional development for staff of the school readiness program;
  - (c) ongoing assessment of a student's educational growth and developmental progress to inform instruction;
  - (d) administration of the school readiness assessment to each student;
  - (e) for a preschool program run by an eligible LEA, a class size that does not exceed 20 students, with one adult for every 10 students in the class;
  - (f) ongoing program evaluation and data collection to monitor program goal achievement and implementation of required program components;
  - (g) family engagement, including ongoing communication between home and school, and parent education opportunities based on each family's circumstances;



- (h) for a preschool program run by an eligible LEA, each teacher having at least obtained:
    - (i) the minimum standard of a child development associate certification; or
    - (ii) an associate or bachelor's degree in an early childhood education related field;
  - (i) for a preschool program run by an eligible private provider, by a teacher's second year, each teacher having at least obtained:
    - (i) the minimum standard of a child development associate certification; or
    - (ii) an associate or bachelor's degree in an early childhood education related field; and
  - (j) a kindergarten transition plan.
- (2) A high quality school readiness program run by a home-based educational technology provider shall:
- (a) be an evidence-based and age appropriate individualized interactive instruction assessment and feedback technology program that teaches eligible students early learning skills needed to be successful upon entry into kindergarten;
  - (b) require regular parental engagement with the student in the student's use of the home-based educational technology program;
  - (c) be aligned with the Utah early childhood core standards;
  - (d) require the administration of a pre- and post-assessment of each student whose parent or legal guardian consents to the assessment that, for a home-based technology program that receives funding under this part, is designated by the board in accordance with Section 35A-15-402; and
  - (e) require technology providers to ensure successful implementation and utilization of the technology program.

Amended by Chapter 186, 2019 General Session

Renumbered and Amended by Chapter 342, 2019 General Session

Amended by Chapter 342, 2019 General Session, (Coordination Clause)

**35A-15-203 School Readiness Restricted Account -- Creation -- Funding -- Distribution of funds.**

- (1) There is created in the General Fund a restricted account known as the "School Readiness Restricted Account".
- (2) The School Readiness Restricted Account consists of:
  - (a) money appropriated by the Legislature;
  - (b) all income and interest derived from the deposit and investment of money in the account;
  - (c) federal grants; and
  - (d) private donations.
- (3) Subject to legislative appropriations, money in the restricted account may be used:
  - (a) to award a grant under Section 35A-15-301 or 35A-15-302;
  - (b) to contract with an evaluator;
  - (c) to fund the participation of eligible students in a high quality school readiness program through a results-based contract; and
  - (d) for administration costs and to monitor the programs described in this part.

Renumbered and Amended by Chapter 342, 2019 General Session

**Part 3**

## Grants for High Quality School Readiness Programs

### 35A-15-301 Becoming High Quality School Readiness Grant Program.

- (1) The High Quality School Readiness Grant Program is created to provide grants to the following, in order to assist an existing preschool or home-based educational technology program in becoming a high quality school readiness program:
  - (a) an eligible private provider;
  - (b) an eligible LEA; or
  - (c) an eligible home-based educational technology provider.
- (2) The board, in cooperation with the department and the State Board of Education, shall solicit proposals from eligible LEAs, eligible private providers, and eligible home-based educational technology providers.
- (3) Subject to legislative appropriations, and the prioritization described in Section 35A-15-201, the board shall award grants to respondents based on:
  - (a) a respondent's capacity to effectively implement the components described in Section 35A-15-202;
  - (b) the percentage of a respondent's students who are eligible students; and
  - (c) the level of administrative support and leadership at a respondent's program to effectively implement, monitor, and evaluate the program.
- (4) To receive a grant under this section, a respondent shall submit a proposal to the board detailing:
  - (a) the respondent's strategy to implement the high quality components described in Section 35A-15-202;
  - (b) the number of students the respondent plans to serve, categorized by age and whether the students are eligible students;
  - (c) for an eligible LEA or eligible private provider, the number of high quality school readiness program classrooms the respondent plans to operate; and
  - (d) the estimated cost per student.
- (5)
  - (a) A recipient of a grant under this section shall use the grant to move the recipient's preschool program toward achieving the components described in Section 35A-15-202.
  - (b) A recipient of a grant under this section may not:
    - (i) enter into a results-based contract while the recipient receives the grant; or
    - (ii) receive grant funds under Section 35A-15-302.
- (6) A recipient of a grant under this section shall ensure that each student who is enrolled in a classroom or who uses a home-based educational technology program supported by the grant has a unique student identifier by:
  - (a) if the recipient is an eligible LEA, assigning a unique student identifier to each student enrolled in the classroom; or
  - (b) if the recipient is an eligible private provider or eligible home-based educational technology provider, working with the State Board of Education to assign a unique student identifier to each student enrolled in the classroom or who uses the home-based educational technology program.
- (7) A grant recipient that is an eligible LEA shall report annually to the board and the State Board of Education the following:
  - (a) number of students served by the preschool, including the number of students who are eligible students;

- (b) attendance;
  - (c) cost per student; and
  - (d) assessment results, including the school readiness assessment, kindergarten assessment, and other assessments as determined by the board.
- (8) A grant recipient that is an eligible private provider or an eligible home-based educational technology provider shall report annually to the board and the department the following:
- (a) number of students served by the preschool or program, including the number of students who are eligible students;
  - (b) attendance;
  - (c) cost per student; and
  - (d) assessment results, including the school readiness assessment and other assessments as determined by the board.
- (9) The board shall make rules to effectively administer and monitor the grant program described in this section, including:
- (a) requiring grant recipients to use assessments, including the school readiness assessment, as determined by the board; and
  - (b) establishing reporting requirements for grant recipients.

Amended by Chapter 342, 2019 General Session, (Coordination Clause)  
Renumbered and Amended by Chapter 342, 2019 General Session

**35A-15-302 Expanded Student Access to High Quality School Readiness Programs Grant Program -- Determination of high quality school readiness program -- Reporting requirement.**

- (1) There is created the Student Access to High Quality School Readiness Programs Grant Program to expand access to high quality school readiness programs for eligible students through grants administered by the board for eligible LEAs and eligible private providers.
- (2) The board, in cooperation with the department and the State Board of Education, shall solicit proposals from eligible LEAs and eligible private providers to fund increases in the number of eligible students high quality school readiness programs can serve.
- (3)
- (a) Except as provided in Subsection (3)(c), a respondent shall submit a proposal that includes the information described in Subsection (3)(b) to the board.
  - (b) A respondent's proposal for the grant solicitation described in Subsection (2) shall include:
    - (i) the respondent's existing and proposed school readiness program, including:
      - (A) the number of students served by the respondent's school readiness program;
      - (B) the respondent's policies and procedures for admitting students into the school readiness program;
      - (C) the estimated cost per student; and
      - (D) any fees the respondent charges to a parent or legal guardian for the school readiness program;
    - (ii) the respondent's plan to use funding sources, in addition to a grant described in this section, including:
      - (A) federal funding; or
      - (B) private grants or donations;
    - (iii) existing or planned partnerships between the respondent and an LEA, eligible private provider, or eligible home-based technology provider to increase access to high quality school readiness programs for eligible students;

- (iv) how the respondent would use a grant to:
    - (A) expand the number of eligible students served by the respondent's school readiness program; and
    - (B) target the funding toward the highest risk students;
  - (v) the results of any evaluations of the respondent's school readiness program; and
  - (vi) a demonstration that the respondent's existing school readiness program meets performance outcome measures.
- (c) In addition to the requirements described in Subsection (3)(b), a respondent that is an eligible LEA shall describe in the respondent's proposal the percentage of the respondent's kindergarten through grade 12 students who are economically disadvantaged.
- (4) For each proposal received in response to the solicitation described in Subsection (2), the board shall determine if the respondent school readiness program is a high quality school readiness program by:
- (a) applying the tool; and
  - (b) reviewing performance outcome measures.
- (5)
- (a) Subject to legislative appropriations and Subsection (9), the board shall award a grant to a respondent.
  - (b) The board may only award a grant to a respondent if:
    - (i) the respondent submits a proposal that includes the information required under Subsection (3); and
    - (ii) the board determines that the respondent's program is a high quality school readiness program in accordance with Subsection (4).
  - (c)
    - (i) A recipient of a grant may use funds received under this section to supplement an existing program but not supplant other funding.
    - (ii) An eligible LEA or an eligible private provider may not receive funding under this section if the eligible LEA or eligible private provider receives funding under Section 35A-15-301 or 35A-15-401.
- (6) In evaluating a proposal received in response to the solicitation described in Subsection (2), the board shall consider:
- (a) the number and percent of students in the respondent's high quality school readiness program that are eligible students at the highest risk;
  - (b) geographic diversity, including whether the respondent is urban or rural;
  - (c) the extent to which the respondent intends to participate in a partnership with an LEA, eligible private provider, or eligible home-based technology provider; and
  - (d) the respondent's level of administrative support and leadership to effectively implement, monitor, and evaluate the program.
- (7) A respondent that receives a grant under this section shall:
- (a) use the grant to expand access for eligible students to high quality school readiness programs by enrolling eligible students in a high quality school readiness program;
  - (b) report to the board annually regarding:
    - (i) how the respondent used the grant awarded under Subsection (5);
    - (ii) participation in any partnerships between an LEA, eligible private provider, or eligible home-based technology provider; and
    - (iii) the results of any evaluations;
  - (c) allow classroom or other visits for an evaluation; and

- (d) for a respondent that is an eligible LEA, notify a parent or legal guardian who expresses interest in enrolling the parent or legal guardian's child in the LEA's high quality school readiness program of each state-funded high quality school readiness program operating within the eligible LEA's geographic boundaries.
- (8)
- (a) The board shall establish interventions for a grantee that fails to comply with the requirements described in this section or meet the benchmarks described in Subsection (8)(c).
  - (b) An intervention under this Subsection (8) may include discontinuing or reducing funding.
  - (c)
    - (i) The board shall adopt benchmarks for success on the performance outcome measures for a grant recipient under this section.
    - (ii) If a grant recipient fails to meet the board's benchmarks for success on the performance outcome measures, the grant recipient may not receive additional funding under this section.
- (9) Subject to legislative appropriations, the board shall give first priority in awarding grants to a respondent that has previously received a grant under this section if the respondent:
- (a) makes the annual report described in Subsection (7)(b);
  - (b) participates in the evaluation; and
  - (c) continues to offer a high quality school readiness program as determined during an annual site visit by:
    - (i) the State Board of Education, for an eligible LEA; or
    - (ii) the department, for an eligible private provider.
- (10) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules to:
- (a) implement the tool; and
  - (b) administer the grant program.

Amended by Chapter 186, 2019 General Session

Renumbered and Amended by Chapter 342, 2019 General Session

Amended by Chapter 342, 2019 General Session, (Coordination Clause)

### **35A-15-303 Evaluation -- Tool -- Reporting.**

- (1) The State Board of Education shall, in consultation with the board, conduct the ongoing review and evaluation each school year of:
- (a) a grant recipient under Section 35A-15-301; and
  - (b) a grant recipient under Section 35A-15-302.
- (2)
- (a) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the State Board of Education may enter into a contract with an evaluator to assist with the evaluation process.
  - (b) An evaluation described in Subsection (1) shall include:
    - (i) outcomes of onsite observations utilizing the tool developed under Subsection (4) at a frequency and number of classrooms visits established by the board;
    - (ii) performance on the performance outcome measures; and
    - (iii) whether any of the programs improved kindergarten readiness through funding provided under Section 35A-15-301 or 35A-15-302.
- (3) The board shall determine whether there is a correlation between the tool and the performance outcome measure.
- (4) The board, in coordination with the department and the State Board of Education:

- (a) shall:
    - (i) develop a tool to determine whether a school readiness program is a high quality school readiness program; and
    - (ii) establish how the board will apply the tool to make a determination described in Subsection (4)(a); and
  - (b) may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of this Subsection (4).
- (5)
- (a) The State Board of Education shall annually prepare a report for the Education Interim Committee in accordance with Section 53E-1-201.
  - (b) The report described in Subsection (5)(a) shall include a summary of an evaluation and the efficacy of:
    - (i) the grant program described in Section 35A-15-301; and
    - (ii) the grant program described in Section 35A-15-302, including whether any recipients failed to meet benchmarks for success on performance outcome measures as described in Subsection 35A-15-302(8)(c).
- (6) The board shall report to the Education Interim Committee by November 30, 2020, on benchmarks adopted by the board under Section 35A-15-302.

Enacted by Chapter 342, 2019 General Session

Amended by Chapter 342, 2019 General Session, (Coordination Clause)

## **Part 4**

### **Results-based Contract Funded Programs**

#### **35A-15-401 Requirements for a school readiness program to receive funding through a results-based contract.**

- (1) As used in this section:
- (a) "Participating program operator" means an eligible LEA, an eligible private provider, or an eligible home-based educational technology provider, that is a party to a results-based contract.
  - (b) "Program" means a school readiness program funded through a results-based contract.
- (2)
- (a) Subject to the requirements of this part, an eligible LEA, an eligible private provider, or an eligible home-based educational technology provider that operates a high quality school readiness program may enter into and receive funding through a results-based contract.
  - (b) An eligible LEA, an eligible private provider, or an eligible home-based educational technology provider may not enter into a results-based contract while receiving a grant under Part 3, Grants for High Quality School Readiness Programs.
- (3) A participating program operator shall ensure that each student who is enrolled in a classroom, or who uses a home-based educational technology, that is part of a participating program operator's program has a unique student identifier by:
- (a) if the participating program operator is an eligible LEA, assigning a unique student identifier to each student enrolled in the classroom; or
  - (b) if the participating program operator is an eligible private provider or eligible home-based technology provider, working with the State Board of Education to assign a unique student

identifier to each student enrolled in the classroom or who uses the home-based educational technology.

- (4) A participating program operator may not use funds received through a results-based contract to supplant funds for an existing high quality school readiness program, but may use the funds to supplement an existing high quality school readiness program.
- (5)
- (a) If not prohibited by the Elementary and Secondary Education Act of 1965, 20 U.S.C. Secs. 6301-6576, a participating program operator may charge a sliding scale fee, based on household income, to a student enrolled in the participating program operator's program.
- (b) A participating program operator may use grants, scholarships, or other money to help fund the program.
- (6)
- (a) A participating program operator that is an eligible LEA may contract with an eligible private provider to provide a high quality school readiness program to a portion of the eligible LEA's eligible students if:
- (i) the results-based contract specifies the number of students to be served by the eligible private provider; and
- (ii) the eligible private provider meets the requirements described in this section for a participating program operator.
- (b) An eligible LEA that contracts with an eligible private provider shall provide supportive services to the eligible private provider, which may include:
- (i) professional development;
- (ii) staffing or staff support;
- (iii) materials; or
- (iv) assessments.

Amended by Chapter 342, 2019 General Session, (Coordination Clause)  
Renumbered and Amended by Chapter 342, 2019 General Session

### **35A-15-402 Results-based contracts -- Assessment.**

- (1) The board may enter into a results-based contract to fund participation of eligible students in a high quality school readiness program in accordance with this part.
- (2)
- (a) The board shall include an investor as a party to a results-based contract.
- (b) The board may provide for a repayment to an investor to include a return of investment and an additional return on investment, dependent on achievement of the performance outcome measures set in the results-based contract.
- (c) The additional return on investment described in Subsection (2)(b) may not exceed 5% above the current Municipal Market Data General Obligation Bond AAA scale for a 10 year maturity at the time of the issuance of the results-based contract.
- (d) Funding obtained for an early education program through a results-based contract that includes an investor is not a procurement item under Section 63G-6a-103.
- (e) A results-based contract that includes an investor shall include:
- (i) a requirement that the repayment to the investor be conditioned on achieving the performance outcome measures set in the results-based contract;
- (ii) a requirement for an independent evaluator to determine whether the performance outcome measures have been achieved;
- (iii) a provision that repayment to the investor is:

- (A) based upon available money in the School Readiness Restricted Account described in Section 35A-15-203; and
- (B) subject to legislative appropriations; and
- (iv) a provision that the investor is not eligible to receive or view personally identifiable student data of students funded through the results-based contract.
- (f) The board may not issue a results-based contract if the total outstanding obligations of results-based contracts that include an investor as a party to the contract would exceed \$15,000,000 at any one time.
- (3) The board shall require an independent evaluation to determine if a school readiness program meets the performance outcome measures included in a results-based contract.
- (4) If the board enters into a results-based contract, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, the board shall select an independent evaluator with experience in evaluating school readiness programs.
- (5)
  - (a) At the end of each year of a results-based contract after a student funded through a results-based contract completes kindergarten, the independent evaluator shall determine whether the performance outcome measures set in the results-based contract have been met.
  - (b) The board may not pay an investor unless the evaluation described in Subsection (5)(a) determines that the performance outcome measures in the results-based contract have been met.
- (6)
  - (a) The board shall ensure that a parent or guardian of an eligible student participating in a program funded through a results-based contract has given permission and signed an acknowledgment that the student's data may be shared for research and evaluation purposes, subject to federal law.
  - (b) The board shall maintain documentation of parental permission required in Subsection (6)(a).

Amended by Chapter 186, 2019 General Session

Amended by Chapter 342, 2019 General Session, (Coordination Clause)

Renumbered and Amended by Chapter 342, 2019 General Session