

1 **UNEMPLOYMENT INSURANCE AMENDMENTS**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Howard A. Stephenson**

5

LONG TITLE

6 **General Description:**

7 This bill provides the manner in which an employer's unemployment insurance social
8 contribution rate is to be calculated and the manner in which an employer's overall
9 unemployment insurance contribution rate is to be determined.
10

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ provides the manner in which an employer's unemployment insurance social
14 contribution rate is to be calculated on or after January 1, 2005;
- 15 ▶ provides the manner in which an employer's overall unemployment insurance
16 contribution rate is to be determined on or after January 1, 2005;
- 17 ▶ ties an employee's weekly unemployment benefit amount to the actual reserve fund
18 balance in a benefit year; and
- 19 ▶ provides that Reed Act monies received from the federal government may not be
20 considered in establishing the reserve factor for the purpose of determining
21 employers' contribution rates.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



28 **35A-4-303**, as last amended by Chapter 292, Laws of Utah 2000

29 **35A-4-401**, as last amended by Chapter 292, Laws of Utah 2000



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

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

33 **35A-4-303. Determination of contribution rates.**

34 (1) (a) On or before January 1 of each year beginning January 1, 1985, an employer's
35 basic contribution rate will be the same as the employer's benefit ratio, determined by dividing
36 the total benefit costs charged back to an employer during the immediately preceding four
37 fiscal years by the total taxable wages of the employer for the same time period, calculated to
38 four decimal places, disregarding the remaining fraction, if any.

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

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

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

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

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

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

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

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

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

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

59 (ii) calculated by dividing all social costs as defined in Subsection 35A-4-307(1)
60 applicable to the preceding four fiscal years by the total taxable wages of all employers subject
61 to contributions for the same time period, calculated to four decimal places, disregarding any
62 remaining fraction, for any rate year in which the reserve factor established in Subsection (3)(c)
63 is greater than 1.0000.

64 (d) On or after January 1, 2005, the social contribution rate shall be calculated by
65 dividing all social costs as defined in Subsection 35-4-307(1) applicable to the preceding four
66 fiscal years by the total taxable wages of all employers subject to contributions for the same
67 period, calculated to four decimal places, disregarding any remaining fraction.

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

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

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

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

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

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

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

79 (B) multiplying the amount under Subsection (3)(a)(ii)(A) by total wages of the fiscal
80 year ending prior to the computation date, rounded to the nearest dollar;

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

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

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

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

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

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

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

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

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

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

96 (iii) The reserve factor is 2.0000 if:

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

98 (I) insolvent; or

99 (II) negative; or

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

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

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

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

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

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

112 (ii) the reserve factor shall be 1.0000 if the actual reserve fund balance as of June 30
113 preceding the computation date is determined to be an adequate reserve;

114 (iii) the reserve factor will be set between 0.5000 and 1.0000 if the actual reserve fund
115 balance as of June 30 preceding the computation date is greater than the adequate reserve;

116 (iv) the reserve factor will be set between 1.0000 and 1.5000 if the actual reserve fund
117 balance as of June 30 prior to the computation date is less than the adequate reserve;

118 (v) if the actual reserve fund balance as of June 30 preceding the computation date is
119 insolvent or negative or if there is an outstanding loan from the Federal Unemployment

120 Account, the reserve factor will be set at 2.0000 until the actual reserve fund balance as of June

121 30 preceding the computation date is determined to be an adequate reserve; [~~and~~]

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

123 (vii) Reed Act monies received by the state from the federal government may not be
124 considered in establishing the reserve factor under this section.

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

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

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

144 (d) On or after January 1, 2005, an employer's overall contribution rate is the
145 employer's basic contribution rate multiplied by the reserve factor established according to
146 Subsection (3)(c), calculated to four decimal places, disregarding the remaining fraction, plus
147 the social contribution rate established according to Subsection (2)(d), and calculated to three
148 decimal places, disregarding the remaining fraction, but not more than a maximum overall
149 contribution rate of 8.0%, plus the applicable social contribution rate and not less than 1.1% for
150 new employers.

151 [~~(d)~~] (e) The overall contribution rate does not include the addition of any penalty

152 applicable to an employer as a result of delinquency in the payment of contributions as
153 provided in Subsection (10).

154 (5) Except as provided in Subsection (10), each new employer shall pay a contribution
155 rate based on the average benefit cost rate experienced by employers of the major industry as
156 defined by department rule to which the new employer belongs, the basic contribution rate to
157 be determined as follows:

158 (a) Except as provided in Subsection (5)(b), on or before January 1 of each year, the
159 basic contribution rate to be used in computing the employer's overall contribution rate is the
160 benefit cost rate which is the greater of:

161 (i) the amount calculated by dividing the total benefit costs charged back to both active
162 and inactive employers of the same major industry for the last two fiscal years by the total
163 taxable wages paid by those employers that were paid during the same time period, computed
164 to four decimal places, disregarding the remaining fraction, if any; or

165 (ii) 1%.

166 (b) If the major industrial classification assigned to a new employer is an industry for
167 which a benefit cost rate does not exist because the industry has not operated in the state or has
168 not been covered under this chapter, the employer's basic contribution rate shall be 5.4%. This
169 basic contribution rate is used in computing the employer's overall contribution rate.

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

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

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

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

181 (i) its normal production has been stopped;

182 (ii) a majority of its workers have been laid off; and

183 (iii) the services of remaining employees are devoted to the protection and disposition
184 of assets and inventory or administrative duties.

185 (7) Notwithstanding any other provision of this chapter, and except as provided in
186 Subsection (8), if an employing unit that moves into this state is declared to be a qualified
187 employer because it has sufficient payroll and benefit cost experience under another state, a
188 rate shall be computed on the same basis as a rate is computed for all other employers subject
189 to this chapter if that unit furnishes adequate records on which to compute the rate.

190 (8) An employer who begins to operate in this state after having operated in another
191 state shall be assigned the maximum overall contribution rate until the employer acquires
192 sufficient experience in this state to be considered a "qualified employer" if the employer is:

193 (a) regularly engaged as a contractor in the construction, improvement, or repair of
194 buildings, roads, or other structures on lands;

195 (b) generally regarded as being a construction contractor or a subcontractor specialized
196 in some aspect of construction; or

197 (c) required to have a contractor's license or similar qualification under Title 58,
198 Chapter 55, Utah Construction Trades Licensing Act, or the equivalent in laws of another state.

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

202 (i) for purposes of determining and establishing the acquiring party's qualifications for
203 an experience rating classification, the payrolls of both employers during the qualifying period
204 shall be jointly considered in determining the period of liability with respect to:

205 (A) the filing of contribution reports;

206 (B) the payment of contributions; and

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

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

210 (b) Any employing unit or prospective employing unit that acquires the payroll
211 experience of an employer shall, for all purposes of this chapter, be an employer as of the date
212 of acquisition.

213 (c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in

214 Subsection (9)(a), is divested of the employer's payroll experience by transferring all of the
215 employer's business to another and by ceasing operations as of the date of the transfer, the
216 transferring employer shall cease to be an employer, as defined by this chapter, as of the date of
217 transfer.

218 (10) (a) A rate of less than 8% shall be effective January 1 of any contribution year on
219 or after January 1, 1985, but before January 1, 1988, and a rate of less than the maximum
220 overall contribution rate on or after January 1, 1988, only with respect to new employers and to
221 those qualified employers who, except for amounts due under division determinations that have
222 not become final, paid all contributions prescribed by the division with respect to the four
223 consecutive calendar quarters in the fiscal year immediately preceding the computation date on
224 or after January 1, 1985.

225 (b) Notwithstanding Subsections (1), (5), (6), (7), and (9), on or after January 1, 1988,
226 any employer who fails to pay all contributions prescribed by the division with respect to the
227 four consecutive calendar quarters in the fiscal year immediately preceding the computation
228 date, except for amounts due under determinations that have not become final, shall pay a
229 contribution rate equal to the overall contribution rate determined under the experience rating
230 provisions of this chapter, plus a surcharge of 1% of wages.

231 (c) Any employer who pays all required contributions shall, for the current contribution
232 year, be assigned a rate based upon the employer's own experience as provided under the
233 experience rating provisions of this chapter effective the first day of the calendar quarter in
234 which the payment was made.

235 (d) Delinquency in filing contribution reports shall not be the basis for denial of a rate
236 less than the maximum contribution rate.

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

238 **35A-4-401. Benefits -- Weekly benefit amount -- Computation of benefits --**
239 **Department to prescribe rules -- Notification of benefits -- Bonuses.**

240 (1) (a) Benefits are payable from the fund to any individual who is or becomes
241 unemployed and eligible for benefits.

242 (b) All benefits shall be paid through the employment offices or other agencies
243 designated by the division in accordance with the rules the department may prescribe.

244 (2) (a) An individual's "weekly benefit amount" is an amount equal to 1/26th,

245 disregarding any fraction of \$1, of his total wages for insured work paid during that quarter of
246 his base period in which the total wages were highest.

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

248 (i) With respect to any individual whose benefit year commences on or after July 1,
249 1984, but prior to January 3, 1988, 60% of the "insured average weekly wage," disregarding
250 any fraction of \$1, constitutes the maximum "weekly benefit amount" payable.

251 (ii) With respect to any individual whose benefit year commences on or after January
252 3, 1988, 60% of the "insured average fiscal year weekly wage" during the preceding fiscal year,
253 e.g., fiscal year 1987 for individuals establishing benefit years in 1988, disregarding any
254 fraction of \$1, constitutes the maximum "weekly benefit amount" payable.

255 (iii) With respect to any individual whose benefit year commences on or after January
256 1, 2001, 65% of the "insured average fiscal year weekly wage" during the preceding fiscal year,
257 e.g., fiscal year 2000 for individuals establishing benefit years in 2001, disregarding any
258 fraction of \$1, constitutes the maximum "weekly benefit amount" payable.

259 (iv) With respect to an individual whose benefit year commences on or after January 1,
260 2005, if the actual reserve fund balance on June 30 of the year preceding the benefit year
261 beginning January 2 is:

262 (A) greater than or equal to 100% of the maximum adequate reserve fund balance as
263 defined in Subsection 35A-4-303(3)(a)(iii), the benefit amount shall be 65% of the insured
264 average fiscal year weekly wage;

265 (B) less than 100% of the maximum adequate reserve fund balance but greater than or
266 equal to 100% of the minimum adequate reserve fund balance, the benefit amount shall be 62%
267 of the insured average fiscal year weekly wage; and

268 (C) less than 100% of the minimum adequate reserve fund balance as defined in
269 Subsection 35A-4-303(3)(a)(ii), the benefit amount shall be 60% of the insured average fiscal
270 year weekly wage.

271 (c) The "weekly benefit amount" of an individual who is receiving, or who is eligible
272 to receive, based upon the individual's previous employment, a pension, which includes a
273 governmental, Social Security, or other pension, retirement or disability retirement pay, under a
274 plan maintained or contributed to by a base-period employer is the "weekly benefit amount"
275 which is computed under this section less 100% of such retirement benefits, that are

276 attributable to a week, disregarding any fraction of \$1.

277 (d) (i) The weekly benefit amount and the potential benefits payable to an individual
278 who, subsequent to the commencement of his benefit year, becomes or is determined to be
279 eligible to receive retirement benefits or increased retirement benefits, shall be recomputed
280 effective with the first calendar week during his benefit year with respect to which he is eligible
281 to receive retirement benefits or increased retirement benefits. The new weekly benefit amount
282 shall be determined under this Subsection (2).

283 (ii) As recomputed the total benefits potentially payable, commencing with the
284 effective date of the recomputation, shall be equal to the recomputed weekly benefit amount
285 times the quotient obtained by dividing the potential benefits unpaid prior to the recomputation
286 by the initial weekly benefit amount, disregarding fractions.

287 (3) Each eligible individual who is unemployed in any week shall be paid with respect
288 to that week a benefit in an amount equal to the claimant's weekly benefit amount less that part
289 of the claimant's wage payable to the claimant with respect to that week that is in excess of
290 30% of the claimant's weekly benefit amount. The resulting benefit payable shall disregard any
291 fraction of \$1. For the purpose of this Subsection (3) "wages" does not include grants, earned
292 or otherwise, paid to the claimant as public assistance.

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

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

299 (5) (a) Notwithstanding any other provision of this chapter, the department in its
300 discretion may by rule prescribe:

301 (i) that the existence of unemployment, eligibility for benefits, and the amount of
302 benefits payable shall be determined in the case of any otherwise eligible claimant who, within
303 a week or other period of unemployment, is separated from or secures work on a regular
304 attachment basis for that portion of the week or other period of unemployment occurring before
305 or after separation from or securing of work; and

306 (ii) in the case of individuals working on a regular attachment basis, eligibility for

307 benefits and the amount of benefits payable for periods of unemployment longer than a week.

308 (b) The rules promulgated shall be reasonably calculated to secure general results
309 substantially similar to those provided by this chapter with respect to weeks of unemployment.

310 (6) The division shall, in all cases involving actual or potential disqualifying issues and
311 prior to the payment of benefits to an eligible individual, notify the individual's most recent
312 employer of the eligibility determination.

313 (7) Upon written request of an employee made under rules of the department, all
314 remuneration for insured work paid to an employee during his base period in the form of a
315 bonus or lump-sum payment shall, for benefit purposes, be apportioned to the calendar quarters
316 in which the remuneration was earned.

Legislative Review Note

as of 2-17-04 7:52 AM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0202

Unemployment Insurance Amendments

20-Feb-04

10:13 AM

State Impact

This bill will reduce Unemployment Insurance Benefits paid out by \$5,500,000 in FY05 and by \$4,600,000 in FY06.

Individual and Business Impact

Unemployment Insurance claimants' maximum weekly benefits will be reduced about \$30 per week (current maximum weekly benefit amount is \$377). Employers will pay higher taxes at some time in the future.

Office of the Legislative Fiscal Analyst