

1. **UNEMPLOYMENT INSURANCE FRAUD**

2 **AMENDMENTS**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Ty McCartney**

6 **This act modifies Title 35A, Chapter 4, Employment Security Act, by making certain**
7 **technical corrections and moving the criminal penalties provisions for violating the act**
8 **from Title 35A, Chapter 4, to Title 76, Chapter 8, Offenses Against the Administration of**
9 **Government, in the Utah Criminal Code.**

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

11 AMENDS:

12 **35A-4-305**, as last amended by Chapter 144, Laws of Utah 2001

13 **35A-4-312**, as last amended by Chapter 144, Laws of Utah 2001

14 ENACTS:

15 **76-8-1301**, Utah Code Annotated 1953

16 REPEALS:

17 **35A-4-104**, as last amended by Chapter 241, Laws of Utah 1998

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

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

20 **35A-4-305. Collection of contributions -- Unpaid contributions to bear interest.**

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

24 (b) (i) Contribution reports not made and filed by the date on which they are due as
25 prescribed by the division shall be subject to a penalty to be assessed and collected in the same
26 manner as contributions due under this section equal to 5% of the contribution due if the failure
27 to file on time was not more than 15 days, with an additional 5% for each additional 15 days or



28 fraction thereof during which the failure continued, but not to exceed 25% in the aggregate and
29 not less than \$25 with respect to each reporting period.

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

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

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

40 (d) The division shall assess as a penalty a service charge, in addition to any other
41 penalties that may apply, in an amount not to exceed the service charge imposed by Section
42 7-15-1 for dishonored instruments if:

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

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

46 (e) Except for benefit overpayments under Subsection 35A-4-405(5), benefit
47 overpayments, contributions, interest, penalties, and assessed costs, uncollected three years
48 after they become due, may be charged as uncollectable and removed from the records of the
49 division if:

50 (i) no assets belonging to the liable person and subject to attachment can be found; and

51 (ii) in the opinion of the division there is no likelihood of collection at a future date.

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

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

56 (2) (a) If an employer fails to file a report when prescribed by the division for the
57 purpose of determining the amount of the employer's contribution due under this chapter, or if
58 the report when filed is incorrect or insufficient or is not satisfactory to the division, the

59 division may determine the amount of wages paid for employment during the period or periods
60 with respect to which the reports were or should have been made and the amount of
61 contribution due from the employer on the basis of [~~such~~] any information [~~as~~] it may be able
62 to obtain.

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

64 (c) The determination is considered correct unless:

65 (i) the employer, within ten days after mailing or personal delivery of notice of the
66 determination, applies to the division for a review of the determination as provided in Section
67 35A-4-508; or

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

70 (d) The amount of contribution so determined shall be subject to penalties and interest
71 as provided in Subsection (1).

72 (3) (a) If, after due notice, [~~any~~] an employer defaults in [~~any~~] the payment of
73 contributions, interest, or penalties on the contributions, or [~~any~~] a claimant defaults in [~~any~~] a
74 repayment of benefit overpayments and penalties on the overpayments, the amount due shall be
75 collectible by civil action in the name of the division, and the employer adjudged in default
76 shall pay the costs of the action.

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

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

80 (ii) entitled to preference upon the calendar of the court over all other civil actions
81 except:

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

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

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

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

90 (C) The notice shall advise the employer or claimant of the employer's or claimant's
91 rights under this chapter and the applicable rules [~~applicable~~] of the department.

92 (ii) (A) A private collector may receive as compensation up to~~[-, but no more than,]~~
93 25% of the lesser of the amount collected or the amount due, plus the costs and fees of any
94 civil action or postjudgment remedy instituted by the private collector with the approval of the
95 division.

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

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

100 (iv) (A) A civil action may not be maintained by any private collector without specific
101 prior written approval of the division.

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

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

109 (ii) A private collector is subject to the confidentiality requirements and penalty
110 provisions provided in Section 35A-4-312 and Subsection [~~35A-4-104~~] 76-8-1301(4), except
111 to the extent disclosure is necessary in any civil action to enforce collection of the amounts
112 due.

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

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

121 (b) If an employer commences a proceeding in the Federal Bankruptcy Court under
122 [any] a chapter of the Bankruptcy Reform Act of 1978, 11 U.S.C. 101 et seq., as amended,
123 contributions, interest, and penalties then or thereafter due shall be entitled to the priority
124 provided for taxes, interest, and penalties in the Bankruptcy Reform Act of 1978.

125 (5) (a) In addition and as an alternative to any other remedy provided by this chapter
126 and provided that no appeal or other proceeding for review provided by this chapter is then
127 pending and the time for taking it has expired, the division may issue a warrant in duplicate,
128 under its official seal, directed to the sheriff of any county of the state, commanding the sheriff
129 to levy upon and sell the real and personal property of a delinquent employer or claimant found
130 within the sheriff's county for the payment of the contributions due thereon, with the added
131 penalties, interest, or benefit overpayment and penalties, and costs, and to return the warrant to
132 the division and pay into the fund the money collected by virtue of the warrant by a time to be
133 [therein] specified in the warrant, not more than 60 days from the date of the warrant.

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

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

140 (c) The amount of the docketed warrant [~~so docketed~~] shall:

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

143 (ii) become a lien upon the real property of the delinquent employer or claimant in the
144 same manner and to the same extent as a judgment duly rendered by [any] a district court and
145 docketed in the office of the clerk.

146 (d) After docketing, the sheriff shall:

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

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

151 (6) (a) Contributions imposed by this chapter are a lien upon the property of [any] an

152 employer liable for the contribution required to be collected under this section who shall sell
153 out the employer's business or stock of goods or shall quit business, if the employer fails to
154 make a final report and payment on the date subsequent to the date of selling or quitting
155 business on which they are due and payable as prescribed by rule.

156 (b) (i) An employer's successor, successors, or assigns, if any, [~~shall be~~] are required to
157 withhold sufficient of the purchase money to cover the amount of the contributions and interest
158 or penalties due and payable until [~~such time as~~] the former owner [~~shall produce~~] produces a
159 receipt from the division showing that they have been paid or a certificate stating that no
160 amount is due.

161 (ii) If the purchaser of a business or stock of goods fails to withhold sufficient purchase
162 money, the purchaser shall be personally liable for the payment of the amount of the
163 contributions required to be paid by the former owner, interest and penalties accrued and
164 unpaid by the former owner, owners, or assignors.

165 (7) (a) If [~~any~~] an employer is delinquent in the payment of [~~any~~] a contribution, the
166 division may give notice of the amount of the delinquency by registered mail to all persons
167 having in their possession or under their control, any credits or other personal property
168 belonging to the employer, or owing any debts to the employer at the time of the receipt by
169 them of the notice.

170 (b) [~~Any persons~~] A person notified under Subsection (7)(a) shall neither transfer nor
171 make any other disposition of the credits, other personal property, or debts until:

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

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

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

177 (8) (a) (i) Each employer shall furnish the division necessary information for the proper
178 administration of this chapter and shall include wage information for each employee, for each
179 calendar quarter [~~beginning October 1, 1984~~].

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

182 (b) (i) Each employer shall furnish each individual worker who is separated that

183 information as the department may by rule require, and shall furnish within 48 hours of the
184 receipt of a request from the division a report of the earnings of any individual during the
185 individual's base-period.

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

188 (c) For each failure by an employer to conform to this Subsection (8) the division shall,
189 unless good cause is shown to the satisfaction of the division for the failure, assess a \$50
190 penalty to be collected in the same manner as contributions due under this chapter.

191 (d) The division shall prescribe rules providing standards for determining which
192 contribution reports must be filed on magnetic media or in other machine-readable form. In
193 prescribing these rules, the division:

194 (i) shall not require any employer to file contribution reports on magnetic media unless
195 that employer is required to file wage data on at least 250 employees during any calender
196 quarter;

197 (ii) shall take into account, among other relevant factors, the ability of the employer to
198 comply at reasonable cost with the requirements of the rules; and

199 (iii) may require an employer to post a bond for failure to comply with the rules
200 required by this Subsection (8)(d).

201 (9) If [~~any~~] a person liable to pay [~~any~~] a contribution or benefit overpayment imposed
202 by this chapter neglects or refuses to pay [~~the same~~] it after demand, the amount, including any
203 interest, additional amount, addition to contributions, or assessable penalty, together with any
204 additional accruable costs, shall be a lien in favor of the division upon all property and rights to
205 property, whether real or personal belonging to the person.

206 (10) (a) The lien imposed by Subsection (9) arises at the time the assessment, as
207 defined in the department rules, is made and continues until the liability for the amount [~~so~~]
208 assessed, or a judgment against the taxpayer arising out of the liability, is satisfied.

209 (b) The lien imposed by Subsection (9) is not valid as against any purchaser, holder of
210 a security interest, mechanics' lien holder, or judgment lien creditor until a warrant which
211 meets the requirements of Subsection (5) has been filed with the clerk of the district court. For
212 the purposes of this Subsection (10)(b):

213 (i) "Judgment lien creditor" means a person who obtains a valid judgment of a court of

214 record for recovery of specific property or a sum certain of money, and who in the case of a
215 recovery of money, has a perfected lien under the judgment on the property involved. A
216 judgment lien does not include inchoate liens such as attachment or garnishment liens until
217 they ripen into a judgment. A judgment lien does not include the determination or assessment
218 of a quasi-judicial authority, such as a state or federal taxing authority.

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

224 (iii) "Person" means:

225 (A) an individual;

226 (B) a trust;

227 (C) an estate;

228 (D) a partnership;

229 (E) an association;

230 (F) a company;

231 (G) a limited liability company;

232 (H) a limited liability partnership; or

233 (I) a corporation.

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

237 (v) "Security interest" means any interest in property acquired by contract for the
238 purpose of securing payment or performance of an obligation or indemnifying against loss or
239 liability. A security interest exists at any time:

240 (A) the property is in existence and the interest has become protected under the law
241 against a subsequent judgment lien arising out of an unsecured obligation; and

242 (B) to the extent that, at that time, the holder has parted with money or money's worth.

243 Section 2. Section **35A-4-312** is amended to read:

244 **35A-4-312. Records.**

245 (1) (a) Each employing unit shall keep true and accurate work records containing any
246 information the department may prescribe by rule.

247 (b) The records shall be open to inspection and subject to being copied by the division
248 or its authorized representatives at ~~any~~ a reasonable time and as often as may be necessary.

249 (c) The employing unit shall make the records available in the state for three years after
250 the calendar year in which the services were rendered.

251 (2) The division may require from ~~any~~ an employing unit any sworn or unsworn
252 reports with respect to persons employed by it that the division considers necessary for the
253 effective administration of this chapter.

254 (3) Except as provided in this section or in Sections 35A-4-103 and 35A-4-106,
255 information obtained under this chapter or obtained from ~~any~~ an individual may not be
256 published or open to public inspection in any manner revealing the employing unit's or
257 individual's identity.

258 (4) (a) The information obtained by the division ~~pursuant to~~ under this section may
259 not be used in ~~any~~ court or admitted into evidence in an action or proceeding, except:

260 (i) in an action or proceeding arising out of this chapter;

261 (ii) in an action or proceeding by the Labor Commission to enforce the provisions of
262 Title 34A, Utah Labor Code, or Chapters ~~21,~~ 23, 28, and 40 of Title 34, Labor in General,
263 provided the Labor Commission enters into a written agreement with the division ~~pursuant to~~
264 under Subsection (6)(b); or

265 (iii) ~~pursuant to~~ under the terms of a court order obtained ~~pursuant to~~ under
266 Subsection 63-2-202(7) and Section 63-2-207 of the Government Records Access and
267 Management Act.

268 (b) The information obtained by the division ~~pursuant to~~ under this section shall be
269 disclosed to:

270 (i) a party to an unemployment insurance hearing before an administrative law judge of
271 the department or a review by the Workforce Appeals Board to the extent necessary for the
272 proper presentation of the party's case; or

273 (ii) an employer, upon request in writing for any information concerning claims for
274 benefits with respect to the employer's former employees.

275 (5) The information obtained by the division ~~pursuant to~~ under this section may be

276 disclosed to:

277 (a) an employee of the department in the performance of the employee's duties in
278 administering this chapter or other programs of the department;

279 (b) an employee of the Labor Commission for the purpose of carrying out the programs
280 administered by the Labor Commission;

281 (c) an employee of the governor's office and other state governmental agencies
282 administratively responsible for statewide economic development, to the extent necessary for
283 economic development policy analysis and formulation;

284 (d) an employee of other governmental agencies that are specifically identified and
285 authorized by federal or state law to receive the information for the purposes stated in the law
286 authorizing the employee of the agency to receive the information;

287 (e) an employee of a governmental agency or workers' compensation insurer to the
288 extent the information will aid in the detection or avoidance of duplicate, inconsistent, or
289 fraudulent claims against a workers' compensation program, public assistance funds, or the
290 recovery of overpayments of workers' compensation or public assistance funds;

291 (f) an employee of a law enforcement agency to the extent the disclosure is necessary
292 to avoid a significant risk to public safety or in aid of a felony criminal investigation;

293 (g) an employee of the State Tax Commission or the Internal Revenue Service for the
294 purposes of audit verification or simplification, state or federal tax compliance, verification of
295 Standard Industry Codes, and statistics;

296 (h) an employee or contractor of the department or an educational institution, or other
297 governmental entity engaged in workforce investment and development activities [~~pursuant to~~]
298 under the Workforce Investment Act of 1998 for the purpose of coordinating services with the
299 department, evaluating the effectiveness of those activities, and measuring performance;

300 (i) an employee of the Department of Community and Economic Development, for the
301 purpose of periodically publishing in the Directory of Business and Industry, the name, address,
302 telephone number, number of employees by range, Standard Industrial Code, and type of
303 ownership of Utah employers;

304 (j) the public for any purpose following a written waiver by all interested parties of
305 their rights to nondisclosure; or

306 (k) an individual whose wage data has been submitted to the department by an

307 employer, so long as no information other than the individual's wage data and the identity of
 308 the party who submitted the information is provided to the individual.

309 (6) Disclosure of private information [~~pursuant to~~] under Subsection (4)(a)(ii) or
 310 Subsection (5), with the exception of Subsections (5)(a) and (f), shall be made only if:

311 (a) the division determines that the disclosure will not have a negative effect on the
 312 willingness of employers to report wage and employment information or on the willingness of
 313 individuals to file claims for unemployment benefits; and

314 (b) the agency enters into a written agreement with the division in accordance with
 315 rules made by the department.

316 (7) (a) The employees of a division of the department other than the Division of
 317 Workforce Information and Payment Services or an agency receiving private information from
 318 the division under this chapter are subject to the same requirements of privacy and
 319 confidentiality and to the same penalties for misuse or improper disclosure of the information
 320 as employees of the division.

321 (b) Use of private information obtained from the department by a person, or for a
 322 purpose other than one authorized in Subsection (4) or (5) violates Subsection [~~35A-4-104~~]
 323 76-8-1301(4).

324 Section 3. Section **76-8-1301** is enacted to read:

325 **Part 13. Unemployment Insurance Fraud**

326 **76-8-1301. False statements regarding unemployment compensation -- Penalties.**

327 (1) (a) A person who makes a false statement or representation knowing it to be false
 328 or knowingly fails to disclose a material fact, to obtain or increase a benefit or other payment
 329 under Title 35A, Chapter 4, Employment Security Act, or under the Unemployment
 330 Compensation Law of any state or of the federal government for any person is guilty of
 331 unemployment insurance fraud.

332 (b) A violation of Subsection (1)(a) is:

333 (i) a class B misdemeanor when the value of the money obtained or sought to be
 334 obtained is less than \$300;

335 (ii) a class A misdemeanor when the value of the money obtained or sought to be
 336 obtained is or exceeds \$300 but is less than \$1,000;

337 (iii) a third degree felony when the value of the money obtained or sought to be

338 obtained is or exceeds \$1,000 but is less than \$5,000; or

339 (iv) a second degree felony when the value of the money obtained or sought to be
 340 obtained is or exceeds \$5,000.

341 (c) The determination of the degree of an offense under Subsection (1)(b) shall be
 342 measured by the total value of all money obtained or sought to be obtained by the unlawful
 343 conduct.

344 (2) (a) An officer or agent of an employing unit as defined in Section 35A-4-202 or any
 345 other person who makes a false statement or representation knowing it to be false, or who
 346 knowingly fails to disclose a material fact, to prevent or reduce the payment of unemployment
 347 compensation benefits to an individual entitled to those benefits, or to avoid becoming or
 348 remaining a subject employer or to avoid or reduce any contribution or other payment required
 349 from an employing unit under Title 35A, Chapter 4, Employment Security Act, or under the
 350 Unemployment Compensation Law of any state or of the federal government, or who willfully
 351 fails or refuses to make a contribution or other payment or to furnish any report required in
 352 Title 35A, Chapter 4, Employment Security Act, or to produce or permit the inspection or
 353 copying of records as required under that chapter is guilty of unemployment insurance fraud.

354 (b) A violation of Subsection (2)(a) is:

355 (i) a class B misdemeanor when the value of the money obtained or sought to be
 356 obtained is less than \$300;

357 (ii) a class A misdemeanor when the value of the money obtained or sought to be
 358 obtained is or exceeds \$300 but is less than \$1,000;

359 (iii) a third degree felony when the value of the money obtained or sought to be
 360 obtained is or exceeds \$1,000 but is less than \$5,000; or

361 (iv) a second degree felony when the value of the money obtained or sought to be
 362 obtained is or exceeds \$5,000.

363 (3) ~~h~~ ~~(a)~~ ~~h~~ A person who willfully violates any provision of Title 35A, Chapter 4,
 364 Employment Security Act, or any order or rule made under that chapter, the violation of which
 365 is made unlawful or the observance of which is required under the terms of that chapter, and
 366 for which a penalty is neither prescribed in that chapter nor provided by any other applicable
 367 statute is guilty of a class A misdemeanor.

368 § ~~h~~ (b) Each day a violation of Subsection (3)(a) continues shall be a separate offense. ~~h~~ §

369 (4) A person is guilty of a class A misdemeanor if:
370 (a) as an employee of the Department of Workforce Services, in willful violation of
371 Section 35A-4-312, the employee makes a disclosure of information obtained from an
372 employing unit or individual in the administration of Title 35A, Chapter 4, Employment
373 Security Act; or
374 (b) the person has obtained a list of applicants for work or of claimants or recipients of
375 benefits under Title 35A, Chapter 4, Employment Security Act, and uses or permits the use of
376 the list for any political purpose.

377 Section 4. **Repealer.**

378 This act repeals:

379 Section **35A-4-104, Violations of chapter -- Penalties.**

Legislative Review Note
as of 12-6-02 9:17 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0174

Unemployment Insurance Fraud Amendments

11-Jan-03

4:05 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact

Office of the Legislative Fiscal Analyst