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 as have been properly recorded or summarized in the payment records of the division, or that are deemed no longer necessary in the proper administration of this chapter in accordance with the requirements of the state records committee pursuant to Section 63G-2-502.

Amended by Chapter 382, 2008 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