

UNEMPLOYMENT INSURANCE AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill provides the manner in which an employer's unemployment insurance social contribution rate is to be calculated and the manner in which an employer's overall unemployment insurance contribution rate is to be determined.

Highlighted Provisions:

This bill:

- ▶ provides the manner in which an employer's unemployment insurance social contribution rate is to be calculated on or after January 1, 2005, and sets the rate for the 2004 rate year;
- ▶ provides the manner in which an employer's overall unemployment insurance contribution rate is to be determined;
- ▶ sets the employee maximum weekly unemployment benefit amount at 62.5% of the insured average fiscal year weekly wage; and
- ▶ provides that monies received from the federal government under Section 903 of the Social Security Act, as amended, may not be considered in establishing the reserve factor for the purpose of determining employers' contribution rates.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

35A-4-303, as last amended by Chapter 292, Laws of Utah 2000

35A-4-401, as last amended by Chapter 292, Laws of Utah 2000

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

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

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

(1) (a) On or before January 1 of each year beginning January 1, 1985, an employer's basic contribution rate will be the same as the employer's benefit ratio, 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 the remaining fraction, if any.

(b) In calculating the basic contribution rate under Subsection (1)(a):

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

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

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

(2) (a) On or before January 1 of each year beginning with January 1, 1985, all social costs as defined in Subsection 35A-4-307(1) applicable to the immediately preceding four fiscal years shall be divided by the total taxable wages of all employers subject to contributions for the same time period, calculated to four decimal places, disregarding the remaining fraction, if any.

(b) In calculating the social contribution rate under Subsection (2)(a):

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

(ii) if three fiscal years of data are not available, the data of two fiscal years shall be

divided by the total taxable wages for the same time period.

(c) On or after January 1, 2000, the social contribution rate shall be:

(i) set at 0.0010 for any rate year in which the reserve factor established in Subsection (3)(c) is equal to or less than 1.0000; or

(ii) calculated 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 time period, calculated to four decimal places, disregarding any remaining fraction, for any rate year in which the reserve factor established in Subsection (3)(c) is greater than 1.0000.

(d) (i) The social contribution rate for the rate year beginning January 1, 2004, is set at .003.

(ii) On or after January 1, 2005, the social contribution rate shall be calculated 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.

(iii) Notwithstanding Subsection (2)(d)(ii), the social contribution rate for only the rate year beginning January 1, 2005, may not exceed .004.

(3) (a) On or before January 1 of each year beginning with January 1, 1985, the reserve factor shall be computed under Subsection (3)(b). For purposes of computing the reserve factor:

(i) the five-year average benefit cost rate is calculated by:

(A) determining the five highest benefit cost rates experienced in the 25 years ending December 31 one year prior to the computation date;

(B) adding together the rates determined under Subsection (3)(a)(i)(A); and

(C) dividing the amount under Subsection (3)(a)(i)(B) by five, calculated to four decimal places, disregarding the remaining fraction, if any;

(ii) the minimum adequate reserve fund balance is calculated by:

(A) multiplying the five-year average benefit cost rate by 1.5; and

(B) multiplying the amount under Subsection (3)(a)(ii)(A) by total wages of the fiscal

year ending prior to the computation date, rounded to the nearest dollar;

(iii) the maximum adequate reserve fund balance is calculated by:

(A) multiplying the five-year average benefit cost rate by 2.0; and

(B) multiplying the amount under Subsection (3)(a)(iii)(A) by the total wages used under Subsection (3)(a)(ii)(B), rounded to the nearest dollar; and

(iv) the computation date is the January 1 on which the reserve factor is calculated.

(b) (i) The reserve factor is one if the actual reserve fund balance as of June 30 preceding the computation date is:

(A) equal to or greater than the minimum adequate reserve fund balance; and

(B) equal to or less than the maximum adequate reserve fund balance.

(ii) If the actual reserve fund balance as of June 30 preceding the computation date is less than the minimum adequate reserve fund balance, the reserve factor shall be the greater of:

(A) 2.0000 minus an amount equal to the actual reserve fund balance divided by the minimum adequate reserve fund balance, calculated to four decimal places, disregarding the remaining fraction, if any; or

(B) the reserve factor calculated in the prior year.

(iii) The reserve factor is 2.0000 if:

(A) the actual reserve fund balance as of June 30 preceding the computation date is:

(I) insolvent; or

(II) negative; or

(B) there is an outstanding loan from the Federal Unemployment Account.

(iv) If the actual reserve fund balance as of June 30 preceding the computation date is more than the maximum adequate reserve fund balance, the reserve factor shall be calculated by:

(A) dividing the actual reserve fund balance by the maximum adequate reserve fund balance, calculated to four decimal places, disregarding the remaining fraction, if any; and

(B) subtracting the amount under Subsection (3)(b)(iv)(A) from 2.0000.

(c) Beginning January 1, 2000, the division shall by administrative decision set the reserve factor at a rate that shall sustain an adequate reserve. For the purpose of setting the reserve

factor:

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

(ii) the reserve factor shall be 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 reserve factor will be set 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 reserve factor will be set 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, the reserve factor will be set at 2.0000 until the actual reserve fund balance as of June 30 preceding the computation date is determined to be an adequate reserve; ~~and~~

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

(vii) monies made available to the state under Section 903 of the Social Security Act, as amended, which are 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 subsequent rate year.

(4) (a) Until January 1, 1995, an employer's overall contribution rate is the employer's basic contribution rate multiplied by the reserve factor, if there is a reserve factor, calculated to four decimal places, disregarding any further fraction, plus the social contribution rate, and rounded up to the next higher multiple of .10%, but not more than a maximum overall contribution rate of 8.0% and not less than 1% for new employers.

(b) On or after January 1, 1995, an employer's overall contribution rate is the employer's basic contribution rate multiplied by the reserve factor, calculated to four decimal places, disregarding any further fraction, plus the social contribution rate, and rounded to three decimal places, disregarding any further fraction, if the fourth decimal place is .0004 or less, or rounding up to the next higher number, if the fourth decimal place is .0005 or more, but not more than a maximum overall contribution rate of 8.0% and not less than 1% for new employers.

(c) On or after January 1, 2000, an employer's overall contribution rate is the employer's basic contribution rate multiplied by the reserve factor established according to Subsection (3)(c), calculated to four decimal places, disregarding the remaining fraction, plus the social contribution rate established according to Subsection (2)(c), and calculated to three decimal places, disregarding the remaining fraction, but not more than a maximum overall contribution rate of 8.0%, plus the applicable social contribution rate and not less than 1.1% for new employers.

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

~~[(+)]~~ (e) The overall contribution rate does not include the addition of any penalty applicable to an employer as a result of delinquency in the payment of contributions as provided in Subsection (10).

(5) Except as provided in Subsection (10), each new employer shall pay a contribution rate 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, the basic contribution rate to be determined as follows:

(a) Except as provided in Subsection (5)(b), on or before January 1 of each year, the basic contribution rate to be used in computing the employer's overall contribution rate is the benefit cost rate which 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 the remaining fraction, if any; or

(ii) 1%.

(b) 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 shall be 5.4%. This basic contribution rate is used in computing the employer's overall contribution rate.

(6) (a) A reopening employer's basic contribution rate is the average overall contribution rate for all employers in the state, but not less than 1%, until such time as the reopening employer becomes a qualified employer as defined in Section 35A-4-301.

(b) The average overall contribution rate for all employers in the state shall be defined by rule.

(c) The reopening employer is an employer that is not substantially related to or affiliated with the predecessor employer and that acquires, for the purpose of reopening, substantially all the assets of a business or operating component of a business that has been closed or substantially closed for 90 days or more of its normal operating period immediately prior to the acquisition.

(d) A business or operating component of a business has been substantially closed if:

- (i) its normal production has been stopped;
- (ii) a majority of its workers have been laid off; and
- (iii) the services of remaining employees are devoted to the protection and disposition of assets and inventory or administrative duties.

(7) Notwithstanding any other provision of this chapter, and except as provided in Subsection (8), 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.

(8) 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.

(9) (a) If an employer, other than a reopening employer, acquires the business or all or substantially all the assets of another employer and the other employer had discontinued operations upon the acquisition:

(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) after January 1, 1985, the benefit costs of both employers; and

(ii) the transferring employer shall be divested of the transferring employer's payroll experience.

(b) Any employing unit or prospective employing unit that acquires the payroll 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 (9)(a), is divested of the employer's payroll 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.

(10) (a) A rate of less than 8% shall be effective January 1 of any contribution year on or after January 1, 1985, but before January 1, 1988, and a rate of less than the maximum overall contribution rate on or after January 1, 1988, only with respect to 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 with respect to the four consecutive calendar quarters in the fiscal year immediately preceding the computation date on or after January 1, 1985.

(b) Notwithstanding Subsections (1), (5), (6), (7), and (9), on or after January 1, 1988, any employer who fails to pay all contributions prescribed by the division with respect to 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) Any 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 shall not be the basis for denial of a rate less than the maximum contribution rate.

Section 2. Section **35A-4-401** is amended to read:

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 any 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 the rules the department may prescribe.

(2) (a) An individual's "weekly benefit amount" is an amount equal to 1/26th, disregarding any fraction of \$1, of his total wages for insured work paid during that quarter of his base period in which the total wages were highest.

(b) The weekly benefit amount may not exceed the amount determined as follows:

(i) With respect to any individual whose benefit year commences on or after July 1, 1984, but prior to January 3, 1988, 60% of the "insured average weekly wage," disregarding any fraction of \$1, constitutes the maximum "weekly benefit amount" payable.

(ii) With respect to any individual whose benefit year commences on or after January 3, 1988, 60% of the "insured average fiscal year weekly wage" during the preceding fiscal year, e.g.,

fiscal year 1987 for individuals establishing benefit years in 1988, disregarding any fraction of \$1, constitutes the maximum "weekly benefit amount" payable.

(iii) With respect to any individual whose benefit year commences on or after January 1, 2001, 65% of the "insured average fiscal year weekly wage" during the preceding fiscal year, e.g., fiscal year 2000 for individuals establishing benefit years in 2001, disregarding any fraction of \$1, constitutes the maximum "weekly benefit amount" payable.

(iv) With respect to an individual who files a claim for benefits on or after July 4, 2004, 62.5% of the insured average fiscal year weekly wage during the preceding fiscal year, disregarding any fraction of \$1, constitutes the maximum weekly benefit amount payable.

(c) 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 such retirement benefits, that are attributable to a week, disregarding any fraction of \$1.

(d) (i) The weekly benefit amount and the potential benefits payable to an individual who, subsequent to the commencement of his 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 his benefit year with respect to which he is eligible to receive retirement benefits or increased retirement benefits. 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) Each eligible individual who is unemployed in any week shall be paid with respect to that week a benefit in an amount equal to the claimant's weekly benefit amount less that part of the claimant's wage payable to the claimant with respect to that week that is in excess of 30% of

the claimant's weekly benefit amount. The resulting benefit payable shall disregard any fraction of \$1. For the purpose of this Subsection (3) "wages" does not include grants, earned or otherwise, paid to the claimant as public assistance.

(4) (a) Any otherwise eligible individual is entitled during any benefit year to a total amount of benefits determined by multiplying his weekly benefit amount times his potential duration.

(b) To determine an individual's potential duration, his total wages for insured work paid during his base period is multiplied by 27%, disregarding any fraction of \$1, and divided by his weekly benefit amount, disregarding any fraction, but not less than ten nor more than 26.

(5) (a) Notwithstanding any other provision of this chapter, the department in its discretion 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 any otherwise eligible claimant 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 individuals 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 promulgated 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 employee made under rules of the department, all remuneration for insured work paid to an employee during his base 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.

Section 3. Reports to interim committee.

The Department of Workforce Services shall report to the Workforce Services and Community and Economic Development Interim Committee in April, July, and October, 2004, on the implementation of Subsections 35A-4-303(2)(d), 35A-4-303(3)(c)(vii), 35A-4-303(4)(d), and 35A-4-401(2)(b)(iv) enacted in this Senate Bill 202.

Section 4. Effective date.

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

Section 5. Retrospective operation.

This bill has retrospective operation for rate years beginning on or after January 1, 2004.