

**RESIDENTIAL MORTGAGES PRACTICES -
EMPLOYMENT SECURITY REVISIONS**

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Mark W. Walker

LONG TITLE

General Description:

This bill modifies the Employment Security Act.

Highlighted Provisions:

This bill:

- ▶ exempts from the Employment Security Act an individual:
 - holding a license or registration under the Utah Residential Mortgage Practices Act; and
 - whose services are paid for by commission; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

35A-4-205, as last amended by Chapter 298, Laws of Utah 2003

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

Section 1. Section **35A-4-205** is amended to read:

35A-4-205. Exempt employment.



(1) If the services are also exempted under the Federal Unemployment Tax Act, as amended, employment does not include:

(a) service performed prior to January 1, 1973, in the employ of a state, except as provided in Subsection 35A-4-204(2)(d);

(b) service performed in the employ of a political subdivision of a state, except as provided in Subsection 35A-4-204(2)(d);

(c) service performed in the employ of the United States Government or an instrumentality of the United States immune under the United States Constitution from the contributions imposed by this chapter, except that, to the extent that the Congress of the United States shall permit, this chapter shall apply to those instrumentalities and to services performed for the instrumentalities to the same extent as to all other employers, employing units, individuals and services; provided, that if this state is not certified for any year by the Secretary of Labor under Section 3304 of the Federal Internal Revenue Code of 1954, 26 U.S.C. 3304, the payments required of the instrumentalities with respect to that year shall be refunded by the division from the fund in the same manner and within the same period as is provided in Subsection 35A-4-306(5) with respect to contributions erroneously collected;

(d) service performed after June 30, 1939, as an employee representative as defined in the Railroad Unemployment Insurance Act, 45 U.S.C. 351 et seq., and service performed after June 30, 1939, for an employer as defined in that act except that if the division determines that any employing unit which is principally engaged in activities not included in those definitions constitutes such an employer only to the extent of an identifiable and separable portion of its activities, this exemption applies only to services performed for the identifiable and separable portion of its activities;

(e) agricultural labor as defined in Section 35A-4-206;

(f) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in Subsection 35A-4-204(2)(k);

(g) (i) service performed in the employ of a school, college, or university, if the service is performed:

(A) by a student who is enrolled and is regularly attending classes at that school, college, or university; or

(B) by the spouse of the student, if the spouse is advised, at the time the spouse

commences to perform that service, that the employment of that spouse to perform that service is provided under a program to provide financial assistance to the student by the school, college, or university, and that the employment will not be covered by any program of unemployment insurance;

(ii) service performed by an individual who is enrolled at a nonprofit or public educational institution, that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at the institution, that combines academic instruction with work experience, if the service is an integral part of the program and the institution has so certified to the employer, but this Subsection (1) does not apply to service performed in a program established for or on behalf of an employer or group of employers; or

(iii) service performed in the employ of a hospital, if the service is performed by a patient of the hospital;

(h) service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of the child's parent;

(i) for the purposes of Subsections 35A-4-204(2)(d) and (e), service performed:

(i) in the employ of:

(A) a church or convention or association of churches; or

(B) an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(ii) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of duties required by the order;

(iii) after December 31, 1977, in the employ of a governmental entity referred to in Subsection 35A-4-204(2) if the service is performed by an individual in the exercise of the individual's duties:

(A) as an elected official;

(B) as a member of a legislative body or the judiciary of the state or its political

subdivisions;

(C) as a member of the National Guard or Air National Guard;

(D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

(E) in an advisory position or a policymaking position the performance of the duties of which ordinarily does not require more than eight hours per week;

(iv) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, injury, or providing a remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving that rehabilitation or remunerative work;

(v) as part of an unemployment work-relief or work-training program, assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision of the state, by an individual receiving the work-relief or work-training; and

(vi) prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution;

(j) casual labor not in the course of the employing unit's trade or business;

(k) service performed in any calendar quarter in the employ of any organization exempt from income tax under Subsection 501(a), Internal Revenue Code, other than an organization described in Subsection 401(a) or Section 521 Internal Revenue Code, if the remuneration for the service is less than \$50;

(l) service is performed in the employ of a foreign government, including service as a consular or other officer, other employee, or a nondiplomatic representative;

(m) service performed in the employ of an instrumentality wholly owned by a foreign government:

(i) if the service is of a character similar to that performed in foreign countries by employees of the United States government or its instrumentalities; and

(ii) if the division finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government with respect to whose instrumentality exemption is claimed grants an equivalent exemption with respect to similar

service performed in the foreign country by employees of the United States government and its instrumentalities;

(n) service performed by an individual for a person as an insurance producer or as an insurance solicitor, if all the service performed by the individual for that person is performed for remuneration solely by way of commission;

(o) service performed by an individual in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(p) service covered by an arrangement between the division and the agency charged with the administration of any other state or federal unemployment compensation law under which all services performed by an individual for an employing unit during the period covered by the employing unit's duly approved election, are considered to be performed entirely within the agency's state or under the federal law;

(q) service performed by lessees engaged in metal mining under lease agreements, unless the individual lease agreement, or the practice in actual operation under the agreement, is such as would constitute the lessees' employees of the lessor at common law;

(r) service performed by an individual for a person as a licensed real estate agent or salesman if all the service performed by the individual for that person is performed for remuneration solely by way of commission;

(s) service performed by an individual for a person as a licensed securities agent or salesman, registered representative, if the service performed by the individual for that person is performed for remuneration solely by way of commission;

(t) services as an outside salesman paid solely by way of commission if the services were performed outside of all places of business of the enterprises for which the services are performed except:

(i) as provided in Subsection 35A-4-204(2)(i); or

(ii) if the services would constitute employment at common law;

(u) service performed by an individual as a telephone survey conductor or pollster if:

(i) the individual does not perform the service on the principal's premises; and

(ii) the individual is paid for the service solely on a piece-rate or commission basis;

[or]

152 (v) service performed by a nurse licensed or registered under Title 58, Chapter 31b,
153 Nurse Practice Act, if:
154 (i) the service of the nurse is performed in the home of the patient;
155 (ii) substantially all of the nurse's compensation for the service is from health insurance
156 proceeds; and
157 (iii) no compensation or fee for the service is paid to any agency or company as a
158 business furnishing nursing services[:]; or
159 (w) service performed by an individual:
160 (i) who holds a license or registration under Title 61, Chapter 2c, Utah Residential
161 Mortgage Practices Act; and
162 (ii) for a person if all the service performed by the individual described in this
163 Subsection (1)(w) for the person is performed for remuneration solely by way of commission.
164 (2) (a) "Included and excluded service" means if the services performed during 1/2 or
165 more of any pay period by an individual for the person employing the individual constitute
166 employment, all the services of the individual for the period are considered to be employment;
167 but if the services performed during more than half of any such pay period by an individual for
168 the person employing the individual do not constitute employment, then none of the services of
169 the individual for the period are considered to be employment.
170 (b) As used in this Subsection (2), "pay period" means a period of not more than 31
171 consecutive days for which payment of remuneration is ordinarily made to the individual by the
172 person employing the individual.

Legislative Review Note**as of 1-12-05 9:05 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel