

UNEMPLOYMENT INSURANCE FRAUD

AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Ty McCartney

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

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

AMENDS:

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

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

ENACTS:

76-8-1301, Utah Code Annotated 1953

REPEALS:

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

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

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

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

(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 shall be 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 [~~such~~] 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 ten 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 ten 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 uncollectable 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 Fund.

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

(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 ~~such~~ any information ~~as~~ 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 ten 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 so determined shall be subject to penalties and interest as provided in Subsection (1).

(3) (a) If, after due notice, ~~any~~ an employer defaults in ~~any~~ the payment of contributions, interest, or penalties on the contributions, or ~~any~~ a claimant defaults in ~~any~~ 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 [~~applicable~~] of the department.

(ii) (A) A private collector may receive as compensation up to [~~, but no more than,~~] 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 any 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 [~~35A-4-104~~] 76-8-1301(4), except to the extent disclosure is necessary in any 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 [~~any~~] a distribution of an employer's assets under an order of [~~any~~] a court under the laws of Utah, including [~~any~~] 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 ~~[any]~~ a chapter of the Bankruptcy Reform Act of 1978, 11 U.S.C. 101 et seq., as amended, contributions, interest, and penalties then or thereafter due shall be entitled to the priority provided for taxes, interest, and penalties in the Bankruptcy Reform Act of 1978.

(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 thereon, 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 ~~[therein]~~ 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 ~~[so docketed]~~ 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 ~~[any]~~ 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 ~~[any]~~ 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, ~~[shall be]~~ are required to withhold sufficient of the purchase money to cover the amount of the contributions and interest or penalties due and payable until ~~[such time as]~~ the former owner ~~[shall produce]~~ 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 shall be 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 ~~[any]~~ an employer is delinquent in the payment of ~~[any]~~ 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) ~~[Any persons]~~ 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 [~~beginning October 1, 1984~~].

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

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

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

(ii) 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

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

(9) If [~~any~~] a person liable to pay [~~any~~] a contribution or benefit overpayment imposed by this chapter neglects or refuses to pay [~~the same~~] 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.

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

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

(i) "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.

(ii) "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.

(iii) "Person" means:

(A) an individual;

(B) a trust;

(C) an estate;

(D) a partnership;

(E) an association;

(F) a company;

- (G) a limited liability company;
- (H) a limited liability partnership; or
- (I) a corporation.

(iv) "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.

(v) "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:

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

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

35A-4-312. Records.

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

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

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

(2) The division may require from ~~[any]~~ an employing unit any sworn or unsworn reports with respect to persons employed by it 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 ~~[any]~~ an individual may not be published or open to public inspection in any manner revealing the employing unit's or individual's identity.

(4) (a) The information obtained by the division ~~[pursuant to]~~ under this section may not

be used in ~~[any]~~ court or admitted into evidence in an action or proceeding, except:

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

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

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

(b) The information obtained by the division ~~[pursuant to]~~ 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 any information concerning claims for benefits with respect to the employer's former employees.

(5) The information obtained by the division ~~[pursuant to]~~ 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 governor's office and other state governmental agencies administratively responsible for statewide economic development, to the extent necessary for economic development policy analysis and formulation;

(d) an employee of other governmental agencies that are 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;

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

(f) 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;

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

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

(i) an employee of the Department of Community and 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, Standard Industrial Code, and type of ownership of Utah employers;

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

(k) an individual whose wage data has been submitted to the department by an employer, so long as no information other than the individual's wage data and the identity of the party who submitted the information is provided to the individual.

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

(a) the division determines that the disclosure will not have a negative effect on the willingness of employers to report wage and employment information or on 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 Division of Workforce Information and Payment Services 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 [~~35A-4-104~~] 76-8-1301(4).

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

Part 13. Unemployment Insurance Fraud

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

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

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

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

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

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

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

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

conduct.

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

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

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

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

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

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

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

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

(4) A person is guilty of a class A misdemeanor if:

(a) as an employee of the Department of Workforce Services, in willful violation of

Section 35A-4-312, the employee makes a disclosure of information obtained from an employing unit or individual in the administration of Title 35A, Chapter 4, Employment Security Act; or

(b) the person has obtained a list of applicants for work or of claimants or recipients of benefits under Title 35A, Chapter 4, Employment Security Act, and uses or permits the use of the list for any political purpose.

Section 4. **Repealer.**

This act repeals:

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