

1 **OCCUPATION INFORMATION AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Howard A. Stephenson**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends a provision related to occupation information collected by the
10 Department of Workforce Services.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ requires an employer to report, to the Unemployment Insurance Division within the
14 Department of Workforce Services, quarterly wage information for each paid
15 employee, including an occupation code and other information about the employee.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **35A-4-305**, as last amended by Laws of Utah 2012, Chapter 15

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

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

26 **35A-4-305. Collection of contributions -- Unpaid contributions to bear interest --**

27 **Offer to compromise.**



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

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

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

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

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

47 (d) The division shall assess as a penalty a service charge, in addition to any other
48 penalties that may apply, in an amount not to exceed the service charge imposed by Section
49 7-15-1 for dishonored instruments if:

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

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

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

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

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

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

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

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

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

70 (c) The determination is considered correct unless:

71 (i) the employer, within 10 days after mailing or personal delivery of notice of the
72 determination, applies to the division for a review of the determination as provided in Section
73 [35A-4-508](#); or

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

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

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

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

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

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

87 except:

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

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

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

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

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

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

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

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

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

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

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

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

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

119 (4) (a) In the event of a distribution of an employer's assets under an order of a court
120 under the laws of Utah, including a receivership, assignment for benefits of creditors,

121 adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter
122 due shall be paid in full prior to all other claims except taxes and claims for wages of not more
123 than \$400 to each claimant, earned within five months of the commencement of the
124 proceeding.

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

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

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

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

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

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

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

151 (d) After docketing, the sheriff shall:

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

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

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

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

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

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

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

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

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

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

180 (8) (a) (i) Each employer shall furnish the division necessary information for the proper
181 administration of this chapter [~~and shall include~~].

182 (ii) An employer shall furnish the division, at minimum, each paid employee's wage

183 information [~~for each employee,~~] for each calendar quarter[-], including the employee's:

184 (A) first initial, second initial, and full last name;

185 (B) social security number;

186 (C) occupation title;

187 (D) occupation code as provided by the division; and

188 (E) number of hours worked.

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

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

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

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

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

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

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

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

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

213 (B) shall take into account, among other relevant factors, the ability of the employer to

214 comply at reasonable cost with the requirements of the rules; and

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

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

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

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

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

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

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

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

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

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

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

242 (A) "Judgment lien creditor" means a person who obtains a valid judgment of a court
243 of record for recovery of specific property or a sum certain of money, and who in the case of a
244 recovery of money, has a perfected lien under the judgment on the property involved. A

245 judgment lien does not include inchoate liens such as attachment or garnishment liens until
246 they ripen into a judgment. A judgment lien does not include the determination or assessment
247 of a quasi-judicial authority, such as a state or federal taxing authority.

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

253 (C) "Person" means:

254 (I) an individual;

255 (II) a trust;

256 (III) an estate;

257 (IV) a partnership;

258 (V) an association;

259 (VI) a company;

260 (VII) a limited liability company;

261 (VIII) a limited liability partnership; or

262 (IX) a corporation.

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

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

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

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

272 (12) (a) Except in cases involving a violation of unemployment compensation
273 provisions under Section [76-8-1301](#), Subsection [35A-4-304\(5\)](#), or Subsection [35A-4-405\(5\)](#),
274 and at the discretion of the division, the division may accept an offer in compromise from an
275 employer or claimant to reduce past due debt arising from contributions or benefit

276 overpayments imposed under this chapter.

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

278 division shall make rules for allowing an offer in compromise provided under Subsection

279 (12)(a).

Legislative Review Note
Office of Legislative Research and General Counsel