

1 **H. B. 2952**

2
3 (By Delegates Marshall, Manchin, Miley, Moore,
4 Fleischauer and Barill)

5
6 [Introduced March 15, 2013; referred to the
7 Committee on the Judiciary then Finance.]

8 **FISCAL**
9 **NOTE**

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §21A-12-1, §21A-12-2,
12 §21A-12-3, §21A-12-4, §21A-12-5, §21A-12-6 and §21A-12-7, all
13 relating to the creation of Work Share West Virginia;
14 providing rule-making authority; specifying work share plan
15 contents; providing criteria for approval or denial of work
16 share plan; providing provisions for enforcement of program,
17 including criminal sanctions, employee eligibility, benefit
18 amounts and exhaustion of benefits; requiring reimbursement of
19 benefits paid; providing for charging participating employers;
20 and requiring report to Legislature.

21 *Be it enacted by the Legislature of West Virginia:*

22 That the Code of West Virginia, 1931, as amended, be amended
23 by adding thereto a new article, designated §21A-12-1, §21A-12-2,
24 §21A-12-3, §21A-12-4, §21A-12-5, §21A-12-6 and §21A-12-7, all to
25 read as follows:

1 **ARTICLE 12. WORK SHARE WEST VIRGINIA.**

2 **§21A-12-1. Definitions.**

3 As used in this article:

4 (1) "Executive director" means the Executive Director of
5 Workforce West Virginia.

6 (2) "Participating employee" means an employee who works a
7 reduced number of hours under an approved shared work plan.

8 (3) "Participating employer" means an employer who has a
9 shared work plan.

10 (4) "Shared work benefit" means an unemployment compensation
11 benefit that is payable to a participating employee.

12 **§21A-12-2. Creation of the Work Share West Virginia Program.**

13 (a) The "Work Share West Virginia" program is created. Under
14 this program an employer who participates in the program reduces
15 the number of hours worked by the employees of the employer in lieu
16 of layoffs. Work Share West Virginia is a completely voluntary
17 program and an employer is under no obligation to participate.

18 (b) An employer who wishes to participate in the program shall
19 submit a plan to the executive director that satisfies the
20 requirements contained in section three of this article.

21 (c) The executive director shall propose rules, in accordance
22 with the provisions of article three, chapter twenty-nine-a of this
23 code, that are necessary to implement and enforce the provisions of
24 this article, including rules necessary to implement guidance

1 issued by the United States Secretary of Labor with respect to the
2 Work Share West Virginia program.

3 **§21A-12-3. Work Share plan contents.**

4 (a) The executive director shall approve a shared work plan
5 submitted under section two of this article if all of the following
6 are satisfied:

7 (1) The employer identifies in the plan the participating
8 employees by name and social security number;

9 (2) The employer describes in the plan the manner in which the
10 employer will implement the requirements of the Work Share West
11 Virginia program;

12 (3) The employer includes in the plan a plan for giving
13 advance notice, if feasible, to an employee whose workweek is to be
14 reduced;

15 (4) The employer includes with the plan an estimate of the
16 number of layoffs that would have occurred absent the ability to
17 participate in the Work Share West Virginia program;

18 (5) The employer certifies in the plan that if the
19 participating employer provides health benefits and retirement
20 benefits under a defined benefit plan, as defined in 26 U.S.C.
21 414(j), as amended, or contributions under a defined contribution
22 plan as defined in 26 U.S.C. 414(i), as amended, to any employee
23 whose workweek is reduced under the program that the benefits will
24 continue to be provided to an employee participating in the Work

1 Share West Virginia program under the same terms and conditions as
2 though the workweek of the employee had not been reduced or to the
3 same extent as other employees not participating in the program;

4 (6) The employer, in the plan, permits eligible employees to
5 participate, as appropriate, in training to enhance job skills
6 approved by the executive director, including employer-sponsored
7 training or worker training funded under the federal "Workforce
8 Investment Act of 1998," 112 Stat. 936, 29 U.S.C. 2801 et seq., as
9 amended;

10 (7) If any of the participating employees are covered by a
11 collective bargaining agreement, the plan must be approved, in
12 writing, by the participating employees' collective bargaining
13 representative;

14 (8) The employer includes in the plan any other information as
15 required by the United States Secretary of Labor or the executive
16 director under the rules the executive director adopts under
17 section two of this article; and

18 (9) The terms of the written plan submitted by the employer
19 and implementation of that plan are consistent with obligations of
20 the employer under the applicable federal and state laws.

21 (b) An employer may not include in the employer's shared work
22 plan any employee employed by the employer on a seasonal, temporary
23 or intermittent basis.

24 (c) (1) The executive director may not approve a shared work

1 plan submitted by an employer who is assigned the maximum
2 contribution rate calculated in accordance with section five,
3 article five of this chapter.

4 (2) The executive director shall approve or deny a shared work
5 plan and shall send a written notice to the employer stating
6 whether the executive director approved or denied the plan not
7 later than thirty days after the executive director receives the
8 plan. If the executive director denies approval of a shared work
9 plan, the executive director shall state the reasons for denying
10 approval in the written notice sent to the employer.

11 (d) The executive director shall enforce the requirements of
12 the Work Share West Virginia program in the same manner as the
13 executive director enforces the requirements of this chapter,
14 including the applicable provisions of article ten of this chapter.

15 **§21A-12-4. Approval of work share plan.**

16 A shared work plan approved under section three of this
17 article takes effect on the date the executive director approves
18 the plan. An approved shared work plan expires on the last day of
19 the twelfth calendar month beginning after the effective date of
20 the plan.

21 **§21A-12-5. Employee eligibility.**

22 (a) An individual is eligible to receive shared work benefits
23 for a week in which the individual satisfies all of the following:

24 (1) The individual is employed by a participating employer and

1 is subject to a shared work plan that was approved before that week
2 and is in effect for that week.

3 (2) The individual is available for work and is actively
4 seeking suitable work by being available for the individual's
5 workweek as required by the rules adopted by the executive director
6 under section two of this article.

7 (3) The individual's workweek has been reduced by at least ten
8 percent but not more than fifty percent.

9 (4) The individual otherwise satisfies the requirements of
10 this chapter.

11 (b) The executive director shall pay a participating employee
12 who is eligible for a weekly shared work benefit in an amount equal
13 to the participating employee's regular weekly benefit amount for
14 a period of total unemployment as described in section ten, article
15 six of this chapter, multiplied by the nearest full percentage of
16 reduction of the participating employee's wages under the
17 participating employee's participating employer's shared work plan.
18 The executive director shall round the amount of a shared work
19 benefit that is not a multiple of one dollar to the next lower
20 multiple of one dollar.

21 (c) A participating employee is not entitled to receive shared
22 work benefits and regular unemployment compensation benefits that
23 exceed the maximum total benefits payable to the participating
24 employee in a benefit year under section ten, article six of this

1 chapter. No participating employee may be paid shared work benefits
2 during the employee's benefit year in an amount that exceeds
3 twenty-six times the amount of regular compensation under section
4 ten, article six of this chapter payable to the employee for a week
5 of total unemployment. An individual who receives shared work
6 benefits is not entitled to receive benefits for partial
7 unemployment under section ten, article six of this chapter for any
8 week during which the individual works as a participating employee.
9 The executive director may not pay an individual shared work
10 benefits for a week during which the individual performs paid work
11 for the individual's participating employer that exceeds the
12 reduced hours established under a shared work plan.

13 (d) An individual who has received all of the shared work
14 benefits and regular unemployment compensation benefits available
15 in a benefit year is an individual who has exhausted regular
16 benefits under section ten, article six of this chapter and is
17 entitled to receive extended benefits under section eleven, article
18 six of this chapter if the individual is otherwise eligible to
19 receive benefits under that section.

20 **§21A-12-6. Reimbursement of benefits paid; charging participating**
21 **employer; exhaustion of shared work benefits.**

22 (a) As used in this section, "regular benefits" has the same
23 meaning as in section one, article six-a of this chapter.

24 (b) If the state is eligible for and receives reimbursement

1 for shared work benefits paid under the Work Share West Virginia
2 program from the federal government pursuant to the federal "Layoff
3 Prevention Act of 2012," Pub. L. No. 112-96, 126 Stat. 156,
4 notwithstanding section seven, article five of this chapter, and if
5 permitted under that act, during the time period in which the state
6 is reimbursed the account of a participating employer may not be
7 charged for any shared work benefits paid to the participating
8 employer's participating employees. Beginning on the date the
9 federal government no longer provides reimbursement, or if the
10 state does not receive reimbursement or the federal government
11 requires an employer's account to be charged, a participating
12 employer's account shall be charged for shared work benefits in
13 accordance with subsections (c) and (d) of this section.

14 (c) Except as provided in subsection (b) of this section and
15 notwithstanding the provisions of section seven, article five of
16 this chapter, any shared work benefits paid to an individual under
17 section five of this article shall be charged only to the account
18 of the participating employer under whose shared work plan the
19 individual is a participating employee.

20 (d) Except as provided in subsection (b) of this section, if
21 an individual exhausts the shared work benefits the individual
22 receives under section five of this article and during the same
23 benefit year the individual receives shared work benefits the
24 individual becomes eligible for regular benefits by a separation of

1 employment from the participating employer under whose shared work
2 plan the individual was a participating employee, notwithstanding
3 section seven, article five of this chapter, only the participating
4 employer's account shall be charged for any regular benefits the
5 individual receives for the remainder of the individual's benefit
6 year resulting directly from that separation from employment.

7 **§21A-12-7. Report to the Legislature.**

8 (a) Beginning one year after the effective date of this
9 article, and every year thereafter, the executive director shall
10 prepare and submit a report evaluating the use and effectiveness of
11 the Work Share West Virginia Program created by section two of this
12 article, and the impact of the program on the Unemployment
13 Compensation Fund created in article eight of this chapter. The
14 executive director shall include in that report the number of
15 employers and employees participating in the program, the amount of
16 shared work benefits paid under the program during the immediately
17 preceding year and any other information the executive director
18 considers to be relevant.

19 (b) The executive director shall submit the report to the
20 Governor, the President and Minority Leader of the Senate, and the
21 Speaker and the Minority Leader of the House of Delegates.

NOTE: The purpose of this bill is to create the Work Share West Virginia program in which a participating employer reduces the number of hours worked by its employees in lieu of laying off

employees.

This article is new; therefore, it has been completely underscored.