UNEMPLOYMENT INSURANCE MODIFICATIONS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Jeremy A. Peterson

LONG TITLE

General Description:

This bill modifies the Employment Security Act by reducing the maximum unemployment insurance contribution rate for an employer beginning in calendar year 2012 and capping the social unemployment insurance contribution rate for all employers for calendar year 2012 only.

Highlighted Provisions:

This bill:

- reduces the maximum unemployment insurance contribution rate for an employer from 9% plus the social contribution rate to 7% plus the social contribution rate beginning in calendar year 2012;
- caps the social unemployment insurance contribution rate for all employers at .4% for calendar year 2012 only;
- provides that if the reserve fund is insolvent, the reserve factor is 2.0 until the reserve fund becomes solvent;
- allows the Unemployment Insurance Division to accept an offer of compromise from an employer or claimant to reduce past due debt under certain circumstances;
- requires the Unemployment Insurance Division to make rules allowing for an offer of compromise; and
- makes technical changes.

Money Appropriated in this Bill:
Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

35A-4-303, as last amended by Laws of Utah 2011, Chapters 297 and 342
35A-4-304, as last amended by Laws of Utah 2011, Chapter 297
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-4-303 is amended to read:

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

(1) (a) An employer's basic contribution rate is the same as the employer's benefit ratio and is determined by dividing the total benefit costs charged back to an employer during the immediately preceding four fiscal years by the total taxable wages of the employer for the same time period, calculated to four decimal places, disregarding any remaining fraction, if any.

(b) In calculating the basic contribution rate under Subsection (1)(a), if four fiscal years of data are not available:

(i) the data of three fiscal years that is available shall be divided by the total taxable wages for the same time period; or

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

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

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

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

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

(b) Beginning January 1, 2005, the division shall calculate the social contribution rate
by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding
four fiscal years by the total taxable wages of all employers subject to contributions for the
same period, calculated to four decimal places, disregarding any remaining fraction:]}

[(e) Beginning January 1, 2009]

(ii) if the employer is a new employer, the basic contribution rate shall be determined
as described in Subsection (5).

(2) (a) Subject to Subsection (2)(b), the division shall [calculate] determine the social
contribution rate by dividing all social costs as defined in Subsection 35A-4-307(1) applicable
to the preceding four fiscal years by the total taxable wages of all employers subject to
contributions for the same period, calculated to four decimal places, disregarding any
remaining fraction, and [rounded] rounding the result to three decimal places[,] disregarding any
further fraction:] as follows:

(i) if the fourth decimal place is [.0004] four ← $ or less, [or rounding up to the next
higher
number:] the third decimal place does not change; or

(ii) if the fourth decimal place is [.0005] five ← $ or more, rounding the third decimal
place up.

(b) For calendar year 2012 only, if the calculation of the social contribution rate under
Subsection (2)(a) is greater than .004, the social contribution rate for calendar year 2012 is
.004.

(3) (a) [Beginning January 1, 2000, the] The division shall [by administrative decision]
set the reserve factor at a rate that [shall sustain] sustains an adequate reserve.

(b) For the purpose of setting the reserve factor:

[(i) (A) the adequate reserve is defined as between 17 and 19 months of benefits at the
average of the five highest benefit cost rates in the last 25 years:]}

[(B) beginning January 1, 2009:] (i) the adequate reserve is defined as between 18 and
24 months of benefits at the average of the five highest benefit cost rates in the last 25 years;

(ii) the division shall set the reserve factor [shall be] at 1.0000 if the actual reserve fund
balance as of June 30 preceding the computation date is determined to be an adequate reserve;

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

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

(v) if the actual reserve fund balance as of June 30 preceding the computation date is insolvent or negative or if there is an outstanding loan from the Federal Unemployment Account[; or other lending institution, the division shall set the reserve factor \[\text{will be set}\] at 2.0000 until the actual reserve fund balance as of June 30 preceding the computation date is determined \[\text{to be an adequate reserve}\] by the division to be solvent or positive and there is no outstanding loan;

(vi) the division shall set the reserve factor \[\text{will be set}\] on or before January 1 of each year; and

(vii) money made available to the state under Section 903 of the Social Security Act, 42 U.S.C. 1103, as amended, which is received on or after January 1, 2004, may not be considered in establishing the reserve factor under this section for the rate year 2005 or any subsequent following rate year.

[(4) (a) On or after January 1, 2004, an employer's overall contribution rate is the employer's basic contribution rate multiplied by the reserve factor established according to Subsection (3), calculated to four decimal places, disregarding the remaining fraction, plus the social contribution rate established according to Subsection (2), and calculated to three decimal places, disregarding the remaining fraction, but not more than a maximum overall contribution rate of 9.0%, plus the applicable social contribution rate and not less than 1.1% for new employers:]

[(b) (4) (a) Beginning January 1, 2009, an employer's overall contribution rate is:

(i) except as provided in Subsection (4)(a)(ii) or (iii), the employer's basic contribution rate multiplied by the reserve factor established \[\text{according to under}\] Subsection (3)(b), calculated to four decimal places, disregarding \[\text{the}\] any remaining fraction, plus the social contribution rate established \[\text{according to under}\] Subsection (2), and \[\text{the result}\] calculated to three decimal places, disregarding \[\text{the}\] any remaining fraction\[,. \text{but not more than a maximum}\] overall contribution rate of 9%, plus the applicable social contribution rate and not less than 1.1% for new employers:]

(ii) if under Subsection (4)(a)(i) the overall contribution rate calculation for an employer is greater than 9% plus the applicable social contribution rate, the overall
(a) The overall contribution rate described under this Subsection (4) does not include the addition of any penalty applicable to an employer:

(i) as a result of delinquency in the payment of contributions as provided in Subsection (9)[.]

(ii) that is assessed a penalty rate under Subsection 35A-4-304(5)(a).

(5) (a) Except as otherwise provided in [Subsection (9), each new employer shall pay a contribution rate] this section, the basic contribution rate for a new employer is based on the average benefit cost rate experienced by employers of the major industry, as defined by department rule, to which the new employer belongs[.], the basic contribution rate to be determined as follows[.]:

[((a)] (b) Except as provided in Subsection (5)[(b)](c), by January 1 of each year, the
basic contribution rate to be used in computing [the] new employer's overall contribution rate under Subsection (4) is the benefit cost rate [which] is the greater of:

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

(ii) 1%.

(c) If the major industrial classification assigned to a new employer is an industry for which a benefit cost rate does not exist because the industry has not operated in the state or has not been covered under this chapter, the employer's basic contribution rate [shall be] is 5.4%. This basic contribution rate is used in computing the employer's overall contribution rate under Subsection (4).

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

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

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

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

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

(8) (a) If an employer acquires the business or all or substantially all the assets of another employer and the other employer had discontinued operations upon the acquisition or transfers its trade or business, or a portion of its trade or business, under Subsection

35A-4-304(3)(a):

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

(A) the filing of contribution reports;
(B) the payment of contributions; and
(C) [after January 1, 1985:] the benefit costs of both employers;

(ii) the transferring employer shall be divested of the transferring employer's
unemployment experience provided the transferring employer had discontinued operations, but
only to the extent as defined under Subsection 35A-4-304(3)(c); and

(iii) if an employer transfers its trade or business, or a portion of its trade or business,
as defined under Subsection 35A-4-304(3), the transferring employer may not be divested of its
employer's unemployment experience.

(b) An employing unit or prospective employing unit that acquires the unemployment
experience of an employer shall, for all purposes of this chapter, be an employer as of the date
of acquisition.

(c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in
Subsection (8)(a), is divested of the employer's unemployment experience by transferring all of
the employer's business to another and by ceasing operations as of the date of the transfer, the
transferring employer shall cease to be an employer, as defined by this chapter, as of the date of
transfer.

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

(b) Notwithstanding Subsections (1), (5), (6), and (8), [on or after January 1, 1988,] an
employer who fails to pay all contributions prescribed by the division [with respect to] for the
four consecutive calendar quarters in the fiscal year immediately preceding the computation
date, except for amounts due under determinations that have not become final, shall pay a
contribution rate equal to the overall contribution rate determined under the experience rating
provisions of this chapter, plus a surcharge of 1% of wages.

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

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

(10) If an employer makes a contribution payment based on the overall contribution rate in effect at the time the payment was made and a provision of this section retroactively reduces the overall contribution rate for that payment, the division:

(a) may not directly refund the difference between what the employer paid and what the employer would have paid under the new rate; and

(b) shall allow the employer to make an adjustment to a future contribution payment to offset the difference between what the employer paid and what the employer would have paid under the new rate.

Section 2. Section 35A-4-304 is amended to read:

35A-4-304. Special provisions regarding transfers of unemployment experience and assignment rates.

(1) As used in this section:

(a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(b) "Person" has the meaning given that term by Section 7701(a)(1) of the Internal Revenue Code of 1986.

(c) "Trade or business" includes the employer's workforce.

(d) "Violate or attempt to violate" includes intent to evade, misrepresentation, or willful nondisclosure.

(2) Notwithstanding any other provision of this chapter, Subsections (3) and (4) shall apply regarding assignment of rates and transfers of unemployment experience.

(3) (a) If an employer transfers its trade or business, or a portion of its trade or business, to another employer and, at the time of the transfer, there is common ownership, management, or control of the employers, then the unemployment experience attributable to
each employer shall be combined into a common experience rate calculation.

(b) The contribution rates of the employers shall be recalculated and made effective upon the date of the transfer of trade or business as determined by division rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) (i) If one or more of the employers is a qualified employer at the time of the transfer, then all employing units that are party to a transfer described in Subsection (3)(a) of this section shall be assigned an overall contribution rate under Subsection 35A-4-303(4)(d), using combined unemployment experience rating factors, for the rate year during which the transfer occurred and for the subsequent three rate years.

(ii) If none of the employing units is a qualified employer at the time of the transfer, then all employing units that are party to the transfer described in Subsection (3)(a) shall be assigned the highest overall contribution rate applicable at the time of the transfer to any employer who is party to the acquisition for the rate year during which the transfer occurred and for subsequent rate years until the time when one or more of the employing units is a qualified employer.

(iii) Once one or more employing units described in Subsection (3)(c)(ii) is a qualified employer, all the employing units shall be assigned an overall rate under Subsection 35A-4-303(4)(d), using combined unemployment experience rating factors for subsequent rate years, not to exceed three years following the year of the transfer.

(d) The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of its trade or business when, as the result of the transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and the trade or business is now performed by the employer to whom the workforce is transferred.

(4) (a) Whenever a person is not an employer under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business may not be transferred to that person if the division finds that the person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

(b) The person shall be assigned the applicable new employer rate under Subsection 35A-4-303(5).

(c) In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the division shall use objective factors
which may include:

(i) the cost of acquiring the business;
(ii) whether the person continued the business enterprise of the acquired business;
(iii) how long the business enterprise was continued; or
(iv) whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(5) (a) If a person knowingly violates or attempts to violate Subsection (3) or (4) or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of any of those subsections or provisions, the person is subject to the following penalties:

(i) (A) If the person is an employer, then the employer shall be assigned an overall contribution rate of 5.4% for the rate year during which the violation or attempted violation occurred and for the subsequent rate year.

(B) If the person's business is already at 5.4% for any year, or if the amount of increase in the person's rate would be less than 2% for that year, then a penalty surcharge of contributions of 2% of taxable wages shall be imposed for the rate year during which the violation or attempted violation occurred and for the subsequent rate year.

(ii) (A) If the person is not an employer, the person shall be subject to a civil penalty of not more than $5,000.

(B) The fine shall be deposited in the penalty and interest account established under Section 35A-4-506.

(b) (i) In addition to the penalty imposed by Subsection (5)(a), a violation of this section may be prosecuted as unemployment insurance fraud.

(ii) The determination of the degree of an offense shall be measured by the total value of all contributions avoided or reduced or contributions sought to be avoided or reduced by the unlawful conduct as applied to the degrees listed under Subsection 76-8-1301(2)(a).

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules to identify the transfer or acquisition of a business for purposes of this section.

(7) This section shall be interpreted and applied in a manner that meets the minimum requirements contained in any guidance or regulations issued by the United States Department
Section 3. Section 35A-4-305 is amended to read:

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

Offer to compromise.

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

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

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

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

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

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

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

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

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

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

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

(f) Interest and penalties collected in accordance with this section shall be paid into the Special Administrative Expense Account created by Section 35A-4-506.

(g) Action required for the collection of sums due under this chapter is subject to the applicable limitations of actions under Title 78B, Chapter 2, Statutes of Limitations.

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

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

(c) The determination is considered correct unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) A private collector is subject to the confidentiality requirements and penalty provisions provided in Section 35A-4-312 and Subsection 76-8-1301(4), except to the extent disclosure is necessary in a civil action to enforce collection of the amounts due.
(e) An action taken by the division under this section may not be construed to be an election to forego other collection procedures by the division.

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

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

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

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

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

(c) The amount of the docketed warrant shall:

(i) have the force and effect of an execution against all personal property of the delinquent employer; and
(ii) become a lien upon the real property of the delinquent employer or claimant in the same manner and to the same extent as a judgment duly rendered by a district court and docketed in the office of the clerk.

(d) After docketing, the sheriff shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) In prescribing these rules, the division:

(A) may not require an employer to file contribution reports on magnetic or electronic media unless the employer is required to file wage data on at least 250 employees during any calendar quarter or is an authorized employer representative who files quarterly tax reports on behalf of 100 or more employers during any calendar quarter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) "Person" means:

(I) an individual;

(II) a trust;

(III) an estate;

(IV) a partnership;

(V) an association;

(VI) a company;

(VII) a limited liability company;

(VIII) a limited liability partnership; or

IX) a corporation.

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

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

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

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

(12) (a) Except in cases involving a violation of unemployment compensation provisions under Section 76-8-1301, Subsection 35A-4-304(5), or Subsection 35A-4-405(5), and at the discretion of the division, the division may accept an offer in compromise from an employer or claimant to reduce past due debt arising from contributions or benefit overpayments imposed under this chapter.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
division shall make rules for allowing an offer in compromise provided under Subsection (12)(a).

Section 4. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

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**Legislative Review Note**

as of 1-20-12 9:47 AM

Office of Legislative Research and General Counsel