

1 **UNEMPLOYMENT INSURANCE MODIFICATIONS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Jeremy A. Peterson

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Employment Security Act by reducing the maximum
10 unemployment insurance contribution rate for an employer beginning in calendar year
11 2012 and capping the social unemployment insurance contribution rate for all
12 employers for calendar year 2012 only.

13 **Highlighted Provisions:**

14 This bill:

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

27 **Money Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 This bill provides an immediate effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **35A-4-303**, as last amended by Laws of Utah 2011, Chapters 297 and 342

34 **35A-4-304**, as last amended by Laws of Utah 2011, Chapter 297

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



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

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

39 **35A-4-303. Determination of contribution rates.**

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

45 (b) In calculating the basic contribution rate under Subsection (1)(a)[;(i)], if four fiscal
46 years of data are not available[;];

47 (i) the data of [~~three~~] the number of complete fiscal years that is available shall be
48 divided by the total taxable wages for the same time period[;]; or

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

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

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

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

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

58 [(b) Beginning January 1, 2005, the division shall calculate the social contribution rate

59 ~~by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding~~
60 ~~four fiscal years by the total taxable wages of all employers subject to contributions for the~~
61 ~~same period, calculated to four decimal places, disregarding any remaining fraction.]~~

62 ~~[(c) Beginning January 1, 2009]~~

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

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

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

73 (ii) if the fourth decimal place is .0005 or more, rounding the third decimal place up.

74 (b) For calendar year 2012 only, if the calculation of the social contribution rate under
75 Subsection (2)(a) is greater than .004, the social contribution rate for calendar year 2012 is
76 .004.

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

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

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

82 ~~[(B) beginning January 1, 2009,] (i) the adequate reserve is defined as between 18 and~~
83 ~~24 months of benefits at the average of the five highest benefit cost rates in the last 25 years;~~

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

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

89 ~~(iv) the division shall set the reserve factor [will be set] between 1.0000 and 1.5000 if~~

90 the actual reserve fund balance as of June 30 prior to the computation date is less than the
91 adequate reserve;

92 (v) if the actual reserve fund balance as of June 30 preceding the computation date is
93 insolvent or negative or if there is an outstanding loan from the Federal Unemployment
94 Account[;] or other lending institution, the division shall set the reserve factor [~~will be set~~] at
95 2.0000 until the actual reserve fund balance as of June 30 preceding the computation date is
96 determined [~~to be an adequate reserve~~] by the division to be solvent or positive and there is no
97 outstanding loan;

98 (vi) the division shall set the reserve factor [~~will be set~~] on or before January 1 of each
99 year; and

100 (vii) money made available to the state under Section 903 of the Social Security Act,
101 42 U.S.C. 1103, as amended, which is received on or after January 1, 2004, may not be
102 considered in establishing the reserve factor under this section for the rate year 2005 or any
103 [~~subsequent~~] following rate year.

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

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

112 (i) except as provided in Subsection (4)(a)(ii) or (iii), the employer's basic contribution
113 rate multiplied by the reserve factor established [~~according to~~] under Subsection (3)(b),
114 calculated to four decimal places, disregarding [~~the~~] any remaining fraction, plus the social
115 contribution rate established [~~according to~~] under Subsection (2), and the result calculated to
116 three decimal places, disregarding [~~the~~] any remaining fraction[, ~~but not more than a maximum~~
117 ~~overall contribution rate of 9%, plus the applicable social contribution rate and not less than~~
118 ~~1.1% for new employers.];~~

119 (ii) if under Subsection (4)(a)(i) the overall contribution rate calculation for an
120 employer is greater than 9% plus the applicable social contribution rate, the overall

121 contribution rate for the employer shall be reduced to 9% plus the applicable social
 122 contribution rate; or

123 (iii) if under Subsection (4)(a)(i) the overall contribution rate calculation for a new
 124 employer is less than 1.1%, the overall contribution rate for the new employer shall be
 125 increased to 1.1%.

126 (b) Beginning January 1, 2012, an employer's overall contribution rate is:

127 (i) except as provided in Subsection (4)(b)(ii) or (iii), the employer's basic contribution
 128 rate multiplied by the reserve factor established under Subsection (3)(b), calculated to four
 129 decimal places, disregarding any remaining fraction, plus the social contribution rate
 130 established under Subsection (2), and the result calculated to three decimal places, disregarding
 131 any remaining fraction;

132 (ii) if under Subsection (4)(b)(i) the overall contribution rate calculation for an
 133 employer is greater than 7% plus the applicable social contribution rate, the overall
 134 contribution rate for the employer shall be reduced to 7% plus the applicable social
 135 contribution rate; or

136 (iii) if under Subsection (4)(b)(i) the overall contribution rate calculation for a new
 137 employer is less than 1.1%, the overall contribution rate for the new employer shall be
 138 increased to 1.1%.

139 (c) The overall contribution rate described under this Subsection (4) does not include
 140 the addition of any penalty applicable to an employer;

141 (i) as a result of delinquency in the payment of contributions as provided in Subsection
 142 (9)[-]; or

143 ~~[(d) The overall contribution rate does not include the addition of any penalty~~
 144 ~~applicable to an employer]~~

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

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

151 ~~[(a)]~~ (b) Except as provided in Subsection (5)[(b)](c), by January 1 of each year, the

152 basic contribution rate to be used in computing ~~the~~ a new employer's overall contribution rate
153 under Subsection (4) is the benefit cost rate ~~which~~ that is the greater of:

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

158 (ii) 1%.

159 ~~(b)~~ (c) If the major industrial classification assigned to a new employer is an industry
160 for which a benefit cost rate does not exist because the industry has not operated in the state or
161 has not been covered under this chapter, the employer's basic contribution rate ~~shall be~~ is
162 5.4%. This basic contribution rate is used in computing the employer's overall contribution
163 rate under Subsection (4).

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

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

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

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

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

178 (8) (a) If an employer acquires the business or all or substantially all the assets of
179 another employer and the other employer had discontinued operations upon the acquisition or
180 transfers its trade or business, or a portion of its trade or business, under Subsection
181 35A-4-304(3)(a):

182 (i) for purposes of determining and establishing the acquiring party's qualifications for

183 an experience rating classification, the payrolls of both employers during the qualifying period
184 shall be jointly considered in determining the period of liability with respect to:

185 (A) the filing of contribution reports;

186 (B) the payment of contributions; and

187 (C) [~~after January 1, 1985,~~] the benefit costs of both employers;

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

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

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

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

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

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

214 provisions of this chapter, plus a surcharge of 1% of wages.

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

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

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

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

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

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

230 **35A-4-304. Special provisions regarding transfers of unemployment experience**
231 **and assignment rates.**

232 (1) As used in this section:

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

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

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

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

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

242 (3) (a) If an employer transfers its trade or business, or a portion of its trade or
243 business, to another employer and, at the time of the transfer, there is common ownership,
244 management, or control of the employers, then the unemployment experience attributable to

245 each employer shall be combined into a common experience rate calculation.

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

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

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

260 (iii) Once one or more employing units described in Subsection (3)(c)(ii) is a qualified
261 employer, all the employing units shall be assigned an overall rate under Subsection
262 35A-4-303(4)~~(4)~~, using combined unemployment experience rating factors for subsequent
263 rate years, not to exceed three years following the year of the transfer.

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

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

272 (b) The person shall be assigned the applicable new employer rate under Subsection
273 35A-4-303(5).

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

276 which may include:

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

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

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

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

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

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

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

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

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

305 (7) This section shall be interpreted and applied in a manner that meets the minimum
306 requirements contained in any guidance or regulations issued by the United States Department

307 of Labor.

308 Section 3. Section **35A-4-305** is amended to read:

309 **35A-4-305. Collection of contributions -- Unpaid contributions to bear interest --**
310 **Offer to compromise.**

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

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

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

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

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

330 (d) The division shall assess as a penalty a service charge, in addition to any other
331 penalties that may apply, in an amount not to exceed the service charge imposed by Section
332 7-15-1 for dishonored instruments if:

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

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

336 (e) Except for benefit overpayments under Subsection 35A-4-405(5), benefit
337 overpayments, contributions, interest, penalties, and assessed costs, uncollected three years

338 after they become due, may be charged as uncollectible and removed from the records of the
339 division if:

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

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

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

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

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

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

353 (c) The determination is considered correct unless:

354 (i) the employer, within 10 days after mailing or personal delivery of notice of the
355 determination, applies to the division for a review of the determination as provided in Section
356 35A-4-508; or

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

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

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

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

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

369 (ii) entitled to preference upon the calendar of the court over all other civil actions
370 except:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

434 (d) After docketing, the sheriff shall:

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

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

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

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

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

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

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

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

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

460 (c) All persons notified under Subsection (7)(a) shall, within five days after receipt of
461 the notice, advise the division of credits, other personal property, or other debts in their

462 possession, under their control or owing by them, as the case may be.

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

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

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

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

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

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

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

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

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

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

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

492 (C) may require an employer to post a bond for failure to comply with the rules

493 required by this Subsection (8)(d).

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

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

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

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

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

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

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

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

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

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

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

524 of a quasi-judicial authority, such as a state or federal taxing authority.

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

530 (C) "Person" means:

- 531 (I) an individual;
- 532 (II) a trust;
- 533 (III) an estate;
- 534 (IV) a partnership;
- 535 (V) an association;
- 536 (VI) a company;
- 537 (VII) a limited liability company;
- 538 (VIII) a limited liability partnership; or
- 539 (IX) a corporation.

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

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

- 546 (I) the property is in existence and the interest has become protected under the law
547 against a subsequent judgment lien arising out of an unsecured obligation; and
- 548 (II) to the extent that, at that time, the holder has parted with money or money's worth.

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

554 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

555 division shall make rules for allowing an offer in compromise provided under Subsection
556 (12)(a).

557 Section 4. **Effective date.**

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

Legislative Review Note
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Office of Legislative Research and General Counsel