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WORKFORCE SERVICES AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jim Bird

Senate Sponsor: _____

LONG TITLE

Committee Note:

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

General Description:

This bill modifies the Employment Security Act by amending the penalty provisions for fraud in obtaining unemployment insurance benefits and the Unemployment Insurance Division's disposition of collected penalties for fraud.

Highlighted Provisions:

This bill:

▶ requires that when the Unemployment Insurance Division issues a determination that a claimant has willfully made a false statement or representation or knowingly failed to report a material fact to obtain unemployment insurance benefits, the penalty weeks begin on the Sunday before the day on which the determination is issued;

▶ requires that beginning on October 1, 2013, the Unemployment Insurance Division deposit 15% of a civil penalty collected from a claimant for false statements or knowingly failing to report a material fact in obtaining unemployment insurance benefits into the Unemployment Compensation Fund in compliance with the federal Social Security Act; and

▶ makes technical changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **35A-4-405**, as last amended by Laws of Utah 2012, Chapters 54 and 314

35 **35A-4-506**, as last amended by Laws of Utah 2012, Chapter 146



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

38 Section 1. Section **35A-4-405** is amended to read:

39 **35A-4-405. Ineligibility for benefits.**

40 Except as otherwise provided in Subsection (5), an individual is ineligible for benefits
41 or for purposes of establishing a waiting period:

42 (1) (a) For the week in which the claimant left work voluntarily without good cause, if
43 so found by the division, and for each week thereafter until the claimant has performed services
44 in bona fide, covered employment and earned wages for those services equal to at least six
45 times the claimant's weekly benefit amount.

46 (b) A claimant may not be denied eligibility for benefits if the claimant leaves work
47 under circumstances where it would be contrary to equity and good conscience to impose a
48 disqualification.

49 (c) Using available information from employers and the claimant, the division shall
50 consider for the purposes of this chapter the reasonableness of the claimant's actions, and the
51 extent to which the actions evidence a genuine continuing attachment to the labor market in
52 reaching a determination of whether the ineligibility of a claimant is contrary to equity and
53 good conscience.

54 (d) Except as provided in Subsection (1)(e), a claimant who has left work voluntarily to
55 accompany or follow the claimant's spouse to a new locality does so without good cause for
56 purposes of this Subsection (1).

57 (e) A claimant who has left work voluntarily to accompany or follow the claimant's
58 spouse to a new locality does so with good cause for purposes of this Subsection (1) and is

59 eligible to receive benefits if:

60 (i) the claimant's spouse is a member of the United States armed forces and the
61 claimant's spouse has been relocated by a full-time assignment scheduled to last at least 180
62 days while on:

63 (A) active duty as defined in 10 U.S.C. Sec. 101(d)(1); or

64 (B) active guard or reserve duty as defined in 10 U.S.C. Sec. 101(d)(6);

65 (ii) it is impractical as determined by the division for the claimant to commute to the
66 previous work from the new locality;

67 (iii) the claimant left work voluntarily no earlier than 15 days before the scheduled start
68 date of the spouse's active-duty assignment; and

69 (iv) the claimant otherwise meets and follows the eligibility and reporting requirements
70 of this chapter, including registering for work with the division or, if the claimant has relocated
71 to another state, the equivalent agency of that state.

72 (2) (a) For the week in which the claimant was discharged for just cause or for an act or
73 omission in connection with employment, not constituting a crime, which is deliberate, willful,
74 or wanton and adverse to the employer's rightful interest, if so found by the division, and
75 thereafter until the claimant has earned an amount equal to at least six times the claimant's
76 weekly benefit amount in bona fide covered employment.

77 (b) For the week in which the claimant was discharged for dishonesty constituting a
78 crime or any felony or class A misdemeanor in connection with the claimant's work as shown
79 by the facts, together with the claimant's admission, or as shown by the claimant's conviction of
80 that crime in a court of competent jurisdiction and for the 51 next following weeks.

81 (c) Wage credits shall be deleted from the claimant's base period, and are not available
82 for this or any subsequent claim for benefits.

83 (3) (a) (i) If the division finds that the claimant has failed without good cause to
84 properly apply for available suitable work, to accept a referral to suitable work offered by the
85 employment office, or to accept suitable work offered by an employer or the employment
86 office.

87 (ii) The ineligibility continues until the claimant has performed services in bona fide
88 covered employment and earned wages for the services in an amount equal to at least six times
89 the claimant's weekly benefit amount.

90 (b) (i) A claimant may not be denied eligibility for benefits for failure to apply, accept
91 referral, or accept available suitable work under circumstances where it would be contrary to
92 equity and good conscience to impose a disqualification.

93 (ii) The division shall consider the purposes of this chapter, the reasonableness of the
94 claimant's actions, and the extent to which the actions evidence a genuine continuing
95 attachment to the labor market in reaching a determination of whether the ineligibility of a
96 claimant is contrary to equity and good conscience.

97 (c) In determining whether work is suitable for an individual, the division shall
98 consider the:

- 99 (i) degree of risk involved to ~~his~~ the individual's health, safety, and morals;
- 100 (ii) individual's physical fitness and prior training;
- 101 (iii) individual's prior earnings and experience;
- 102 (iv) individual's length of unemployment;
- 103 (v) prospects for securing local work in ~~his~~ the individual's customary occupation;
- 104 (vi) wages for similar work in the locality; and
- 105 (vii) distance of the available work from ~~his~~ the individual's residence.

106 (d) Prior earnings shall be considered on the basis of all four quarters used in
107 establishing eligibility and not just the earnings from the most recent employer. The division
108 shall be more prone to find work as suitable the longer the claimant has been unemployed and
109 the less likely the prospects are to secure local work in his customary occupation.

110 (e) Notwithstanding any other provision of this chapter, no work is suitable, and
111 benefits may not be denied under this chapter to any otherwise eligible individual for refusing
112 to accept new work under any of the following conditions:

- 113 (i) if the position offered is vacant due directly to a strike, lockout, or other labor
114 dispute;
- 115 (ii) if the wages, hours, or other conditions of the work offered are substantially less
116 favorable to the individual than those prevailing for similar work in the locality; or
- 117 (iii) if as a condition of being employed the individual would be required to join a
118 company union or to resign from or refrain from joining any bona fide labor organization.

119 (4) For any week in which the division finds that the claimant's unemployment is due
120 to a stoppage of work that exists because of a strike involving the claimant's grade, class, or

121 group of workers at the factory or establishment at which the claimant is or was last employed.

122 (a) If the division finds that a strike has been fomented by a worker of any employer,
 123 none of the workers of the grade, class, or group of workers of the individual who is found to
 124 be a party to the plan, or agreement to foment a strike, shall be eligible for benefits. However,
 125 if the division finds that the strike is caused by the failure or refusal of any employer to
 126 conform to any law of the state or of the United States pertaining to hours, wages, or other
 127 conditions of work, the strike may not render the workers ineligible for benefits.

128 (b) If the division finds that the employer, the employer's agent or representative has
 129 conspired, planned, or agreed with any of the employer's workers, their agents or
 130 representatives to foment a strike, that strike may not render the workers ineligible for benefits.

131 (c) A worker may receive benefits if, subsequent to the worker's unemployment
 132 because of a strike as defined in this Subsection (4), the worker has obtained employment and
 133 has been paid wages of not less than the amount specified in Subsection 35A-4-401(4) and has
 134 worked as specified in Subsection 35A-4-403(1)(f). During the existence of the stoppage of
 135 work due to this strike the wages of the worker used for the determination of his benefit rights
 136 may not include any wages the worker earned from the employer involved in the strike.

137 (5) (a) For each week ~~[with respect to which the claimant willfully made a false~~
 138 ~~statement or representation or knowingly failed to report a material fact to obtain any benefit~~
 139 ~~under the provisions of this chapter, and an additional 13 weeks for the first week the~~
 140 ~~statement or representation was made or fact withheld and six weeks for each week thereafter;~~
 141 ~~the additional weeks not to exceed 49 weeks:]~~ a claimant obtains a benefit under this chapter by
 142 willfully making a false statement or representation or by knowingly failing to report a material
 143 fact, and a penalty of no more than 49 additional weeks as follows:

144 (i) 13 weeks for the first week the false statement or representation was made or fact
 145 withheld to receive a benefit; and

146 (ii) six weeks for each additional week the false statement or representation was made
 147 or fact withheld to receive a benefit.

148 (b) The additional ~~[period]~~ penalty weeks shall ~~[commence]~~ begin on the Sunday
 149 ~~[following the issuance of a]~~ of the week the determination finding the claimant in violation of
 150 this Subsection (5) is issued.

151 (c) (i) Each claimant found in violation of this Subsection (5) shall repay to the

152 division the overpayment and, as a civil penalty for fraud, an amount equal to the overpayment.

153 (ii) The overpayment is the amount of benefits the claimant received by direct reason
154 of fraud.

155 (iii) ~~[The]~~ Subject to the requirements of Subsection 35A-4-506(7), the civil penalty
156 for fraud amount shall be ~~[regarded]~~ treated as any other penalty under this chapter.

157 (iv) ~~[These amounts]~~ The repayment of an overpayment and a civil penalty for fraud
158 shall be collectible by civil action or warrant in the manner provided in Subsections
159 35A-4-305(3) and (5).

160 (d) A claimant is ineligible for future benefits or waiting week credit, and any wage
161 credits earned by the claimant shall be unavailable for purposes of paying benefits, if any
162 amount owed under this Subsection (5) remains unpaid.

163 (e) Determinations under this Subsection (5) shall be appealable in the manner
164 provided by this chapter for appeals from other benefit determinations.

165 (f) If the fraud determination is based solely on unreported or underreported work or
166 earnings, or both, and the claimant would have been eligible for benefits if the work or
167 earnings, or both, had been correctly reported, the individual does not lose eligibility for that
168 week because of the misreporting but is liable for the overpayment and subject to the penalties
169 in Subsection (5)(c) and the disqualification periods for future weeks in Subsection (5)(a).

170 (6) For any week with respect to which or a part of which the claimant has received or
171 is seeking unemployment benefits under an unemployment compensation law of another state
172 or the United States. If the appropriate agency of the other state or of the United States finally
173 determines that the claimant is not entitled to those unemployment benefits, this
174 disqualification does not apply.

175 (7) (a) For any week with respect to which the claimant is receiving, has received, or is
176 entitled to receive remuneration in the form of:

177 (i) wages in lieu of notice, or a dismissal or separation payment; or

178 (ii) accrued vacation or terminal leave payment.

179 (b) If the remuneration is less than the benefits that would otherwise be due, the
180 claimant is entitled to receive for that week, if otherwise eligible, benefits reduced as provided
181 in Subsection 35A-4-401(3).

182 (8) (a) For any week in which the individual's benefits are based on service for an

183 educational institution in an instructional, research, or principal administrative capacity and
184 that begins during the period between two successive academic years, or during a similar
185 period between two regular terms, whether or not successive, or during a period of paid
186 sabbatical leave provided for in the individual's contract if the individual performs services in
187 the first of those academic years or terms and if there is a contract or reasonable assurance that
188 the individual will perform services in that capacity for an educational institution in the second
189 of the academic years or terms.

190 (b) (i) For any week in which the individual's benefits are based on service in any other
191 capacity for an educational institution, and that week begins during a period between two
192 successive academic years or terms if the individual performs those services in the first of the
193 academic years or terms and there is a reasonable assurance that the individual will perform the
194 services in the second of the academic years or terms.

195 (ii) If compensation is denied to any individual under this Subsection (8) and the
196 individual was not offered an opportunity to perform the services for the educational institution
197 for the second of the academic years or terms, the individual shall be entitled to a retroactive
198 payment of compensation for each week for which the individual filed a timely claim for
199 compensation and for which compensation was denied solely by reason of this Subsection (8).

200 (c) With respect to any services described in Subsection (8)(a) or (b), compensation
201 payable on the basis of those services shall be denied to an individual for any week that
202 commences during an established and customary vacation period or holiday recess if the
203 individual performs the services in the period immediately before the vacation period or
204 holiday recess, and there is a reasonable assurance that the individual will perform the services
205 in the period immediately following the vacation period or holiday recess.

206 (d) (i) With respect to services described in Subsection (8)(a) or (b), compensation
207 payable on the basis of those services as provided in Subsection (8)(a), (b), or (c) shall be
208 denied to an individual who performed those services in an educational institution while in the
209 employ of an educational service agency in accordance with the Federal Unemployment Tax
210 Act, 26 U.S.C. Sec. 3304(a)(6)(A)(iv).

211 (ii) For purposes of this Subsection (8)(d), "educational service agency" means a
212 governmental agency or entity established and operated exclusively for the purpose of
213 providing the services described in Subsection (8)(a) or (b) to an educational institution.

214 (e) With respect to services described in Subsection (8)(a) or (b), compensation
215 payable on the basis of those services as provided in Subsection (8)(a), (b), or (c) shall be
216 denied to an individual who performed those services:

217 (i) to or on behalf of an educational institution in accordance with the Federal
218 Unemployment Tax Act, 26 U.S.C. Sec. 3304(a)(6)(A)(v); and

219 (ii) while employed by a governmental entity, Indian tribe, or nonprofit organization, to
220 which the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3309(a)(1) applies.

221 (f) Benefits based on service in employment, defined in Subsections 35A-4-204(2)(d)
222 and (e) are payable in the same amount, on the same terms and subject to the same conditions
223 as compensation payable on the basis of other ~~[service]~~ services subject to this chapter.

224 (9) For any week that commences during the period between two successive sport
225 seasons or similar periods if the individual performed any services, substantially all of which
226 ~~[consists]~~ consist of participating in sports or athletic events or training or preparing to
227 participate in the first of those seasons or similar periods and there is a reasonable assurance
228 that individual will perform those services in the later of the seasons or similar periods.

229 (10) (a) For any week in which the benefits are based upon services performed by an
230 alien, unless the alien is an individual who has been lawfully admitted for permanent residence
231 at the time the services were performed, was lawfully present for purposes of performing the
232 services or~~;~~ was permanently residing in the United States under color of law at the time the
233 services were performed, including an alien who is lawfully present in the United States as a
234 result of the application of Subsection 212(d)(5) of the Immigration and Nationality Act, 8
235 U.S.C. 1182(d)(5)(A).

236 (b) Any data or information required of individuals applying for benefits to determine
237 whether benefits are not payable to them because of their alien status shall be uniformly
238 required from all applicants for benefits.

239 (c) In the case of an individual whose application for benefits would otherwise be
240 approved, no determination that benefits to the individual are not payable because of his alien
241 status shall be made except upon a preponderance of the evidence.

242 Section 2. Section **35A-4-506** is amended to read:

243 **35A-4-506. Special Administrative Expense Account.**

244 (1) There is created a restricted account within the General Fund known as the "Special

245 Administrative Expense Account."

246 (2) (a) ~~[Interest]~~ Subject to Subsection (7), interest and penalties collected under this
247 chapter, less refunds made under Subsection 35A-4-306(5), shall be paid into the restricted
248 account from the clearing account of the restricted account at the end of each calendar month.

249 (b) A contribution to the restricted account and any other money received for that
250 purpose shall be paid into the restricted account.

251 (c) The money in the restricted account may not be expended in any manner that would
252 permit its substitution for, or a corresponding reduction in, federal funds that would in the
253 absence of the money be available to finance expenditures for the administration of this
254 chapter.

255 (3) Nothing in this section shall prevent the money from being used as a revolving fund
256 to cover expenditures, necessary and proper under this chapter, for which federal funds have
257 been duly requested but not yet received subject to the charging of those expenditures against
258 the funds when received.

259 (4) Subject to ~~[Subsection (6)]~~ Subsections (6) and (7), money in the restricted account
260 shall be deposited, administered, and dispersed in accordance with the directions of the
261 Legislature.

262 (5) Subject to Subsection (6), money in the restricted account is made available to
263 replace, within a reasonable time, any money received by this state under Section 302 of the
264 Social Security Act, 42 U.S.C. Sec. 502, as amended, that because of any action of contingency
265 has been lost or has been expended for purposes other than or in amounts in excess of those
266 necessary for the proper administration of this chapter.

267 (6) If money in the restricted account is used for a purpose unrelated to the
268 administration of the unemployment compensation program as described in Subsection
269 303(a)(8) of the Social Security Act, 42 U.S.C. Sec. 503(a)(8), as amended, the division shall
270 develop and follow a cost allocation plan in compliance with United States Department of
271 Labor regulations, including the cost principles described in 29 C.F.R. 97.22(b) and 2 C.F.R.
272 Part 225.

273 (7) Beginning October 1, 2013, 15% of a civil penalty for fraud collected under
274 Subsection 35A-4-405(5)(c)(i) shall be deposited into the Unemployment Compensation Fund,
275 described in Section 35A-4-501, in compliance with Subsection 303(a)(11) of the Social

276 Security Act, 42 U.S.C. Sec. 503(a)(8), as amended.

277 [~~(7)~~] (8) Money in the restricted account shall be available to the division for
278 expenditure in accordance with this section.

279 [~~(8)~~] (9) The state treasurer shall pay all warrants drawn upon it by the division or its
280 duly authorized agent in accordance with rules made by the department.

281 [~~(9)~~] (10) (a) The state treasurer is liable on the state treasurer's official bond for the
282 faithful performance of the treasurer's duties in connection with the Special Administrative
283 Expense Account described in this chapter.

284 (b) Liability on the official bond exists in addition to any liability upon any separate
285 bond that exists on the effective date of this provision or that may be given in the future.

286 (c) Any money recovered on any surety bond losses sustained by the Special
287 Administrative Expense Account shall be deposited in the restricted account or in the General
288 Fund if directed by the Legislature.

Legislative Review Note
as of 10-22-12 11:05 AM

Office of Legislative Research and General Counsel