

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

**Introduced**

### **House Bill 2924**

**FISCAL  
NOTE**

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SUMMERS AND ZATEZALO

[Introduced March 05, 2021; Referred to the  
Committee on Workforce Development then  
Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated as §21A-6B-1, §21A-6B-2, §21A-6B-3, §21A-6B-4, §21A-6B-5, and §21A-6B-  
 3 6, all relating to establishing the Short Time Compensation Program within Workforce  
 4 West Virginia; defining terms; providing that the executive director of Workforce West  
 5 Virginia establish and implement the program; establishing program requirements;  
 6 development of an employer application form to request approval of a plan and an  
 7 approval process to participate in the program; establishing requirements for a plan  
 8 application; procedure for approval or disapproval of a plan; providing for the effective  
 9 date, duration, and modification of a plan; employee eligibility requirements to receive  
 10 short-time compensation; and prescribing employee benefits and limitations on benefits.

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

**ARTICLE 6B. SHORT TIME COMPENSATION PROGRAM.**

**§21A-6B-1. Definitions:**

1 As used in this article, unless the context requires a different meaning:  
 2 “Affected unit” means a specific plant, department, shift, or other definable unit of an  
 3 employing unit that has at least two employees to which an approved short-time compensation  
 4 plan applies.  
 5 “Director” means the executive director of Workforce West Virginia.  
 6 “Exhaustee” has the same meaning as defined in §21A-6A-1 of this code.  
 7 “Health and retirement benefits” means employer-provided health benefits and retirement  
 8 benefits under a defined benefit pension plan as defined in § 414(j) of the Internal Revenue Code  
 9 or contributions under a defined contribution plan as defined in § 414(i) of the Internal Revenue  
 10 Code that are incidents of employment in addition to the cash remuneration earned.  
 11 “Program” means the short-time compensation program established pursuant to this  
 12 article.  
 13 “Short-time compensation” means the unemployment benefits payable to employees in

14 an affected unit under an approved short-time compensation plan, as distinguished from the  
15 unemployment benefits otherwise payable under the unemployment compensation provisions of  
16 this chapter.

17 “Work sharing plan” or “plan” means a plan submitted by an employer to the director for  
18 approval to participate in the program.

**§ 21A-6B-2. Application to participate in short-time compensation program.**

1 (a) The director shall establish and implement a short-time compensation program by July  
2 1, 2021. The program shall meet the requirements of 26 U.S.C. § 3306(v) and all other applicable  
3 federal and state laws.

4 (b) An employer that wishes to participate in the program shall submit to the director a  
5 signed, written work sharing plan for approval. The director shall develop an application form to  
6 request approval of a plan and an approval process. The application shall include:

7 (1) The affected unit covered by the plan, including the number of employees in the unit;  
8 the percentage of employees in the affected unit covered by the plan; identification of each  
9 individual employee in the affected unit by name, Social Security number, and the employer’s  
10 unemployment tax account number; and any other information required by the director to identify  
11 plan participants.

12 (2) A description of how employees in the affected unit will be notified of the employer’s  
13 participation in the plan if such application is approved, including how the employer will notify  
14 those employees in a collective bargaining unit as well as any employees in the affected unit who  
15 are not in a collective bargaining unit. If the employer does not intend to provide advance notice  
16 to employees in the affected unit, the employer shall explain in a statement in the application why  
17 it is not feasible to provide such notice.

18 (3) A requirement that the employer identify, in the application, the usual weekly hours of  
19 work for employees in the affected unit and the specific percentage by which their hours will be  
20 reduced during all weeks covered by the plan. The percentage of reduction for which a work

21 sharing plan application may be approved shall be not less than 10 percent and not more than 60  
22 percent. If the plan includes any week for which the employer regularly does not provide work,  
23 including incidences due to a holiday or other plant closing, then such week shall be identified in  
24 the application.

25 (4) Certification by the employer that, if the employer provides health benefits and  
26 retirement benefits to any employee whose usual weekly hours of work are reduced under the  
27 program, such benefits will continue to be provided to employees participating in the program  
28 under the same terms and conditions as though the usual weekly hours of work of such employee  
29 had not been reduced or to the same extent as other employees not participating in the program.  
30 For defined benefit retirement plans, the hours that are reduced under the plan shall be credited  
31 for purposes of participation, vesting, and accrual of benefits as though the usual weekly hours of  
32 work had not been reduced. The dollar amount of employer contributions to a defined contribution  
33 plan that are based on a percentage of compensation may be less due to the reduction in the  
34 employee's compensation.

35 (5) Certification by the employer that the aggregate reduction in work hours is in lieu of  
36 layoffs, whether temporary or permanent layoffs or both. The application shall include an estimate  
37 of the number of employees who would have been laid off in the absence of the plan. The  
38 employer shall also certify that new employees will not be hired in or transferred to an affected  
39 unit for the duration of the plan.

40 (6) Certification by the employer that participation in the plan and its implementation is  
41 consistent with the employer's obligations under applicable federal and state laws.

42 (7) Agreement by the employer to (i) furnish reports to the director relating to the proper  
43 conduct of the plan; (ii) allow the director access to all records necessary to approve or disapprove  
44 the plan application and, after approval of a plan, monitor and evaluate the plan; and (iii) follow  
45 any other directives the director deems necessary to implement the plan and that are consistent  
46 with the requirements for plan applications.

47 (8) Any other provision added to the application by the director that the U.S. Secretary of  
48 Labor determines to be appropriate for purposes of a work sharing plan.

**§21A-6B-3. Approval and disapproval of plan.**

1 The director shall approve or disapprove a work sharing plan in writing within 10 working  
2 days of its receipt and promptly communicate the decision to the employer. A decision  
3 disapproving the plan shall clearly identify the reasons for the disapproval. If a plan is disapproved,  
4 the employer may submit a different work sharing plan for approval.

**§21A-6B-4. Effective date, duration, and modification of plan.**

1 (a) A work sharing plan shall be effective on the date that is mutually agreed upon by the  
2 employer and the director, which shall be specified in the notice of approval to the employer. The  
3 plan shall expire on the date specified in the notice of approval, which shall be either the date at  
4 the end of the 12th full calendar month after its effective date or an earlier date mutually agreed  
5 upon by the employer and the director. However, if a work sharing plan is revoked by the director  
6 under subsection (b) of this section, the plan shall terminate on the date specified in director's  
7 written order of revocation. An employer may terminate a plan at any time upon written notice to  
8 the director. Upon receipt of such notice from the employer, the director shall promptly notify each  
9 member of the affected unit of the termination date. An employer may submit a new application  
10 to participate in another plan at any time after the expiration or termination date.

11 (b) The director may revoke approval of a work sharing plan for good cause at any time,  
12 including upon the request of any of the affected unit's employees. The revocation order shall be  
13 in writing and shall specify the reasons for the revocation and the date the revocation is effective.  
14 The director may periodically review the operation of each employer's plan to assure that no good  
15 cause exists for revocation of the approval of the plan. Good cause shall include failure to comply  
16 with the assurances given in the plan, unreasonable revision of productivity standards for the  
17 affected unit, conduct or occurrences tending to defeat the intent and effective operation of the  
18 plan, and violation of any criteria on which approval of the plan was based.

19 (c) An employer may request a modification of an approved plan by filing a written request  
20 to the director. The request shall identify the specific provisions proposed to be modified and  
21 provide an explanation of why the proposed modification is appropriate for the plan. The director  
22 shall approve or disapprove the proposed modification in writing within 10 working days and  
23 promptly communicate the decision to the employer. An employer is not required to request  
24 approval of a plan modification from the director if the change is not substantial, but the employer  
25 shall report every change to the plan to the director promptly and in writing.

**§21A-6B-5. Eligibility for short-time compensation.**

1 (a) An employee is eligible to receive short-time compensation under a work sharing plan  
2 with respect to any week only if the employee is monetarily eligible for unemployment  
3 compensation, not otherwise disqualified for unemployment compensation, and:

4 (1) During the week, the employee is employed as a member of an affected unit under an  
5 approved work sharing plan that was approved prior to that week, and the plan is in effect with  
6 respect to the week for which short-time compensation is claimed; and

7 (2) Notwithstanding any other provisions of this title relating to availability for work and  
8 actively seeking work, the employee is available for the employee's usual hours of work with the  
9 short-time compensation employer, which may include, for purposes of this section, participating  
10 in training, including employer-sponsored training or training funded under the federal Workforce  
11 Innovation and Opportunity Act of 2014, to enhance job skills that is approved by the director.

12 (b) Notwithstanding any other provision of law, an employee covered by a work sharing  
13 plan is deemed unemployed in any week during the duration of that plan if the employee's  
14 remuneration as an employee in an affected unit is reduced based on a reduction of the  
15 employee's usual weekly hours of work under an approved work sharing plan.

16 (c) The short-term compensation program shall not serve as a subsidy of seasonal  
17 employment during the off-season, nor as a subsidy of temporary part-time or intermittent  
18 employment.

**§21A-6B-6. Benefits.**

1           (a) The short-time compensation weekly benefit amount shall be the product of the regular  
2 weekly unemployment compensation amount for a week of total unemployment multiplied by the  
3 percentage of reduction in the individual's usual weekly hours of work.

4           (b) An individual may be eligible for short-time compensation or unemployment  
5 compensation, as appropriate: *Provided*, That no individual shall be eligible for combined benefits  
6 in any benefit year in an amount more than the maximum entitlement established for regular  
7 unemployment compensation: *Provide, however*, That no individual shall be paid short-time  
8 compensation benefits for more than 26 weeks under a plan.

9           (c) Provisions applicable to unemployment compensation claimants shall apply to short-  
10 time compensation claimants to the extent that they are not inconsistent with the program's  
11 provisions. An individual who files an initial claim for short-time compensation benefits shall  
12 receive a monetary determination.

13           (d) An employee who is not provided any work during a week by the short-time  
14 compensation employer, or any other employer, and who is otherwise eligible for unemployment  
15 compensation shall be eligible for the amount of regular unemployment compensation to which  
16 he or she would otherwise be eligible.

17           (e) An employee who is not provided any work by the short-time compensation employer  
18 during a week, but who works for another employer and is otherwise eligible, may be paid  
19 unemployment compensation for that week subject to the disqualifying income and other  
20 provisions applicable to claims for regular unemployment compensation.

21           (f) An employee who has received all of the short-time compensation or combined  
22 unemployment compensation and short-time compensation available in a benefit year shall be  
23 considered an exhaustee for purposes of extended benefits and, if otherwise eligible under those  
24 provisions, shall be eligible to receive extended benefits.

NOTE: The purpose of this bill is to establish the Short-Time Compensation Program within Workforce West Virginia.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.