

WAGE REPORTING AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Val L. Peterson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Employment Security Act by amending information collected by the Unemployment Insurance Division.

Highlighted Provisions:

This bill:

- requires an employer to include additional wage-related information on quarterly unemployment contribution reports filed with the Unemployment Insurance Division including occupation title and hours worked for each paid employee during the calendar quarter; and

- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2012.

Utah Code Sections Affected:

AMENDS:

35A-4-305, as last amended by Laws of Utah 2011, Chapter 297

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

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



28 **35A-4-305. Collection of contributions -- Unpaid contributions to bear interest --**
29 **Delinquent payments collected by civil action -- Employer information required --**
30 **Reimbursements -- Liens for delinquent payments.**

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

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

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

43 (c) (i) If contributions are unpaid after 10 days from the date of the mailing or personal
44 delivery by the division or its authorized representative, of a written demand for payment, there
45 shall attach to the contribution, to be assessed and collected in the same manner as
46 contributions due under this section, a penalty equal to 5% of the contribution due.

47 (ii) A penalty may not attach if within 10 days after the mailing or personal delivery,
48 arrangements for payment have been made with the division, or its authorized representative,
49 and payment is made in accordance with those arrangements.

50 (d) The division shall assess as a penalty a service charge, in addition to any other
51 penalties that may apply, in an amount not to exceed the service charge imposed by Section
52 7-15-1 for dishonored instruments if:

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

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

56 (e) Except for benefit overpayments under Subsection 35A-4-405(5), benefit
57 overpayments, contributions, interest, penalties, and assessed costs, uncollected three years
58 after they become due, may be charged as uncollectible and removed from the records of the

59 division if:

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

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

62 (f) Interest and penalties collected in accordance with this section shall be paid into the

63 Special Administrative Expense Account created by Section 35A-4-506.

64 (g) Action required for the collection of sums due under this chapter is subject to the

65 applicable limitations of actions under Title 78B, Chapter 2, Statutes of Limitations.

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

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

73 (c) The determination is considered correct unless:

74 (i) the employer, within 10 days after mailing or personal delivery of notice of the
75 determination, applies to the division for a review of the determination as provided in Section
76 35A-4-508; or

77 (ii) [unless] the division or its authorized representative of its own motion reviews the
78 determination.

79 (d) The amount of contribution determined under Subsection (2)(a) is subject to
80 penalties and interest as provided in Subsection (1).

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

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

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

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

90 except:

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

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

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

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

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

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

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

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

108 (iv) (A) A civil action may not be maintained by a private collector without specific
109 prior written approval of the division.

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

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

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

120 (e) An action taken by the division under this section may not be construed to be an

121 election to forego other collection procedures by the division.

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

128 (b) If an employer commences a proceeding in the Federal Bankruptcy Court under a
129 chapter of 11 U.S.C. 101 et seq., as amended by the Bankruptcy Abuse Prevention and
130 Consumer Protection Act of 2005, contributions, interest, and penalties then or thereafter due
131 shall be entitled to the priority provided for taxes, interest, and penalties in the Bankruptcy
132 Abuse Prevention and Consumer Protection Act of 2005.

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

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

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

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

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

151 (ii) become a lien upon the real property of the delinquent employer or claimant in the

152 same manner and to the same extent as a judgment duly rendered by a district court and
153 docketed in the office of the clerk.

154 (d) After docketing, the sheriff shall:

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

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

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

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

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

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

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

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

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

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

183 (8) (a) (i) Each employer shall furnish the division necessary information for the
184 [~~proper~~] administration of this chapter [~~and~~]. The information shall include, for each calendar
185 quarter, wage information for each paid employee, [~~for each calendar quarter.~~] including the
186 employee's:

- 187 (A) Social Security number;
188 (B) first initial, second initial, and full last name;
189 (C) occupation title;
190 (D) gross wages paid as defined in Section 35A-4-208; and
191 (E) number of hours worked.

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

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

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

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

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

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

208 (d) (i) The division shall prescribe rules providing standards for determining which
209 contribution reports shall be filed on magnetic or electronic media or in other machine-readable
210 form.

211 (ii) In prescribing these rules, the division:

212 (A) may not require an employer to file contribution reports on magnetic or electronic
213 media unless the employer is required to file wage data on at least 250 employees during any

214 calendar quarter or is an authorized employer representative who files quarterly tax reports on
215 behalf of 100 or more employers during any calendar quarter;

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

218 (C) may require an employer to post a bond for failure to comply with the rules
219 required by this Subsection (8)(d).

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

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

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

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

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

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

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

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

241 (b) (i) The lien imposed by Subsection (10) is not valid as against a purchaser, holder
242 of a security interest, mechanics' lien holder, or judgment lien creditor until the division files a
243 warrant with the clerk of the district court.

244 (ii) For the purposes of this Subsection (11)(b):

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

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

256 (C) "Person" means:

257 (I) an individual;

258 (II) a trust;

259 (III) an estate;

260 (IV) a partnership;

261 (V) an association;

262 (VI) a company;

263 (VII) a limited liability company;

264 (VIII) a limited liability partnership; or

265 (IX) a corporation.

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

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

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

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

275 Section 2. **Effective date.**

276

This bill takes effect on July 1, 2012.

Legislative Review Note
as of 1-31-12 11:04 AM

Office of Legislative Research and General Counsel