



28 This bill takes effect on July 1, 2006.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **35A-4-202**, as last amended by Chapter 260, Laws of Utah 2003

32 **35A-4-204**, as last amended by Chapter 12, Laws of Utah 2005

33 **35A-4-205**, as last amended by Chapter 298, Laws of Utah 2003

34 **35A-4-305**, as last amended by Chapter 7, Laws of Utah 2004

35 **35A-4-309**, as last amended by Chapter 7, Laws of Utah 2004

36 **35A-4-501**, as last amended by Chapter 375, Laws of Utah 1997



37  
38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **35A-4-202** is amended to read:

40 **35A-4-202. Employing units.**

41 As used in this chapter:

42 (1) (a) "Employing unit" means:

43 (i) any individual or type of organization that has or subsequent to January 1, 1935, had  
44 one or more individuals performing services for it within the state including any:

45 (A) partnership;

46 (B) association;

47 (C) trust;

48 (D) estate;

49 (E) joint stock company;

50 (F) insurance company;

51 (G) limited liability company;

52 (H) limited liability partnership;

53 (I) joint venture;

54 (J) corporation, whether domestic or foreign;

55 (K) the receiver, trustee in bankruptcy, trustee or successor of any entity listed in

56 Subsections (1)(a)(i)(A) through (J);

57 (L) the legal representative of a deceased person; or

58 (M) a tribal unit; or

59 (ii) any properly and legally registered professional employer organization, commonly  
60 known as an employee leasing company, as defined by Section 58-59-102.

61 (b) The department may adopt rules specific to [~~employee leasing companies~~] a  
62 professional employer organization pursuant to Title 63, Chapter 46a, Utah Administrative  
63 Rulemaking Act.

64 (c) All individuals performing services within this state for any employing unit that  
65 maintains two or more separate establishments within this state are considered to be  
66 performing services for a single employing unit for all the purposes of this chapter.

67 (d) Each individual employed to perform or to assist in performing the work of any  
68 person in the service of an employing unit is considered to be engaged by the employing unit  
69 for all the purposes of this chapter whether the individual was hired or paid directly by the  
70 employing unit or by the person, provided the employing unit had actual or constructive  
71 knowledge of the work.

72 (2) "Hospital" means an institution that is licensed, certified, or approved by the  
73 Department of Health as a hospital.

74 (3) "Institution of higher education," for the purposes of this section, means an  
75 educational institution that:

76 (a) (i) admits, as regular students only, individuals having a certificate of graduation  
77 from a high school or the recognized equivalent of a certificate;

78 (ii) is legally authorized in this state to provide a program of education beyond high  
79 school;

80 (iii) provides:

81 (A) an educational program for which it awards a bachelor's or higher degree;

82 (B) a program that is acceptable for full credit toward a bachelor's or higher degree;

83 (C) a program of postgraduate or postdoctoral studies; or

84 (D) a program of training to prepare students for gainful employment in a recognized  
85 occupation; and

86 (iv) is a public or other nonprofit institution.

87 (b) All colleges and universities in this state are institutions of higher education for  
88 purposes of this section.

89 Section 2. Section **35A-4-204** is amended to read:

90           **35A-4-204. Definition of employment.**

91           (1) Subject to the other provisions of this section, "employment" means any service  
92 performed for wages or under any contract of hire, whether written or oral, express or implied,  
93 including service in interstate commerce, and service as an officer of a corporation.

94           (2) "Employment" includes an individual's entire service performed within or both  
95 within and without this state if one of Subsections (2)(a) through (k) is satisfied.

96           (a) The service is localized in this state. Service is localized within this state if:

97           (i) the service is performed entirely within the state; or

98           (ii) the service is performed both within and without the state, but the service  
99 performed without the state is incidental to the individual's service within the state, for  
100 example, is temporary or transitory in nature or consists of isolated transactions.

101           (b) (i) The service is not localized in any state but some of the service is performed in  
102 this state and the individual's base of operations, or, if there is no base of operations, the place  
103 from which the service is directed or controlled, is in this state; or

104           (ii) the individual's base of operations or place from which the service is directed or  
105 controlled is not in any state in which some part of the service is performed, but the individual's  
106 residence is in this state.

107           (c) (i) (A) The service is performed entirely outside this state and is not localized in  
108 any state;

109           (B) the worker is one of a class of employees who are required to travel outside this  
110 state in performance of their duties; and

111           (C) (I) the base of operations is in this state; or

112           (II) if there is no base of operations, the place from which the service is directed or  
113 controlled is in this state.

114           (ii) Services covered by an election under Subsection 35A-4-310(3), and services  
115 covered by an arrangement under Section 35A-4-106 between the division and the agency  
116 charged with the administration of any other state or federal unemployment compensation law,  
117 under which all services performed by an individual for an employing unit are considered to be  
118 performed entirely within this state, are considered to be employment if the division has  
119 approved an election of the employing unit for whom the services are performed, under which  
120 the entire service of the individual during the period covered by the election is considered to be

121 insured work.

122 (d) (i) The service is performed [~~after December 31, 1977,~~] in the employ of [~~this~~] the  
123 state [~~or any of its instrumentalities or any~~], a county, city, town, school district, or [~~any~~] other  
124 political subdivision [~~thereof~~] of the state, or [~~any of its instrumentalities or any~~] in the employ  
125 of an Indian tribe or tribal unit or an instrumentality of any one or more [~~than one~~] of the  
126 foregoing [~~or any instrumentality of any of the foregoing and one or more other states or~~  
127 ~~political subdivisions~~] which is wholly owned by the state or one of its political subdivisions or  
128 Indian tribes or tribal units if:

129 (A) the service is excluded from employment as defined in the Federal Unemployment  
130 Tax Act, 26 U.S.C. 3306(c)(7);

131 (B) the service is not excluded from employment by Section 35A-4-205; and

132 (C) as to any county, city, town, school district, or political subdivision of this state, or  
133 [~~any~~] an instrumentality of the same or Indian tribes or tribal units, that service is either:

134 (I) required to be treated as covered employment as a condition of eligibility of  
135 employers in this state for Federal Unemployment Tax Act employer tax credit;

136 (II) required to be treated as covered employment by any other requirement of the  
137 Federal Unemployment Tax Act, as amended; or

138 (III) not required to be treated as covered employment by any requirement of the  
139 Federal Unemployment Tax Act, but coverage of the service is elected by a majority of the  
140 members of the governing body of the political subdivision or instrumentality or tribal unit in  
141 accordance with Section 35A-4-310.

142 (ii) Benefits paid on the basis of service performed in the employ of this state shall be  
143 financed by payments to the division instead of contributions in the manner and amounts  
144 prescribed by Subsections 35A-4-311(2)(a) and (4).

145 (iii) Benefits paid on the basis of service performed in the employ of any other  
146 governmental entity or tribal unit described in this Subsection (2) shall be financed by  
147 payments to the division in the manner and amount prescribed by the applicable provisions of  
148 Section 35A-4-311.

149 (e) The service is performed by an individual in the employ of a religious, charitable,  
150 educational, or other organization, but only if:

151 (i) the service is excluded from employment as defined in the Federal Unemployment

152 Tax Act, 26 U.S.C. 3306(c)(8), solely by reason of Section 3306(c)(8) of that act; and

153 (ii) the organization had four or more individuals in employment for some portion of a  
154 day in each of 20 different weeks, whether or not the weeks were consecutive, within either the  
155 current or preceding calendar year, regardless of whether they were employed at the same  
156 moment of time.

157 (f) (i) The service is performed outside the United States [~~after December 31, 1971~~],  
158 except in Canada, in the employ of an American employer, other than service that is considered  
159 employment under the provisions of this Subsection (2) or the parallel provisions of another  
160 state's law if:

161 (A) the employer's principal place of business in the United States is located in this  
162 state;

163 (B) the employer has no place of business in the United States but is:

164 (I) an individual who is a resident of this state;

165 (II) a corporation that is organized under the laws of this state; or

166 (III) a partnership or trust in which the number of partners or trustees who are residents  
167 of this state is greater than the number who are residents of any one other state; or

168 (C) none of the criteria of Subsections (2)(f)(i)(A) and (B) is met but:

169 (I) the employer has elected coverage in this state; or

170 (II) the employer fails to elect coverage in any state and the individual has filed a claim  
171 for benefits based on that service under the law of this state.

172 (ii) "American employer" for purposes of this Subsection (2) means a person who is:

173 (A) an individual who is a resident of the United States;

174 (B) a partnership if 2/3 or more of the partners are residents of the United States;

175 (C) a trust if all of the trustees are residents of the United States;

176 (D) a corporation organized under the laws of the United States or of any state;

177 (E) a limited liability company organized under the laws of the United States or of  
178 [~~any~~] a state;

179 (F) a limited liability partnership organized under the laws of the United States or of  
180 any state; or

181 (G) a joint venture if 2/3 or more of the members are individuals, partnerships,  
182 corporations, limited liability companies, or limited liability partnerships that qualify as

183 American employers.

184 (g) The service is performed [~~after December 31, 1971~~]:

185 (i) by an officer or member of the crew of an American vessel on or in connection with  
186 the vessel; and

187 (ii) the operating office from which the operations of the vessel, operating on navigable  
188 waters within, or within and without, the United States, is ordinarily and regularly supervised,  
189 managed, directed, and controlled within this state.

190 (h) A tax with respect to the service in this state is required to be paid under any federal  
191 law imposing a tax against which credit may be taken for contributions required to be paid into  
192 a state unemployment fund or that, as a condition for full tax credit against the tax imposed by  
193 the Federal Unemployment Tax Act, is required to be covered under this chapter.

194 (i) (i) Notwithstanding Subsection 35A-4-205(1)[~~(t)~~](p), the service is performed:

195 (A) as an agent-driver or commission-driver engaged in distributing meat products,  
196 vegetable products, fruit products, bakery products, beverages other than milk, or laundry or  
197 dry cleaning services, for the driver's principal; or

198 (B) as a traveling or city salesman, other than as an agent-driver or commission-driver,  
199 engaged on a full-time basis in the solicitation on behalf of and the transmission to the  
200 salesman's principal, except for sideline sales activities on behalf of some other person, of  
201 orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other  
202 similar establishments for merchandise for resale or supplies for use in their business  
203 operations.

204 (ii) The term "employment" as used in this Subsection (2) includes services described  
205 in Subsection (2)(i)(i) performed [~~after December 31, 1971,~~] only if:

206 (A) the contract of service contemplates that substantially all of the services are to be  
207 performed personally by the individual;

208 (B) the individual does not have a substantial investment in facilities used in  
209 connection with the performance of the services other than in facilities for transportation; and

210 (C) the services are not in the nature of a single transaction that is not part of a  
211 continuing relationship with the person for whom the services are performed.

212 (j) The service is performed [~~after December 31, 1977,~~] by an individual in agricultural  
213 labor as defined in Section 35A-4-206.

214 (k) The service is domestic service performed [~~after December 31, 1977,~~] in a private  
215 home, local college club, or local chapter of a college fraternity or sorority performed for a  
216 person who paid cash remuneration of \$1,000 or more during any calendar quarter in either the  
217 current calendar year or the preceding calendar year to individuals employed in the domestic  
218 service.

219 (3) Services performed by an individual for wages or under any contract of hire,  
220 written or oral, express or implied, are considered to be employment subject to this chapter,  
221 unless it is shown to the satisfaction of the division that:

222 (a) the individual is customarily engaged in an independently established trade,  
223 occupation, profession, or business of the same nature as that involved in the contract of hire  
224 for services; and

225 (b) the individual has been and will continue to be free from control or direction over  
226 the means of performance of those services, both under the individual's contract of hire and in  
227 fact.

228 (4) If an employer, consistent with a prior declaratory ruling or other formal  
229 determination by the division, has treated an individual as independently established and it is  
230 later determined that the individual is in fact an employee, the department may by rule provide  
231 for waiver of the employer's retroactive liability for contributions with respect to wages paid to  
232 the individual prior to the date of the division's later determination, except to the extent the  
233 individual has filed a claim for benefits.

234 Section 3. Section **35A-4-205** is amended to read:

235 **35A-4-205. Exempt employment.**

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

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

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

242 [~~(c)~~] (a) service performed in the employ of the United States Government or an  
243 instrumentality of the United States immune under the United States Constitution from the  
244 contributions imposed by this chapter, except that, to the extent that the Congress of the United



245 States shall permit, this chapter shall apply to those instrumentalities and to services performed  
246 for the instrumentalities to the same extent as to all other employers, employing units,  
247 individuals and services; provided, that if this state is not certified for any year by the Secretary  
248 of Labor under Section 3304 of the Federal Internal Revenue Code of 1954, 26 U.S.C. 3304,  
249 the payments required of the instrumentalities with respect to that year shall be refunded by the  
250 division from the fund in the same manner and within the same period as is provided in  
251 Subsection 35A-4-306(5) with respect to contributions erroneously collected;

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

259 (b) service performed by an individual as an employee or employee representative as  
260 defined in Section 1 of the Railroad Unemployment Insurance Act, 45 U.S.C., Sec. 351;

261 ~~[(e)]~~ (c) agricultural labor as defined in Section 35A-4-206;

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

264 ~~[(g)]~~ (e) (i) service performed in the employ of a school, college, or university, if the  
265 service is performed:

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

268 (B) by the spouse of the student, if the spouse is advised, at the time the spouse  
269 commences to perform that service, that the employment of that spouse to perform that service  
270 is provided under a program to provide financial assistance to the student by the school,  
271 college, or university, and that the employment will not be covered by any program of  
272 unemployment insurance;

273 (ii) service performed by an individual who is enrolled at a nonprofit or public  
274 educational institution, that normally maintains a regular faculty and curriculum and normally  
275 has a regularly organized body of students in attendance at the place where its educational

276 activities are carried on, as a student in a full-time program taken for credit at the institution,  
277 that combines academic instruction with work experience, if the service is an integral part of  
278 the program and the institution has so certified to the employer, but this Subsection (1) does  
279 not apply to service performed in a program established for or on behalf of an employer or  
280 group of employers; ~~or~~

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

283 (iv) service performed as a student nurse in the employ of a hospital or a nurses'  
284 training school by an individual who is enrolled and is regularly attending classes in a nurses'  
285 training school chartered or approved under state law;

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

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

290 (i) in the employ of:

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

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

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

298 (iii) ~~[after December 31, 1977,]~~ in the employ of a governmental entity or Indian tribe  
299 referred to in Subsection 35A-4-204(2)(d) if the service is performed by an individual in the  
300 exercise of the individual's duties:

301 (A) as an elected official;

302 (B) as a member of a legislative body or the judiciary ~~[of the state or its political~~  
303 ~~subdivisions];~~

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

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

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

309 (F) as an election official or election worker if the amount of remuneration received by  
310 the individual during the calendar year for services as an election official or election worker is  
311 less than \$1,000;

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

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

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

324 ~~[(j)]~~ (h) casual labor not in the course of the employing unit's trade or business;

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

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

331 ~~[(m)]~~ (k) service performed in the employ of an instrumentality wholly owned by a  
332 foreign government:

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

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

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

340 ~~[(n)]~~ (l) service performed by an individual for a person as an insurance ~~[producer]~~  
341 agent or as an insurance solicitor, if all the service performed by the individual for that person  
342 is performed for remuneration solely by way of commission;

343 ~~[(o)]~~ (m) service performed by an individual in the delivery or distribution of  
344 newspapers or shopping news, not including delivery or distribution to any point for  
345 subsequent delivery or distribution;

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

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

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

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

360 ~~[(t)]~~ (p) services as an outside salesman paid solely by way of commission if the  
361 services were performed outside of all places of business of the enterprises for which the  
362 services are performed except:

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

364 (ii) if the services would constitute employment at common law[;].

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

366 ~~[(i)]~~ the individual does not perform the service on the principal's premises, and]

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

368 or]

369 ~~[(v) service performed by a nurse licensed or registered under Title 58, Chapter 31b,~~  
370 ~~Nurse Practice Act, if:]~~

371 ~~[(i) the service of the nurse is performed in the home of the patient;]~~

372 ~~[(ii) substantially all of the nurse's compensation for the service is from health~~  
373 ~~insurance proceeds; and]~~

374 ~~[(iii) no compensation or fee for the service is paid to any agency or company as a~~  
375 ~~business furnishing nursing services.]~~

376 (2) (a) "Included and excluded service" means if the services performed during 1/2 or  
377 more of any pay period by an individual for the person employing the individual constitute  
378 employment, all the services of the individual for the period are considered to be employment[;  
379 but if].

380 (b) If the services performed during more than ~~[half]~~ 1/2 of any ~~[such]~~ pay period by an  
381 individual for the person employing the individual do not constitute employment, then none of  
382 the services of the individual for the period are considered to be employment.

383 (c) As used in this Subsection (2), "pay period" means a period of not more than 31  
384 consecutive days for which payment of remuneration is ordinarily made to the individual by the  
385 person employing the individual.

386 (3) The following services are exempt employment under the Utah Employment  
387 Security Act:

388 (a) service performed by an individual as a licensed real estate agent or salesman, if all  
389 the service performed by the individual is performed for remuneration solely by way of  
390 commission;

391 (b) service performed by an individual as a licensed securities agent or salesman or a  
392 registered representative, if all the service performed by the individual is performed for  
393 remuneration solely by way of commission;

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

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

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

397 (d) service performed by a nurse licensed or registered under Title 58, Chapter 31b,  
398 Nurse Practice Act, if:

399 (i) the service of the nurse is performed in the home of the patient;

400           (ii) substantially all of the nurse's compensation for the service is from health insurance  
401 proceeds; and

402           (iii) no compensation or fee for the service is paid to an agency or company as a  
403 business furnishing nursing services.

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

405           **35A-4-305. Collection of contributions -- Unpaid contributions to bear interest.**

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

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

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

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

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

425           (d) The division shall assess as a penalty a service charge, in addition to any other  
426 penalties that may apply, in an amount not to exceed the service charge imposed by Section  
427 7-15-1 for dishonored instruments if:

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

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

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

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

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

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

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

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

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

448 (c) The determination is considered correct unless:

449 (i) the employer, within ten days after mailing or personal delivery of notice of the  
450 determination, applies to the division for a review of the determination as provided in Section  
451 35A-4-508; or

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

454 (d) The amount of contribution [~~so~~] determined [~~shall be~~] under Subsection (2)(a) is  
455 subject to penalties and interest as provided in Subsection (1).

456 (3) (a) If, after due notice, an employer defaults in the payment of contributions,  
457 interest, or penalties on the contributions, or a claimant defaults in a repayment of benefit  
458 overpayments and penalties on the overpayments, the amount due shall be collectible by civil  
459 action in the name of the division, and the employer adjudged in default shall pay the costs of  
460 the action.

461 (b) Civil actions brought under this section to collect contributions, interest or penalties

462 from an employer, or benefit overpayments and penalties from a claimant shall be:

- 463 (i) heard by the court at the earliest possible date; and
- 464 (ii) entitled to preference upon the calendar of the court over all other civil actions

465 except:

- 466 (A) petitions for judicial review under this chapter; and
- 467 (B) cases arising under the workers' compensation law of this state.

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

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

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

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

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

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

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

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

488 (d) (i) Notwithstanding Section 35A-4-312, the division may disclose the contribution,  
489 interest, penalties or benefit overpayments and penalties, costs due, the name of the employer  
490 or claimant, and the employer's or claimant's address and telephone number when any  
491 collection matter is referred to a private collector under Subsection (3)(c).

492 (ii) A private collector is subject to the confidentiality requirements and penalty



493 provisions provided in Section 35A-4-312 and Subsection 76-8-1301(4), except to the extent  
494 disclosure is necessary in any civil action to enforce collection of the amounts due.

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

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

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

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

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

518 (ii) The clerk shall enter in the judgment docket, in the column for judgment debtors,  
519 the name of the delinquent employer or claimant mentioned in the warrant, and in appropriate  
520 columns the amount of the contribution, penalties, interest, or benefit overpayment and  
521 penalties, and costs, for which the warrant is issued and the date when the duplicate is filed.

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

523 (i) have the force and effect of an execution against all personal property of the

524 delinquent employer; and

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

528 (d) After docketing, the sheriff shall:

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

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

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

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

542 (ii) If the purchaser of a business or stock of goods fails to withhold sufficient purchase  
543 money, the purchaser is personally liable for the payment of the amount of the contributions  
544 required to be paid by the former owner, interest and penalties accrued and unpaid by the  
545 former owner, owners, or assignors.

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

550 (b) A person notified under Subsection (7)(a) shall neither transfer nor make any other  
551 disposition of the credits, other personal property, or debts until:

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

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

554 (c) All persons notified under Subsection (7)(a) shall, within five days after receipt of

555 the notice, advise the division of credits, other personal property, or other debts in their  
556 possession, under their control or owing by them, as the case may be.

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

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

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

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

568 (c) (i) For each failure by an employer to conform to this Subsection (8) the division  
569 shall, unless good cause is shown, assess a \$50 penalty if the filing was not more than 15 days  
570 late.

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

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

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

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

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

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

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

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

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

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

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

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

599 (10) If a person liable to pay a contribution or benefit overpayment imposed by this  
600 chapter neglects or refuses to pay it after demand, the amount, including any interest, additional  
601 amount, addition to contributions, or assessable penalty, together with any additional accruable  
602 costs, shall be a lien in favor of the division upon all property and rights to property, whether  
603 real or personal belonging to the person.

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

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

611 (i) "Judgment lien creditor" means a person who obtains a valid judgment of a court of  
612 record for recovery of specific property or a sum certain of money, and who in the case of a  
613 recovery of money, has a perfected lien under the judgment on the property involved. A  
614 judgment lien does not include inchoate liens such as attachment or garnishment liens until  
615 they ripen into a judgment. A judgment lien does not include the determination or assessment  
616 of a quasi-judicial authority, such as a state or federal taxing authority.

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

622 (iii) "Person" means:

623 (A) an individual;

624 (B) a trust;

625 (C) an estate;

626 (D) a partnership;

627 (E) an association;

628 (F) a company;

629 (G) a limited liability company;

630 (H) a limited liability partnership; or

631 (I) a corporation.

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

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

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

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

641 Section 5. Section **35A-4-309** is amended to read:

642 **35A-4-309. Nonprofit organizations -- Contributions -- Payments in lieu of**  
643 **contributions.**

644 (1) Notwithstanding any other provisions of this chapter for payments by employers,  
645 benefits paid to employees of nonprofit organizations, as described in Section 501(c)(3) of the  
646 Internal Revenue Code, 26 U.S.C. 501(c)(3), that are exempt from income tax under Section  
647 501(a), shall be financed in accordance with the following provisions:

648 (a) Any nonprofit organization which is, or becomes, subject to this chapter shall pay  
649 contributions under Section 35A-4-303, unless it elects in accordance with this Subsection (1)  
650 to pay to the division for the unemployment fund an amount equal to the amount of regular  
651 benefits and of 1/2 of the extended benefits paid that is attributable to service in the employ of  
652 the nonprofit organization, to individuals for weeks of unemployment that begin during the  
653 effective period of this election.

654 (b) (i) Any nonprofit organization that is, or becomes, subject to this chapter may elect  
655 to become liable for payments in lieu of contributions for a period of not less than one  
656 contribution year beginning with the date on which the organization becomes subject to this  
657 chapter.

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

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

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

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

670 (e) The division may, for good cause, extend the period within which a notice of  
671 election or a notice of termination must be filed and may permit an election to be retroactive.

672 (f) (i) The division, in accordance with department rules, shall notify each nonprofit  
673 organization of any determination that the division may make of the organization's status as an  
674 employer, of the effective date of any election that it makes, and of any termination of this  
675 election.

676 (ii) These determinations [~~shall be~~] are subject to reconsideration, appeal, and review  
677 in accordance with Section 35A-4-508.

678 (2) Payments in lieu of contributions shall be made in accordance with this Subsection

679 (2).

680 (a) At the end of each calendar month, or at the end of any other period as determined  
681 by the division, the division shall bill each nonprofit organization or group of nonprofit  
682 organizations that has elected to make payments in lieu of contributions for an amount equal to  
683 the full amount of regular benefits plus 1/2 of the amount of extended benefits paid during this  
684 month or other prescribed period that is attributable to service in the employ of the  
685 organization.

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

690 (c) Payments made by any nonprofit organization under this Subsection (2) may not be  
691 deducted or deductible, in whole or in part, from the remuneration of individuals in the employ  
692 of the organization.

693 (d) (i) The amount due specified in any bill from the division shall be conclusive on  
694 the organization unless, not later than 15 days after the bill was mailed to its last-known  
695 address or otherwise delivered to it, the organization files an application for redetermination by  
696 the division or an appeal to the [~~Workforce Appeals Board~~] Division of Adjudication, setting  
697 forth the grounds for the application or appeal in accordance with Section 35A-4-508.

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

701 (iii) Any redetermination [~~shall be~~] is conclusive on the organization unless, no later  
702 than 15 days after the redetermination was mailed to its last known address or otherwise  
703 delivered to it, the organization files an appeal to [~~a Workforce Appeals Board~~] the Division of  
704 Adjudication in accordance with Section 35A-4-508 and Chapter 1, Part 3, Adjudicative  
705 Proceedings, setting forth the grounds for the appeal.

706 (iv) Proceedings on appeal to the [~~Workforce Appeals Board~~] Division of Adjudication  
707 from the amount of a bill rendered under this Subsection (2) or a redetermination of the amount  
708 shall be in accordance with Section 35A-4-508.

709 (e) Past due payments of amounts in lieu of contributions are subject to the same

710 interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.

711 (3) If any nonprofit organization is delinquent in making payments in lieu of  
712 contributions as required under Subsection (2), the division may terminate the organization's  
713 election to make payment in lieu of contributions as of the beginning of the next contribution  
714 year, and the termination is effective for that and the next contribution year.

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

718 (b) The amount of the deposit shall be determined in accordance with this Subsection  
719 (4).

720 (c) (i) The amount of the deposit required by this Subsection (4) shall be equal to 1%  
721 of the organization's total wages paid for employment as defined in Section 35A-4-204 for the  
722 four calendar quarters immediately preceding the effective date of the election, or the biennial  
723 anniversary of the effective date of election, whichever date shall be most recent and  
724 applicable.

725 (ii) If the nonprofit organization did not pay wages in each of these four calendar  
726 quarters, the amount of the deposit is as determined by the division.

727 (d) (i) Any deposit of money in accordance with this Subsection (4) shall be retained  
728 by the division in an escrow account until liability under the election is terminated, at which  
729 time it shall be returned to the organization, less any deductions as provided in this Subsection  
730 (4).

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

734 (iii) The division shall require the organization within 30 days following any  
735 deduction from a money deposit under this Subsection (4) to deposit sufficient additional  
736 money to make whole the organization's deposit at the prior level.

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

739 (B) If, as a result of this review, the division determines that an adjustment is  
740 necessary, it shall require the organization to make an additional deposit within 30 days of



741 written notice of the division's determination or shall return to it any portion of the deposit the  
742 division no longer considers necessary, as considered appropriate.

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

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

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

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

754 (b) If benefits paid to an individual are based on wages paid by more than one  
755 employer and one or more of these employers are liable for payments in lieu of contributions,  
756 the amount payable to the fund by each employer liable for the payments shall be determined in  
757 accordance with Subsection (5)(c) or (d).

758 (c) If benefits paid to an individual are based on wages paid by one or more employers  
759 who are liable for payments in lieu of contributions and on wages paid by one or more  
760 employers who are liable for contributions, the amount of benefits payable by each employer  
761 that is liable for payments in lieu of contributions shall be an amount that bears the same ratio  
762 to the total benefits paid to the individual as the total base-period wages paid to the individual  
763 by that employer bear to the total base-period wages paid to the individual by all of the  
764 individual's base-period employers.

765 (d) If benefits paid to an individual are based on wages paid by two or more employers  
766 who are liable for payments in lieu of contributions, the amount of benefits payable by each of  
767 those employers shall be an amount which bears the same ratio to the total benefits paid to the  
768 individual as the total base-period wages paid to the individual by the employer bear to the total  
769 base-period wages paid to the individual by all of the individual's base-period employers.

770 (6) (a) (i) Two or more employers who have become liable for payments in lieu of  
771 contributions, in accordance with this section and Subsection 35A-4-204(2)(d), may file a joint

772 application to the division for the establishment of a group account for the purpose of sharing  
773 the cost of benefits paid that are attributable to service in the employ of these employers.

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

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

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

781 (c) Upon establishment of the account, each member of the group is liable for  
782 payments in lieu of contributions with respect to each calendar quarter in the amount that bears  
783 the same ratio to the total benefits paid in ~~[such]~~ the quarter attributable to service performed in  
784 the employ of all members of the group as the total wages paid for service in employment by  
785 ~~[such]~~ the member in ~~[such]~~ the quarter bear to the total wages paid during ~~[such]~~ the quarter  
786 for service performed in the employ of all members of the group.

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

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

797 (b) The acquiring entity shall reimburse the Unemployment Compensation Fund for the  
798 transferring nonprofit organization's share of any unreimbursed benefits paid to former  
799 employees of the transferring nonprofit organization.

800 Section 6. Section **35A-4-501** is amended to read:

801 **35A-4-501. Unemployment Compensation Fund -- Administration -- Contents --**  
802 **Treasurer and custodian -- Separate accounts -- Use of money requisitioned -- Advances**

803 **under Social Security Act.**

804 (1) There is established the Unemployment Compensation Fund, separate and apart  
805 from all public moneys or funds of this state, that shall be administered by the department  
806 exclusively for the purposes of this chapter. This fund shall consist of the following moneys,  
807 all of which shall be mingled and undivided:

808 (a) all contributions collected under this chapter, less refunds of contributions made  
809 from the clearing account under Subsection 35A-4-306(5);

810 (b) interest earned upon any moneys in the fund;

811 (c) any property or securities acquired through the use of moneys belonging to the  
812 fund;

813 (d) all earnings of the property or securities;

814 (e) all money credited to this state's account in the unemployment trust fund under  
815 Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended; and

816 (f) all other moneys received for the fund from any other source.

817 (2) (a) The state treasurer shall be the treasurer and custodian of the fund, and shall  
818 administer ~~[this]~~ the fund in accordance with the directions of the division and shall pay all  
819 warrants drawn upon it by the division or its duly authorized agent in accordance with rules  
820 made by the department. The division shall maintain within the fund three separate accounts:

821 (i) a clearing account;

822 (ii) an unemployment trust fund account; and

823 (iii) a benefit account.

824 (b) All moneys payable to the fund, upon receipt by the division, shall be immediately  
825 deposited in the clearing account.

826 (c) (i) All moneys in the clearing account after clearance shall, except as otherwise  
827 provided in this section, be deposited immediately with the secretary of the treasury of the  
828 United States of America to the credit of the account of this state in the unemployment trust  
829 fund, established and maintained under Section 904 of the Social Security Act, 42 U.S.C. 1104,  
830 as amended, any provisions of law in this state relating to the deposit, administration, release,  
831 or disbursement of moneys in the possession or custody of this state to the contrary  
832 notwithstanding.

833 (ii) Refunds of contributions payable under Subsections 35A-4-205(1)~~(e)~~(a) and

834 35A-4-306(5) may be paid from the clearing account or the benefit account.

835 (d) The benefit account shall consist of all moneys requisitioned from this state's  
836 account in the unemployment trust fund in the United States treasury.

837 (e) Moneys in the clearing and benefit accounts may be deposited in any depository  
838 bank in which general funds of this state may be deposited, but no public deposit insurance  
839 charge or premium may be paid out of the fund.

840 (f) (i) Moneys in the clearing and benefit accounts may not be commingled with other  
841 state funds, but shall be maintained in separate accounts on the books of the depository bank.

842 (ii) The money shall be secured by the depository bank to the same extent and in the  
843 same manner as required by the general depository law of this state.

844 (iii) Collateral pledged for this purpose shall be kept separate and distinct from any  
845 collateral pledged to secure other funds of the state.

846 (g) (i) The state treasurer [~~shall be~~] is liable on the state treasurer's official bond for the  
847 faithful performance of the state treasurer's duties in connection with the unemployment  
848 compensation fund provided for under this chapter.

849 (ii) The liability on the official bond shall be effective immediately upon the enactment  
850 of this provision, and that liability shall exist in addition to the liability upon any separate bond  
851 existent on the effective date of this provision, or which may be given in the future.

852 (iii) All sums recovered for losses sustained by the fund shall be deposited [~~therein~~] in  
853 the fund.

854 (3) (a) (i) Moneys requisitioned from [~~this~~] the state's account in the unemployment  
855 trust fund shall, except as set forth in this section, be used exclusively for the payment of  
856 benefits and for refunds of contributions under Subsections 35A-4-205(1)[~~(c)~~](a) and  
857 35A-4-306(5).

858 (ii) The department shall from time to time requisition from the unemployment trust  
859 fund [~~such~~] amounts, not exceeding the amounts standing to this state's account in the fund, as  
860 it considers necessary for the payment of those benefits and refunds for a reasonable future  
861 period.

862 (iii) (A) Upon receipt the treasurer shall deposit the moneys in the benefit account and  
863 shall pay benefits and refunds from the account by means of warrants issued by the division in  
864 accordance with rules prescribed by the department.

865 (B) Expenditures of these moneys in the benefit account and refunds from the clearing  
866 account are not subject to any provisions of law requiring specific appropriations or other  
867 formal release by state officers of money in their custody.

868 (b) Moneys in [~~this~~] the state's account in the unemployment trust fund that were  
869 collected under the Federal Unemployment Tax Act, 26 U.S.C. 3301 et seq., and credited to  
870 [~~this~~] the state under Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as  
871 amended may be requisitioned from [~~this~~] the state's account and used in the payment of  
872 expenses incurred by the department for the administration of [~~this~~] the state's unemployment  
873 law and public employment offices, if the expenses are incurred and the withdrawals are made  
874 only after and under a specific appropriation of the Legislature that specifies:

875 (i) the purposes and amounts;

876 (ii) that the moneys may not be obligated after the two-year period that began on the  
877 date of the enactment of the appropriation law; and

878 (iii) that the total amount which may be used during a fiscal year shall not exceed the  
879 amount by which the aggregate of the amounts credited to this state's account under Section  
880 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended, during the fiscal year and  
881 the 34 preceding fiscal years, exceeds the aggregate of the amounts used by this state for  
882 administration during the same 35 fiscal years.

883 (A) For the purpose of Subsection (3)(b)(iii), amounts used during any fiscal year shall  
884 be charged against equivalent amounts that were first credited and that have not previously  
885 been so charged. An amount used during any fiscal year may not be charged against any  
886 amount credited during a fiscal year earlier than the 34th preceding fiscal year.

887 (B) Except as appropriated and used for administrative expenses, as provided in this  
888 section, moneys transferred to this state under Section 903 of the Social Security Act as  
889 amended, may be used only for the payment of benefits.

890 (C) Any moneys used for the payment of benefits may be restored for appropriation  
891 and use for administrative expenses, upon request of the governor, under Section 903(c) of the  
892 Social Security Act.

893 (D) Money appropriated as provided in this section for the payment of expenses of  
894 administration shall be requisitioned as needed for the payment of obligations incurred under  
895 the appropriation and, upon requisition, shall be deposited in the employment security

896 administration fund from which the payments shall be made.

897 (E) The division shall maintain a separate record of the deposit, obligation,  
898 expenditure, and return of funds deposited.

899 (F) Money deposited shall, until expended, remain a part of the unemployment fund  
900 and, if not expended, shall be returned promptly to the account of this state in the  
901 unemployment trust fund.

902 (G) The moneys available by reason of this legislative appropriation shall not be  
903 expended or available for expenditure in any manner that would permit their substitution for,  
904 or a corresponding reduction in, federal funds that would in the absence of the moneys be  
905 available to finance expenditures for the administration of this chapter.

906 (c) Any balance of moneys requisitioned from the unemployment trust fund that  
907 remains unclaimed or unpaid in the benefit account after the expiration of the period for which  
908 the sums were requisitioned shall either be deducted from estimates for, and may be utilized for  
909 the payment of, benefits and refunds during succeeding periods, or in the discretion of the  
910 division, shall be redeposited with the secretary of the treasury of the United States of America  
911 to the credit of ~~[this]~~ the state's account in the unemployment trust fund, as provided in  
912 Subsection (2).

913 (4) (a) The provisions of Subsections (1), (2), and (3), to the extent that they relate to  
914 the unemployment trust fund, shall be operative only so long as the unemployment trust fund  
915 continues to exist and so long as the secretary of the treasury of the United States of America  
916 continues to maintain for ~~[this]~~ the state a separate book account of all ~~[funds]~~ moneys  
917 deposited ~~[therein]~~ in the fund by the state for benefit purposes, together with ~~[this]~~ the state's  
918 proportionate share of the earnings of the unemployment trust fund, from which no other state  
919 is permitted to make withdrawals.

920 (b) ~~[If and when]~~ (i) When the unemployment trust fund ceases to exist, or the  
921 separate book account is no longer maintained, all moneys belonging to the unemployment  
922 compensation fund of ~~[this]~~ the state shall be administered by the division as a trust fund for  
923 the purpose of paying benefits under this chapter, and the division shall have authority to hold,  
924 invest, transfer, sell, deposit, and release the moneys, and any properties, securities, or earnings  
925 acquired as an incident to the administration.

926 (ii) The moneys shall be invested in ~~[the following]~~ readily marketable ~~[classes of]~~

927 securities;] bonds or other interest-bearing obligations of the United States of America, of  
928 [this] the state, or of any county, city, town, or school district of [this] the state, at current  
929 market prices for the bonds.

930 (iii) The investment shall [~~at all times~~] be [~~so~~] made so that all the assets of the fund  
931 shall always be readily convertible into cash when needed for the payment of benefits.

932 Section 7. **Effective date.**

933 This bill takes effect on July 1, 2006.

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**Legislative Review Note**  
**as of 11-10-05 9:45 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**

**Interim Committee Note**  
**as of 12-19-05 8:47 AM**

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