

1                                   **EMPLOYMENT SECURITY MODIFICATIONS**

2   2004 GENERAL SESSION

3   STATE OF UTAH

4                                   **Sponsor: Scott K. Jenkins**

5   Karen Hale

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7   **LONG TITLE**

8   **General Description:**

9           This bill modifies the benefits and eligibility provisions of the Employment Security  
10   Act and a related provision of the Utah Exemptions Act.

11   **Highlighted Provisions:**

12           This bill:

- 13           ▶ modifies the filing penalty for failure to provide timely quarterly wage information;
- 14           ▶ provides a filing penalty for failure to make timely reimbursable employment and  
15   wage reports;
- 16           ▶ removes an archaic provision regarding reimbursable employers paying premiums  
17   or expenditures in advance;
- 18           ▶ makes a technical change to the definition of employer;
- 19           ▶ modifies the fraud penalty and overpayment calculation provisions;
- 20           ▶ provides, consistent with federal law, that unemployment benefits may not have  
21   creditor's claims deducted from them; and
- 22           ▶ makes certain technical changes.

23   **Monies Appropriated in this Bill:**

24           None

25   **Other Special Clauses:**

26           This bill takes effect on July 1, 2004.

27   **Utah Code Sections Affected:**



28 AMENDS:

29 35A-4-305, as last amended by Chapter 135, Laws of Utah 2003

30 35A-4-309, as last amended by Chapter 144, Laws of Utah 2001

31 35A-4-310, as renumbered and amended by Chapter 240, Laws of Utah 1996

32 35A-4-405, as last amended by Chapter 144, Laws of Utah 2001

33 78-23-10, as last amended by Chapter 9, Laws of Utah 2001

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

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

37 **35A-4-305. Collection of contributions -- Unpaid contributions to bear interest.**

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

41 (b) (i) Contribution reports not made and filed by the date on which they are due as  
42 prescribed by the division ~~[shall be]~~ are subject to a penalty to be assessed and collected in the  
43 same manner as contributions due under this section equal to 5% of the contribution due if the  
44 failure to file on time was not more than 15 days, with an additional 5% for each additional 15  
45 days or fraction thereof during which the failure continued, but not to exceed 25% in the  
46 aggregate and not less than \$25 with respect to each reporting period.

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

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

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

57 (d) The division shall assess as a penalty a service charge, in addition to any other  
58 penalties that may apply, in an amount not to exceed the service charge imposed by Section

59 7-15-1 for dishonored instruments if:

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

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

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

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

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

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

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

73 (2) (a) If an employer fails to file a report when prescribed by the division for the  
74 purpose of determining the amount of the employer's contribution due under this chapter, or if  
75 the report when filed is incorrect or insufficient or is not satisfactory to the division, the  
76 division may determine the amount of wages paid for employment during the period or periods  
77 with respect to which the reports were or should have been made and the amount of  
78 contribution due from the employer on the basis of any information it may be able to obtain.

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

80 (c) The determination is considered correct unless:

81 (i) the employer, within ten days after mailing or personal delivery of notice of the  
82 determination, applies to the division for a review of the determination as provided in Section  
83 35A-4-508; or

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

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

88 (3) (a) If, after due notice, an employer defaults in the payment of contributions,  
89 interest, or penalties on the contributions, or a claimant defaults in a repayment of benefit

90 overpayments and penalties on the overpayments, the amount due shall be collectible by civil  
91 action in the name of the division, and the employer adjudged in default shall pay the costs of  
92 the action.

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

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

96 (ii) entitled to preference upon the calendar of the court over all other civil actions

97 except:

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

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

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

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

106 (C) The notice shall advise the employer or claimant of the employer's or claimant's  
107 rights under this chapter and the applicable rules of the department.

108 (ii) (A) A private collector may receive as compensation up to 25% of the lesser of the  
109 amount collected or the amount due, plus the costs and fees of any civil action or postjudgment  
110 remedy instituted by the private collector with the approval of the division.

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

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

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

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

120 (d) (i) Notwithstanding Section 35A-4-312, the division may disclose the contribution,

121 interest, penalties or benefit overpayments and penalties, costs due, the name of the employer  
122 or claimant, and the employer's or claimant's address and telephone number when any  
123 collection matter is referred to a private collector under Subsection (3)(c).

124 (ii) A private collector is subject to the confidentiality requirements and penalty  
125 provisions provided in Section 35A-4-312 and Subsection 76-8-1301(4), except to the extent  
126 disclosure is necessary in any civil action to enforce collection of the amounts due.

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

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

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

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

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

150 (ii) The clerk shall enter in the judgment docket, in the column for judgment debtors,  
151 the name of the delinquent employer or claimant mentioned in the warrant, and in appropriate

152 columns the amount of the contribution, penalties, interest, or benefit overpayment and  
153 penalties, and costs, for which the warrant is issued and the date when the duplicate is filed.

154 (c) The amount of the docketed warrant shall:

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

157 (ii) become a lien upon the real property of the delinquent employer or claimant in the  
158 same manner and to the same extent as a judgment duly rendered by a district court and  
159 docketed in the office of the clerk.

160 (d) After docketing, the sheriff shall:

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

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

165 (6) (a) Contributions imposed by this chapter are a lien upon the property of an  
166 employer liable for the contribution required to be collected under this section who shall sell  
167 out the employer's business or stock of goods or shall quit business, if the employer fails to  
168 make a final report and payment on the date subsequent to the date of selling or quitting  
169 business on which they are due and payable as prescribed by rule.

170 (b) (i) An employer's successor, successors, or assigns, if any, are required to withhold  
171 sufficient of the purchase money to cover the amount of the contributions and interest or  
172 penalties due and payable until the former owner produces a receipt from the division showing  
173 that they have been paid or a certificate stating that no amount is due.

174 (ii) If the purchaser of a business or stock of goods fails to withhold sufficient purchase  
175 money, the purchaser ~~[shall be]~~ is personally liable for the payment of the amount of the  
176 contributions required to be paid by the former owner, interest and penalties accrued and  
177 unpaid by the former owner, owners, or assignors.

178 (7) (a) If an employer is delinquent in the payment of a contribution, the division may  
179 give notice of the amount of the delinquency by registered mail to all persons having in their  
180 possession or under their control, any credits or other personal property belonging to the  
181 employer, or owing any debts to the employer at the time of the receipt by them of the notice.

182 (b) A person notified under Subsection (7)(a) shall neither transfer nor make any other

183 disposition of the credits, other personal property, or debts until:

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

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

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

189 (8) (a) (i) Each employer shall furnish the division necessary information for the proper  
190 administration of this chapter and shall include wage information for each employee, for each  
191 calendar quarter.

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

194 (b) (i) Each employer shall furnish each individual worker who is separated that  
195 information as the department may by rule require, and shall furnish within 48 hours of the  
196 receipt of a request from the division a report of the earnings of any individual during the  
197 individual's base-period.

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

200 (c) (i) For each failure by an employer to conform to this Subsection (8) the division  
201 shall, unless good cause is shown [~~to the satisfaction of the division for the failure~~], assess a  
202 \$50 penalty if the filing was not more than 15 days late.

203 (ii) If the filing is more than 15 days late, the division shall assess an additional penalty  
204 of \$50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed \$250  
205 per filing.

206 (iii) The penalty is to be collected in the same manner as contributions due under this  
207 chapter.

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

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

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

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

218 (9) (a) (i) An employer liable for payments in lieu of contributions shall file  
219 Reimbursable Employment and Wage Reports.

220 (ii) The reports are due on the last day of the month that follows the end of each  
221 calendar quarter unless the division, after giving notice, changes the due date.

222 (iii) A report postmarked on or before the due date is considered timely.

223 (b) (i) Unless the employer can show good cause, the division shall assess a \$50  
224 penalty against an employer who does not file Reimbursable Employment and Wage Reports  
225 within the time limits set out in Subsection (9)(a) if the filing was not more than 15 days late.

226 (ii) If the filing is more than 15 days late, the division shall assess an additional penalty  
227 of \$50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed \$250  
228 per filing.

229 (iii) The division shall assess and collect the penalties referred to in this Subsection  
230 (9)(b) in the same manner as prescribed in Sections 35A-4-309 and 35A-4-311.

231 [~~9~~] (10) If a person liable to pay a contribution or benefit overpayment imposed by  
232 this chapter neglects or refuses to pay it after demand, the amount, including any interest,  
233 additional amount, addition to contributions, or assessable penalty, together with any additional  
234 accruable costs, shall be a lien in favor of the division upon all property and rights to property,  
235 whether real or personal belonging to the person.

236 [~~10~~] (11) (a) The lien imposed by Subsection [~~9~~] (10) arises at the time the  
237 assessment, as defined in the department rules, is made and continues until the liability for the  
238 amount assessed, or a judgment against the taxpayer arising out of the liability, is satisfied.

239 (b) The lien imposed by Subsection [~~9~~] (10) is not valid as against any purchaser,  
240 holder of a security interest, mechanics' lien holder, or judgment lien creditor until a warrant  
241 which meets the requirements of Subsection (5) has been filed with the clerk of the district  
242 court. For the purposes of this Subsection [~~10~~] (11)(b):

243 (i) "Judgment lien creditor" means a person who obtains a valid judgment of a court of  
244 record for recovery of specific property or a sum certain of money, and who in the case of a



245 recovery of money, has a perfected lien under the judgment on the property involved. A  
246 judgment lien does not include inchoate liens such as attachment or garnishment liens until  
247 they ripen into a judgment. A judgment lien does not include the determination or assessment  
248 of a quasi-judicial authority, such as a state or federal taxing authority.

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

254 (iii) "Person" means:

255 (A) an individual;

256 (B) a trust;

257 (C) an estate;

258 (D) a partnership;

259 (E) an association;

260 (F) a company;

261 (G) a limited liability company;

262 (H) a limited liability partnership; or

263 (I) a corporation.

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

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

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

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

273 Section 2. Section **35A-4-309** is amended to read:

274 **35A-4-309. Nonprofit organizations -- Contributions -- Payments in lieu of**  
275 **contributions.**

276 (1) Notwithstanding any other provisions of this chapter for payments by employers,  
277 benefits paid to employees of nonprofit organizations, as described in Section 501(c)(3) of the  
278 Internal Revenue Code, 26 U.S.C. 501(c)(3), that ~~[is]~~ are exempt from income tax under  
279 Section 501(a), shall be financed in accordance with the following provisions:

280 (a) Any nonprofit organization which is, or becomes, subject to this chapter ~~[on or after~~  
281 ~~January 1, 1972,]~~ shall pay contributions under ~~[the provisions of]~~ Section 35A-4-303, unless it  
282 elects in accordance with this Subsection (1) to pay to the division for the unemployment fund  
283 an amount equal to the amount of regular benefits and of 1/2 of the extended benefits paid that  
284 is attributable to service in the employ of ~~[such]~~ the nonprofit organization, to individuals for  
285 weeks of unemployment that begin during the effective period of this election.

286 (b) (i) Any nonprofit organization that is, or becomes, subject to this chapter ~~[on or~~  
287 ~~after January 1, 1972,]~~ may elect to become liable for payments in lieu of contributions for a  
288 period of not less than one contribution year beginning with the date on which the organization  
289 becomes subject to this chapter.

290 (ii) The nonprofit organization shall file a written notice of its election with the  
291 division not later than 30 days immediately following the date that the division gives notice to  
292 the organization that it is subject to this chapter.

293 (c) Any nonprofit organization that makes an election in accordance with Subsection  
294 (1)(b)(i) shall continue to be liable for payments in lieu of contributions until it files with the  
295 division a written notice terminating its election, not later than 30 days prior to the beginning of  
296 the contribution year for which this termination shall first be effective.

297 (d) (i) Any nonprofit organization that has been paying contributions under this chapter  
298 for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with  
299 the division, no later than 30 days prior to the beginning of any contribution year, a written  
300 notice of election to become liable for payments in lieu of contributions.

301 (ii) This election is not terminable by the organization for that year or the next year.

302 (e) The division may, for good cause, extend the period within which a notice of  
303 election or a notice of termination must be filed and may permit an election to be retroactive  
304 ~~[but not with respect to benefits paid prior to January 1, 1970].~~

305 (f) (i) The division, in accordance with department rules, shall notify each nonprofit  
306 organization of any determination that the division may make of the organization's status as an

307 employer, of the effective date of any election that it makes, and of any termination of this  
308 election.

309 (ii) These determinations shall be subject to reconsideration, appeal, and review in  
310 accordance with ~~[the provisions of]~~ Section 35A-4-508.

311 (2) Payments in lieu of contributions shall be made in accordance with ~~[the provisions~~  
312 ~~of]~~ this Subsection (2).

313 (a) At the end of each calendar month, or at the end of any other period as determined  
314 by the division, the division shall bill each nonprofit organization or group of ~~[such]~~ nonprofit  
315 organizations that has elected to make payments in lieu of contributions for an amount equal to  
316 the full amount of regular benefits plus 1/2 of the amount of extended benefits paid during this  
317 month or other prescribed period that is attributable to service in the employ of the  
318 organization.

319 ~~[(b) (i) Every nonprofit organization that has elected payments in lieu of contributions~~  
320 ~~may request permission to make payments under one of the methods provided in Subsection~~  
321 ~~(2)(b). The method selected becomes effective upon approval by the division. At the end of~~  
322 ~~each calendar month, or at the end of such other period as determined by the division, the~~  
323 ~~division shall bill each organization for an amount representing the organization's choice of the~~  
324 ~~following:]~~

325 ~~[(A) for 1972, 0.1% of its total payroll for 1971;]~~

326 ~~[(B) for years after 1972, the percentage of its total payroll for the immediately~~  
327 ~~preceding calendar year as determined by the division, based upon the average benefit costs~~  
328 ~~attributable to service in the employ of nonprofit organizations during the preceding calendar~~  
329 ~~year; or]~~

330 ~~[(C) for any organization that did not pay wages throughout the four calendar quarters~~  
331 ~~of the preceding calendar year, the percentage of its payroll during the year as determined by~~  
332 ~~the division:]~~

333 ~~[(ii) At the end of each contribution year, the division may modify the monthly or other~~  
334 ~~period's percentage of payroll thereafter payable by the nonprofit organization in order to~~  
335 ~~minimize excess or insufficient payments:]~~

336 ~~[(iii) At the end of each contribution year, the division shall determine whether the~~  
337 ~~total of payments for the year made by a nonprofit organization is less than, or in excess of, the~~

338 total amount of regular benefits plus 1/2 of the amount of extended benefits paid to individuals  
339 during the contribution year based on wages attributable to service in the employ of the  
340 organization. Each nonprofit organization whose total payments for the year are less than the  
341 amount so determined shall be liable for payment of the unpaid balance to the fund in  
342 accordance with Subsection (2)(e). If the total payments exceed the amount so determined for  
343 the contribution year, all or a part of the excess may, at the discretion of the division, be  
344 refunded from the fund or retained in the fund as part of the payments that may be required for  
345 the next contribution year.]

346 [(~~e~~)] (b) Payment of any bill rendered under Subsection (2)(a) [~~or (2)(b)~~] shall be made  
347 no later than 30 days after the bill was mailed to the last-known address of the nonprofit  
348 organization or was otherwise delivered to it, unless there has been an application for review  
349 and redetermination in accordance with Subsection (2)[(~~e~~)](d).

350 [(~~d~~)] (c) Payments made by any nonprofit organization under [~~the provisions of~~]  
351 Subsection (2) [~~shall~~] may not be deducted or deductible, in whole or in part, from the  
352 remuneration of individuals in the employ of the organization.

353 [(~~e~~)] (d) (i) The amount due specified in any bill from the division shall be conclusive  
354 on the organization unless, not later than 15 days after the bill was mailed to its last-known  
355 address or otherwise delivered to it, the organization files an application for redetermination by  
356 the division or an appeal to the Workforce Appeals Board, setting forth the grounds for the  
357 application or appeal.

358 (ii) The division shall promptly review and reconsider the amount due specified in the  
359 bill and shall thereafter issue a redetermination in any case in which the application for  
360 redetermination has been filed.

361 (iii) Any redetermination shall be conclusive on the organization unless, no later than  
362 15 days after the redetermination was mailed to its last known address or otherwise delivered to  
363 it, the organization files an appeal to a Workforce Appeals Board in accordance with Section  
364 35A-4-508 and Chapter 1, Part 3, Adjudicative Proceedings, setting forth the grounds for the  
365 appeal.

366 (iv) Proceedings on appeal to the Workforce Appeals Board from the amount of a bill  
367 rendered under Subsection (2) or a redetermination of the amount shall be in accordance with  
368 Section 35A-4-508.

369           ~~[(f)]~~ (e) Past due payments of amounts in lieu of contributions ~~[shall be]~~ are subject to  
370 the same interest and penalties that, under Subsection 35A-4-305(1), attach to past due  
371 contributions.

372           (3) If any nonprofit organization is delinquent in making payments in lieu of  
373 contributions as required under Subsection (2), the division may terminate the organization's  
374 election to make payment in lieu of contributions as of the beginning of the next contribution  
375 year, and ~~[this]~~ the termination ~~[shall be]~~ is effective for that and the next contribution year.

376           (4) (a) In the discretion of the division, any nonprofit organization that elects to  
377 become liable for payments in lieu of contributions shall be required, within 30 days after the  
378 effective date of its election, to deposit money with the division.

379           (b) The amount of the deposit shall be determined in accordance with ~~[the provisions~~  
380 ~~of]~~ this Subsection (4).

381           ~~[(a)]~~ (c) (i) The amount of the deposit required by this Subsection (4) shall be equal to  
382 1% of the organization's total wages paid for employment as defined in Section 35A-4-204 for  
383 the four calendar quarters immediately preceding the effective date of the election, or the  
384 biennial anniversary of the effective date of election, whichever date shall be most recent and  
385 applicable.

386           (ii) If the nonprofit organization did not pay wages in each of these four calendar  
387 quarters, the amount of the deposit ~~[shall be]~~ is as determined by the division.

388           ~~[(b)]~~ (d) (i) Any deposit of money in accordance with this Subsection (4) shall be  
389 retained by the division in an escrow account until liability under the election is terminated, at  
390 which time it shall be returned to the organization, less any deductions as provided in this  
391 Subsection (4).

392           (ii) The division may deduct from the money deposited under this Subsection (4) by a  
393 nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of  
394 contributions and any applicable interest and penalties provided for in Subsection (2)~~[(f)]~~(e).

395           (iii) The division shall require the organization within 30 days following any deduction  
396 from a money deposit under ~~[the provisions of]~~ this Subsection (4) to deposit sufficient  
397 additional money to make whole the organization's deposit at the prior level.

398           (iv) (A) The division may, at any time, review the adequacy of the deposit made by any  
399 organization.

400           (B) If, as a result of this review, the division determines that an adjustment is  
401 necessary, it shall require the organization to make additional deposit within 30 days of written  
402 notice of the division's determination or shall return to it any portion of the deposit the division  
403 no longer considers necessary, as considered appropriate.

404           ~~(e)~~ (e) If any nonprofit organization fails to make a deposit, or to increase or make  
405 whole the amount of a previously made deposit, as provided under this Subsection (4), the  
406 division may terminate the organization's election to make payments in lieu of contributions.

407           ~~(f)~~ (f) (i) Termination under Subsection (4)~~(e)~~(e) shall continue for not less than the  
408 four-consecutive-calendar-quarter period beginning with the quarter in which the termination  
409 becomes effective.

410           (ii) The division may extend for good cause the applicable filing, deposit, or  
411 adjustment period by not more than 60 days.

412           (5) (a) Each employer liable for payments in lieu of contributions shall pay to the  
413 division for the fund the amount of regular benefits plus the amount of 1/2 of extended benefits  
414 paid that are attributable to service in the employ of the employer.

415           (b) If benefits paid to an individual are based on wages paid by more than one  
416 employer and one or more of these employers are liable for payments in lieu of contributions,  
417 the amount payable to the fund by each employer liable for the payments shall be determined in  
418 accordance with ~~[the provisions of]~~ Subsection (5)~~(a)~~(c) or ~~(b)~~ (d).

419           ~~(a)~~ (c) If benefits paid to an individual are based on wages paid by one or more  
420 employers who are liable for payments in lieu of contributions and on wages paid by one or  
421 more employers who are liable for contributions, the amount of benefits payable by each  
422 employer that is liable for payments in lieu of contributions shall be an amount that bears the  
423 same ratio to the total benefits paid to the individual as the total base-period wages paid to the  
424 individual by ~~[such]~~ that employer bear to the total base-period wages paid to the individual by  
425 all of the individual's base-period employers.

426           ~~(b)~~ (d) If benefits paid to an individual are based on wages paid by two or more  
427 employers who are liable for payments in lieu of contributions, the amount of benefits payable  
428 by each ~~[such employer]~~ of those employers shall be an amount which bears the same ratio to  
429 the total benefits paid to the individual as the total base-period wages paid to the individual by  
430 the employer bear to the total base-period wages paid to the individual by all of the

431 individual's base-period employers.

432           (6) (a) (i) Two or more employers who have become liable for payments in lieu of  
433 contributions, in accordance with [~~the provisions of~~] this section and Subsection  
434 35A-4-204(2)(d), may file a joint application to the division for the establishment of a group  
435 account for the purpose of sharing the cost of benefits paid that are attributable to service in the  
436 employ of these employers.

437           (ii) Each application shall identify and authorize a group representative to act as the  
438 group's agent for the purpose of this Subsection (6).

439           (b) (i) Upon approval of the application, the division shall establish a group account for  
440 these employers effective as of the beginning of the calendar quarter in which it receives the  
441 application and shall notify the group's representative of the effective date of the account.

442           (ii) This account shall remain in effect for not less than two contribution years and  
443 thereafter until terminated at the discretion of the division or upon application by the group.

444           (c) Upon establishment of the account, each member of the group [~~shall be~~] is liable  
445 for payments in lieu of contributions with respect to each calendar quarter in the amount that  
446 bears the same ratio to the total benefits paid in such quarter attributable to service performed  
447 in the employ of all members of the group as the total wages paid for service in employment by  
448 such member in such quarter bear to the total wages paid during such quarter for service  
449 performed in the employ of all members of the group.

450           (d) The department shall prescribe rules, with respect to applications for establishment,  
451 maintenance, and termination of group accounts authorized by this Subsection (6), for addition  
452 of new members to, and withdrawal of active members from, these accounts, for the  
453 determination of the amounts that are payable under this Subsection (6) by members of the  
454 group, and the time and manner of these payments.

455           (7) (a) An employing unit that acquires a nonprofit organization or substantially all the  
456 assets of a nonprofit organization that has elected reimbursable coverage as defined in  
457 Subsection (1), in accordance with rules made by the commission, shall be given the subject  
458 date of the transferring nonprofit organization, provided the transferring nonprofit organization  
459 ceases to operate as an employing unit at the point of acquisition.

460           (b) The acquiring entity shall reimburse the Unemployment Compensation Fund for the  
461 transferring nonprofit organization's share of any unreimbursed benefits paid to former

462 employees of the transferring nonprofit organization.

463 Section 3. Section **35A-4-310** is amended to read:

464 **35A-4-310. Employing units.**

465 (1) (a) Any employing unit that is or becomes an employer subject to this chapter  
466 within any calendar quarter ~~[shall be]~~ is subject to this chapter during the ~~[whole of the]~~ entire  
467 calendar quarter.

468 (b) (i) No employing unit is liable as an employer under Section 35A-4-302 for any  
469 period prior to three calendar years immediately preceding the calendar year in which the  
470 division determines the employing unit to be an employer as defined in Section 35A-4-203.

471 (ii) This limitation does not apply if the division determines that the employing unit  
472 knowingly or willfully failed to report to the division to avoid liability for contributions  
473 imposed by this chapter.

474 ~~[(2) (a) Except as otherwise provided in Subsection (3), an employing unit shall cease  
475 to be an employer subject to this chapter only as of the first day of January of any calendar  
476 year, if it files with the division, prior to the last day of March of such year, a written  
477 application for termination of coverage, and the division finds that there was no calendar  
478 quarter within the preceding calendar year during which there were wages paid for employment  
479 amounting to a total of \$140 or more.]~~

480 ~~[(b)]~~ (2) Notwithstanding the other provisions of this section, the division may on its  
481 own initiative terminate coverage when it finds that an employing unit had no calendar quarter  
482 within the preceding calendar year during which there were wages paid for employment  
483 ~~[amounting to a total of \$140 or more]~~ and the division finds that during the preceding calendar  
484 year the employing unit did not meet any of the conditions for subjectivity to this chapter.

485 (3) (a) (i) An employing unit not otherwise subject to this chapter that files with the  
486 division its written election to become an employer subject to this chapter for not less than two  
487 calendar years shall, with the written approval of the election by the division, become an  
488 employer subject to this chapter to the same extent as all other employers, as of the date stated  
489 in the approval~~[-and]~~.

490 (ii) The employing unit shall cease to be subject to this chapter as of January 1 of any  
491 calendar year subsequent to ~~[such]~~ the two calendar years, referred to in Subsection (3)(a)(i)  
492 only if, at least 30 days prior to the first day of January, it has filed with the division a written



493 notice to the effect.

494 (b) (i) Services which do not constitute employment as defined in this chapter shall,  
495 upon the filing by the employing unit for whom the services are performed of a written election  
496 that services performed by individuals in its employ in one or more distinct establishments or  
497 places of work shall be considered to constitute employment for all the purposes of this chapter  
498 for not less than two calendar years, and upon the written approval of the election by the  
499 division, be considered to constitute employment subject from and after the date stated in  
500 [~~such~~] the approval[~~, and~~].

501 (ii) The services referred to in Subsection (3)(b)(i) shall cease to be considered to be  
502 employment subject to this chapter as of January 1 of any calendar year subsequent to the two  
503 calendar years only if, at least 30 days prior to the first day of January, the employing unit has  
504 filed with the division a written notice to that effect.

505 Section 4. Section **35A-4-405** is amended to read:

506 **35A-4-405. Ineligibility for benefits.**

507 [~~Am~~] Except as otherwise provided in Subsection (5), an individual is ineligible for  
508 benefits or for purposes of establishing a waiting period:

509 (1) (a) For the week in which the claimant left work voluntarily without good cause, if  
510 so found by the division, and for each week thereafter until the claimant has performed services  
511 in bona fide, covered employment and earned wages for those services equal to at least six  
512 times the claimant's weekly benefit amount.

513 (b) A claimant [~~shall~~] may not be denied eligibility for benefits if the claimant leaves  
514 work under circumstances [~~of such a nature that~~] where it would be contrary to equity and good  
515 conscience to impose a disqualification.

516 (c) Using available information from employers and the claimant, the division shall  
517 consider for the purposes of this chapter the reasonableness of the claimant's actions, and the  
518 extent to which the actions evidence a genuine continuing attachment to the labor market in  
519 reaching a determination of whether the ineligibility of a claimant is contrary to equity and  
520 good conscience.

521 (d) Notwithstanding any other subsection of this section, a claimant who has left work  
522 voluntarily to accompany, follow, or join the claimant's spouse to or in a new locality does so  
523 without good cause for purposes of Subsection (1).

524 (2) (a) For the week in which the claimant was discharged for just cause or for an act or  
525 omission in connection with employment, not constituting a crime, which is deliberate, willful,  
526 or wanton and adverse to the employer's rightful interest, if so found by the division, and  
527 thereafter until the claimant has earned an amount equal to at least six times the claimant's  
528 weekly benefit amount in bona fide covered employment.

529 (b) For the week in which ~~he~~ the claimant was discharged for dishonesty constituting  
530 a crime or any felony or class A misdemeanor in connection with ~~his~~ the claimant's work as  
531 shown by the facts, together with ~~his~~ the claimant's admission, or as shown by ~~his~~ the  
532 claimant's conviction of that crime in a court of competent jurisdiction and for the 51 next  
533 following weeks.

534 (c) Wage credits shall be deleted from the claimant's base period, and are not available  
535 for this or any subsequent claim for benefits.

536 (3) (a) (i) If the division finds that the claimant has failed without good cause to  
537 properly apply for available suitable work, to accept a referral to suitable work offered by the  
538 employment office, or to accept suitable work offered by an employer or the employment  
539 office.

540 (ii) The ineligibility continues until the claimant has performed services in bona fide  
541 covered employment and earned wages for the services in an amount equal to at least six times  
542 the claimant's weekly benefit amount.

543 (b) (i) A claimant ~~shall~~ may not be denied eligibility for benefits for failure to apply,  
544 accept referral, or accept available suitable work under circumstances ~~[of such a nature that]~~  
545 where it would be contrary to equity and good conscience to impose a disqualification.

546 (ii) The division shall consider the purposes of this chapter, the reasonableness of the  
547 claimant's actions, and the extent to which the actions evidence a genuine continuing  
548 attachment to the labor market in reaching a determination of whether the ineligibility of a  
549 claimant is contrary to equity and good conscience.

550 (c) In determining whether ~~[or not]~~ work is suitable for an individual, the division shall  
551 consider the:

- 552 (i) degree of risk involved to his health, safety, and morals;  
553 (ii) individual's physical fitness and prior training;  
554 (iii) individual's prior earnings and experience;

- 555 (iv) individual's length of unemployment;
- 556 (v) prospects for securing local work in his customary occupation;
- 557 (vi) wages for similar work in the locality; and
- 558 (vii) distance of the available work from his residence.
- 559 (d) Prior earnings shall be considered on the basis of all four quarters used in
- 560 establishing eligibility and not just the earnings from the most recent employer. The division
- 561 shall be more prone to find work as suitable the longer the claimant has been unemployed and
- 562 the less likely the prospects are to secure local work in his customary occupation.
- 563 (e) Notwithstanding any other provision of this chapter, no work is suitable, and
- 564 benefits ~~shall~~ may not be denied under this chapter to any otherwise eligible individual for
- 565 refusing to accept new work under any of the following conditions:
- 566 (i) if the position offered is vacant due directly to a strike, lockout, or other labor
- 567 dispute;
- 568 (ii) if the wages, hours, or other conditions of the work offered are substantially less
- 569 favorable to the individual than those prevailing for similar work in the locality; or
- 570 (iii) if as a condition of being employed the individual would be required to join a
- 571 company union or to resign from or refrain from joining any bona fide labor organization.
- 572 (4) For any week in which the division finds that ~~his~~ the claimant's unemployment is
- 573 due to a stoppage of work that exists because of a strike involving ~~his~~ the claimant's grade,
- 574 class, or group of workers at the factory or establishment at which ~~he~~ the claimant is or was
- 575 last employed.
- 576 (a) If the division finds that a strike has been fomented by a worker of any employer,
- 577 none of the workers of the grade, class, or group of workers of the individual who is found to
- 578 be a party to the plan, or agreement to foment a strike, shall be eligible for benefits. However,
- 579 if the division finds that the strike is caused by the failure or refusal of any employer to
- 580 conform to ~~the provisions of~~ any law of the state or of the United States pertaining to hours,
- 581 wages, or other conditions of work, the strike ~~shall~~ may not render the workers ineligible for
- 582 benefits.
- 583 (b) If the division finds that the employer, ~~his~~ the employer's agent or representative
- 584 has conspired, planned, or agreed with any of ~~his~~ the employer's workers, their agents or
- 585 representatives to foment a strike, that strike ~~shall~~ may not render the workers ineligible for

586 benefits.

587 (c) A worker may receive benefits if, subsequent to ~~[his]~~ the worker's unemployment  
588 because of a strike as defined in this Subsection (4), ~~[he]~~ the worker has obtained employment  
589 and has been paid wages of not less than the amount specified in Subsection 35A-4-401(4) and  
590 has worked as specified in Subsection 35A-4-403(1)(f). During the existence of the stoppage  
591 of work due to this strike the wages of the worker used for the determination of his benefit  
592 rights ~~[shall]~~ may not include any wages ~~[he]~~ the worker earned from the employer involved in  
593 the strike.

594 (5) (a) For each week with respect to which the claimant willfully made a false  
595 statement or representation or knowingly failed to report a material fact to obtain any benefit  
596 under the provisions of this chapter, and an additional 13 weeks for the first week the statement  
597 or representation was made or fact withheld and six weeks for each week thereafter; the  
598 additional weeks not to exceed 49 weeks.

599 (b) The additional period shall commence on the Sunday following the issuance of a  
600 determination finding the claimant in violation of this Subsection (5).

601 (c) (i) Each ~~[individual]~~ claimant found in violation of this Subsection (5) shall repay  
602 to the division the ~~[amount of benefits the claimant actually received]~~ overpayment and, as a  
603 civil penalty, an amount equal to the ~~[benefits the claimant received by direct reason of his~~  
604 ~~fraud]~~ overpayment.

605 (ii) The overpayment is the amount of benefits the claimant received by direct reason  
606 of fraud.

607 (iii) The penalty amount shall be regarded as any other penalty under this chapter.

608 (iv) These amounts shall be collectible by civil action or warrant in the manner  
609 provided in Subsections 35A-4-305(3) and (5).

610 (d) A claimant is ineligible for future benefits or waiting week credit, and any wage  
611 credits earned by the claimant shall be unavailable for purposes of paying benefits, if any  
612 amount owed under this Subsection (5) remains unpaid.

613 (e) Determinations under this Subsection (5) shall be appealable in the manner  
614 provided by this chapter for appeals from other benefit determinations.

615 (f) If the fraud determination is based solely on unreported or under reported work or  
616 earnings, or both, and the claimant would have been eligible for benefits if the work or

617 earnings, or both, had been correctly reported, the individual does not lose eligibility because of  
618 the misreporting but is liable for the overpayment and the penalties in Subsection (5)(c).

619 (6) For any week with respect to which or a part of which ~~he~~ the claimant has  
620 received or is seeking unemployment benefits under an unemployment compensation law of  
621 another state or the United States. If the appropriate agency of the other state or of the United  
622 States finally determines that ~~he~~ the claimant is not entitled to those unemployment benefits,  
623 this disqualification does not apply.

624 (7) (a) For any week with respect to which ~~he~~ the claimant is receiving, has received,  
625 or is entitled to receive remuneration in the form of:

626 (i) wages in lieu of notice, or a dismissal or separation payment; or

627 (ii) accrued vacation or terminal leave payment.

628 (b) If the remuneration is less than the benefits that would otherwise be due, ~~he~~ the  
629 claimant is entitled to receive for that week, if otherwise eligible, benefits reduced as provided  
630 in Subsection 35A-4-401(3).

631 (8) (a) For any week in which the individual's benefits are based on service for an  
632 educational institution in an instructional, research, or principal administrative capacity and  
633 that begins during the period between two successive academic years, or during a similar  
634 period between two regular terms, whether or not successive, or during a period of paid  
635 sabbatical leave provided for in the individual's contract if the individual performs services in  
636 the first of those academic years or terms and if there is a contract or reasonable assurance that  
637 the individual will perform services in that capacity for an educational institution in the second  
638 of the academic years or terms.

639 (b) (i) For any week in which the individual's benefits are based on service in any other  
640 capacity for an educational institution, and that week begins during a period between two  
641 successive academic years or terms if the individual performs those services in the first of the  
642 academic years or terms and there is a reasonable assurance that the individual will perform the  
643 services in the second of the academic years or terms.

644 (ii) If compensation is denied to any individual under this Subsection (8) and the  
645 individual was not offered an opportunity to perform the services for the educational institution  
646 for the second of the academic years or terms, the individual shall be entitled to a retroactive  
647 payment of compensation for each week for which the individual filed a timely claim for

648 compensation and for which compensation was denied solely by reason of this Subsection (8).

649 (c) With respect to any services described in Subsection (8)(a) or (b), compensation  
650 payable on the basis of those services shall be denied to an individual for any week that  
651 commences during an established and customary vacation period or holiday recess if the  
652 individual performs the services in the period immediately before the vacation period or  
653 holiday recess, and there is a reasonable assurance that the individual will perform the services  
654 in the period immediately following the vacation period or holiday recess.

655 (d) (i) With respect to services described in Subsection (8)(a) or (b), compensation  
656 payable on the basis of those services as provided in Subsection (8)(a), (b), or (c) shall be  
657 denied to an individual who performed those services in an educational institution while in the  
658 employ of an educational service agency.

659 (ii) For purposes of this Subsection (8)(d), "educational service agency" means a  
660 governmental agency or entity established and operated exclusively for the purpose of  
661 providing the services described in Subsection (8)(a) or (b) to an educational institution.

662 (e) Benefits based on service in employment, defined in Subsections 35A-4-204(2)(d)  
663 and (e) are payable in the same amount, on the same terms and subject to the same conditions  
664 as compensation payable on the basis of other service subject to this chapter.

665 (9) For any week that commences during the period between two successive sport  
666 seasons or similar periods if the individual performed any services, substantially all of which  
667 consists of participating in sports or athletic events or training or preparing to participate in the  
668 first of those seasons or similar periods and there is a reasonable assurance that individual will  
669 perform those services in the later of the seasons or similar periods.

670 (10) (a) For any week in which the benefits are based upon services performed by an  
671 alien, unless the alien is an individual who has been lawfully admitted for permanent residence  
672 at the time the services were performed, was lawfully present for purposes of performing the  
673 services or, was permanently residing in the United States under color of law at the time the  
674 services were performed, including an alien who is lawfully present in the United States as a  
675 result of the application of Subsection 212(d)(5) of the Immigration and Nationality Act, 8  
676 U.S.C. 1182(d)(5)(A).

677 (b) Any data or information required of individuals applying for benefits to determine  
678 whether benefits are not payable to them because of their alien status shall be uniformly

679 required from all applicants for benefits.

680 (c) In the case of an individual whose application for benefits would otherwise be  
681 approved, no determination that benefits to the individual are not payable because of his alien  
682 status shall be made except upon a preponderance of the evidence.

683 Section 5. Section **78-23-10** is amended to read:

684 **78-23-10. Allowable claims against exempt property.**

685 (1) Notwithstanding other provisions of this chapter, but subject to the provisions of  
686 the Utah Uniform Consumer Credit Code:

687 (a) A creditor may levy against exempt property of any kind, except unemployment  
688 benefits, to enforce a claim for:

689 (i) alimony, support, or maintenance;

690 (ii) unpaid earnings of up to one month's compensation or the full-time equivalent of  
691 one month's compensation for personal services of an employee; or

692 (iii) state or local taxes.

693 (b) The only deductions that can be withheld from unemployment benefits are those  
694 listed in Section 35A-4-103.

695 [~~(b)~~] (c) A creditor may levy against exempt property to enforce a claim for:

696 (i) the purchase price of the property or a loan made for the purpose of enabling an  
697 individual to purchase the specific property used for that purpose;

698 (ii) labor or materials furnished to make, repair, improve, preserve, store, or transport  
699 the specific property; and

700 (iii) a special assessment imposed to defray costs of a public improvement benefiting  
701 the property.

702 (2) This section does not affect the right to enforce any statutory lien or security  
703 interest in exempt property.

704 Section 6. **Effective date.**

705 This bill takes effect on July 1, 2004.

**Legislative Review Note**  
**as of 10-15-03 4:03 PM**

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

**Office of Legislative Research and General Counsel**

**Interim Committee Note**  
**as of 12-09-03 9:04 AM**

The Workforce Services and Community and Economic Development Interim Committee recommended this bill.