

**H. B. 2093**

(By Delegates Manchin, Skinner and Ferro)

[Introduced January 19, 2015; referred to the

Committee on the Judiciary then Finance.]

**FISCAL  
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21A-12-1, §21A-12-2, §21A-12-3, §21A-12-4, §21A-12-5, §21A-12-6, §21A-12-7, §21A-12-8, §21A-12-9, §21A-12-10, §21A-12-11, §21A-12-12 and §21A-12-13, all relating to the creation of Valued Employee Retention Program; authorizing the commissioner to enforce the requirements of the program; specifying the contents of an application for participation; setting limitations on employer participation; providing criteria for approval or denial of work share plan; setting forth an effective date and duration of program plan; permitting the revocation of an approved plan; permitting the modification of an approved program plan; establishing eligibility for benefits; establishing employee benefits; charging program benefits to employer; setting forth eligibility for extended benefits; and requiring a report to the Legislature.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new

1 article, designated §21A-12-1, §21A-12-2, §21A-12-3, §21A-12-4, §21A-12-5, §21A-12-6,  
2 §21A-12-7, §21A-12-8, §21A-12-9, §21A-12-10, §21A-12-11, §21A-12-12 and §21A-12-13, all to  
3 read as follows:

4 **ARTICLE 12. VALUED EMPLOYEE RETENTION PROGRAM.**

5 **§21A-12-1. Definitions.**

6 As used in this article:

7 (1) "Affected unit" means a specified plant, department, shift, or other definable unit which  
8 includes two or more workers to which an approved program plan applies.

9 (2) "Commissioner" means the Commissioner of the Bureau of Employment Programs.

10 (3) "Health and retirement benefits" means employer-provided health benefits, and retirement  
11 benefits under a defined benefit pension plan (as defined in section 414(j) of the Internal Revenue  
12 Code) or contributions under a defined contribution plan (defined in section 414(i) of such code),  
13 which are incidents of employment in addition to the cash remuneration earned.

14 (4) "Participating employee" means an employee who works a reduced number of hours  
15 under an approved program plan.

16 (5) "Participating employer" means an employer who has a program plan.

17 (6) "Program" means the "Valued Employee Retention" program created in section two;

18 (7) "Program benefits" means unemployment benefits payable to employees in an affected  
19 unit under an approved program plan, as distinguished from the unemployment benefits otherwise  
20 payable under the unemployment compensation law.

21 (8) "Program plan" means a plan submitted by an employer, for approval by the  
22 commissioner, under which the employer requests the payment of program benefits to workers in

1 an affected unit of the employer to avert layoffs.

2 (9) "Usual weekly hours of work" means the usual hours of work for full-time or part-time  
3 employees in the affected unit when that unit is operating on its regular basis, not to exceed forty  
4 hours and not including hours of overtime work.

5 (10) "Unemployment insurance" means the unemployment benefits payable under the state  
6 unemployment compensation law other than the Valued Employee Retention program and includes  
7 any amounts payable pursuant to an agreement under any federal law providing for compensation,  
8 assistance, or allowances with respect to unemployment.

9 **§21A-12-2. Creation of the Valued Employee Retention Program.**

10 (a) The "Valued Employee Retention" program is created. The Valued Employee Retention  
11 program is a short-time compensation program in which an employer who participates in the  
12 program reduces the number of hours worked by the employees of the employer in lieu of layoffs.  
13 The Valued Employee Retention program is a completely voluntary program and an employer is  
14 under no obligation to participate.

15 (b) The commissioner shall enforce the requirements of the Valued Employee Retention  
16 program in the same manner as the commissioner enforces the requirements of this chapter,  
17 including the applicable provisions of article ten.

18 **§21A-12-3. Application to participate in the Valued Employee Retention Program.**

19 (a) An employer wishing to participate in the program shall submit a signed written program  
20 plan to the commissioner for approval.

21 (b) The commissioner shall develop an application form to request approval of a short-time  
22 compensation plan and an approval process.

1           (c) The application shall include:

2           (1) The affected unit (or units) covered by the plan, including the number of full-time or  
3 part-time workers in such unit, the percentage of workers in the affected unit covered by the plan,  
4 identification of each individual employee in the affected unit by name, social security number and  
5 the employer's unemployment tax account number and any other information required by the  
6 commissioner to identify plan participants.

7           (2) Certification by the employer that it has obtained the written approval of any applicable  
8 collective bargaining representative and has notified all affected employees who are not in a  
9 collective bargaining unit of the proposed program plan.

10          (3) A description of how workers in the affected unit will be notified of the employer's  
11 participation in the program plan if the application is approved, including how the employer will  
12 notify those workers in a collective bargaining unit as well as any workers in the affected unit who  
13 are not in a collective bargaining unit. If the employer will not provide advance notice to workers  
14 in the affected unit, the employer shall explain in a statement in the application why it is not feasible  
15 to provide the notice.

16          (4) A requirement that the employer identify the usual weekly hours of work for employees  
17 in the affected unit and the specific percentage by which their hours will be reduced during all weeks  
18 covered by the plan. An application shall specify the percentage of reduction for which a program  
19 application may be approved which shall be not less than ten percent and not more than sixty  
20 percent. If the plan includes any week for which the employer regularly provides no work (due to  
21 a holiday or other plant closing), then the week shall be identified in the application.

22          (5) Certification by the employer that, if the employer provides health benefits and retirement

1 benefits under defined benefit pension plans (as defined in section 414(j) of the Internal Revenue  
2 Code) or contributions under a defined contribution plan (defined in section 414(i) of that Code) to  
3 any employee whose usual weekly hours of work are reduced under the program, the benefits will  
4 continue to be provided to employees participating in the program under the same terms and  
5 conditions as though the usual weekly hours of work of the employee had not been reduced or to the  
6 same extent as other employees not participating in the program.

7 For defined benefit retirement plans, the hours that are reduced under the program plan shall  
8 be credited for purposes of participation, vesting and accrual of benefits as though the usual weekly  
9 hours of work had not been reduced. The dollar amount of employer contributions to a defined  
10 contribution plan that are based on a percentage of compensation may be less due to the reduction  
11 in the employee's compensation. Notwithstanding the above, an application may contain the  
12 required certification when a reduction in health and retirement benefits scheduled to occur during  
13 the duration of the plan will be applicable equally to employees who are not participating in the  
14 short-time compensation program and to those employees who are participating.

15 (6) Certification by the employer that the aggregate reduction in work hours is in lieu of  
16 layoffs (temporary or permanent layoffs, or both temporary or permanent layoffs) of regularly  
17 employed employees in the affected unit. The application shall include an estimate of the number  
18 of workers who would have been laid off in the absence of the short-time compensation plan.

19 (7) Agreement by the employer to:

20 (A) Furnish reports to the commissioner relating to the proper conduct of the plan;

21 (B) Allow the commissioner or his or her authorized representatives access to all records  
22 necessary to approve or disapprove the plan application and, after approval of a plan, to monitor and

1 evaluate the plan; and

2 (C) Follow any other directives the commissioner considers necessary for the agency to  
3 implement the plan and which are consistent with the requirements for plan applications.

4 (8) Certification by the employer that it has filed all quarterly reports and other reports  
5 required under the state unemployment compensation law and has paid all quarterly contributions,  
6 reimbursements in lieu of contributions, interest and penalties due through the date of the employer's  
7 application.

8 (9) Certification by the employer that it will not hire new employees in, or transfer employees  
9 to, the affected unit during the effective period of the program plan.

10 (10) Certification by the employer that it will not lay off participating employees during the  
11 effective period of the program plan, or reduce participating employees' hours of work by more than  
12 the reduction percentage during the effective period of the program plan, except in cases of holidays,  
13 designated vacation periods, equipment maintenance or similar circumstances.

14 (11) Certification by the employer that participation in the program plan and its  
15 implementation is consistent with the employer's obligations under applicable federal and state laws.

16 (12) The effective date and duration of the plan that shall expire not later than the end of the  
17 twelfth full calendar month after the effective date.

18 (13) Any other provision added to the application by the commissioner that the United States  
19 Secretary of Labor determines to be appropriate for purposes of administering the program.

20 **§21A-12-4. Limitations on participation.**

21 (a) The commissioner may not approve a shared work plan submitted by an employer who  
22 is assigned the maximum contribution rate calculated in accordance with section five, article five

1 of this chapter, or employers subject to a "new employer" tax rate.

2 (b) An employer may be approved for only one program plan during any twelve month period  
3 commencing with the effective date of the original approved plan and ending on the twelfth full  
4 calendar month after said date.

5 (c) An employer who has had two consecutive program plans for the same affected unit, may  
6 not be approved for another program for the affected unit until two full years have elapsed.

7 **§21A-12-5. Approval or disapproval of program plan.**

8 The commissioner shall approve or disapprove a program plan in writing within thirty days  
9 of its receipt and promptly communicate the decision to the employer. A decision disapproving the  
10 plan shall clearly identify the reasons for the disapproval. The disapproval is final, but the employer  
11 shall be allowed to submit another program plan for approval not earlier than fifteen days from the  
12 date of the disapproval.

13 **§21A-12-6. Effective date and duration of the program plan.**

14 (a) A program plan is effective on the date that is mutually agreed upon by the employer and  
15 the commissioner, which shall be specified in the notice of approval to the employer.

16 (b) The plan shall expire on the date specified in the notice of approval, which shall be either  
17 the date at the end of the twelfth full calendar month after its effective date or an earlier date  
18 mutually agreed upon by the employer and the commissioner. However, if a program plan is  
19 revoked by the commissioner under section seven of this article, the plan shall terminate on the date  
20 specified in the commissioner's written order of revocation.

21 (c) An employer may terminate a program plan at any time upon written notice to the  
22 commissioner. Upon receipt of the notice from the employer, the commissioner shall notify each

1 member of the affected unit at least ten days prior to the termination date.

2 (d) An employer may submit a new application to participate in another program plan at any  
3 time after the expiration or termination date.

4 **§21A-12-7. Revocation of approval.**

5 (a) The commissioner may revoke approval of a program plan for good cause at any time,  
6 including upon the request of any of the affected unit's employees. The revocation order shall be in  
7 writing and shall specify the reasons for the revocation and the date the revocation is effective.

8 (b) The commissioner may periodically review the operation of each employer's program  
9 plan to assure that no good cause exists for revocation of the approval of the plan.

10 (c) Good cause includes, but is not limited to, failure to comply with the assurances given  
11 in the plan, unreasonable revision of productivity standards for the affected unit, conduct or  
12 occurrences tending to defeat the intent and effective operation of the plan and violation of any  
13 criteria on which approval of the plan was based.

14 **§21A-12-8. Modification of an approved program plan.**

15 (a) An employer may request a modification of an approved plan by filing a written request  
16 to the commissioner.

17 (b) The request shall identify the specific provisions proposed to be modified and provide  
18 an explanation of why the proposed modification is appropriate for the program plan.

19 (c) The commissioner shall approve or disapprove the proposed modification in writing  
20 within ten working days of receipt and promptly communicate the decision to the employer.

21 (d) The commissioner may approve a request for modification of the plan based on conditions  
22 that have changed since the plan was approved provided that the modification is consistent with and



1 supports the purposes for which the plan was initially approved.

2 (e) A modification does not extend the expiration date of the original plan. The  
3 commissioner must promptly notify the employer whether the plan modification has been approved  
4 and, if approved, the effective date of the modification.

5 (f) An employer is not required to request approval of a plan modification from the  
6 commissioner if the change is not substantial, but the employer must report every change to the plan  
7 to the commissioner promptly and in writing. The commissioner may terminate an employer's plan  
8 if the employer fails to meet this reporting requirement.

9 (g) If the commissioner determines that the reported change is substantial, the commissioner  
10 shall require the employer to request a modification to the plan.

11 **§21A-12-9. Eligibility for program benefits.**

12 An individual is eligible to receive program benefits with respect to any week only if the  
13 individual is monetarily eligible for unemployment insurance, not otherwise disqualified for  
14 unemployment insurance, and:

15 (1) During the week, the individual is employed as a member of an affected unit under an  
16 approved program plan, which was approved prior to that week, and the plan is in effect with respect  
17 to the week for which program benefits are claimed;

18 (2) Notwithstanding any other provisions of this chapter relating to availability for work and  
19 actively seeking work, the individual is available for the individual's usual hours of work with the  
20 program employer, which may include, for purposes of this section, participating in training to  
21 enhance job skills that is approved by the commissioner such as employer-sponsored training or  
22 training funded under the Workforce Investment Act of 1998; and

1        (3) Notwithstanding any other provision of law, an individual covered by an approved  
2 program plan is considered unemployed in any week during the duration of the plan if the  
3 individual's remuneration as an employee in an affected unit is reduced based a reduction of the  
4 individual's usual weekly hours of work under an approved program plan.

5 **§21A-12-10. Benefits.**

6        (a) An individual's program benefit amount is the product of the regular weekly  
7 unemployment insurance amount for a week of total unemployment multiplied by the percentage of  
8 reduction in the individual's usual weekly hours of work.

9        (b) An individual may be eligible for program benefits or unemployment insurance, as  
10 appropriate, except that an individual may not be eligible for combined benefits in any benefit year  
11 in an amount more than the maximum entitlement established for regular unemployment insurance,  
12 nor may an individual be paid program benefits for more than twenty-six weeks under an approved  
13 program plan.

14        (c) The program benefits paid to an individual shall be deducted from the maximum  
15 entitlement amount of regular unemployment insurance established for that individual's benefit year.

16        (d) Provisions applicable to unemployment insurance claimants apply to program claimants  
17 to the extent that they are not inconsistent with the program provisions of this article. An individual  
18 who files an initial claim for program benefits shall receive a monetary determination.

19        (e) An individual who is eligible for program benefits is not subject to the provisions of the  
20 state's unemployment compensation law relating to partial unemployment benefits. Wages earned  
21 from an employer other than the program employer during the week of program eligibility shall be  
22 disregarded in the calculation of the individual's weekly program benefit.

1       (f) An individual who is not provided any work during a week by the program employer, or  
2 any other employer, and who is otherwise eligible for unemployment insurance is eligible for the  
3 amount of regular unemployment insurance to which the individual would otherwise be eligible.

4       (g) An individual who is not provided any work by the program employer during a week, but  
5 who works for another employer and is otherwise eligible may be paid unemployment insurance for  
6 that week subject to the disqualifying income provisions of article six of this chapter relating to  
7 partial unemployment benefits.

8 **§21A-12-11. Charging program benefits.**

9       (a) Except as provided in subsection (b) of this section, program benefits shall be charged  
10 to an employers' experience rating account in the same manner as unemployment insurance is  
11 charged under article five of this chapter. Employers liable for payments in lieu of contributions  
12 shall have program benefits attributed to service in their employ in the same manner as  
13 unemployment insurance is attributed under the provisions of the state's unemployment  
14 compensation law relating to the financing of benefits by employers using the reimbursing method.

15       (b) If federal funding is available to the state for the purpose of full reimbursement for the  
16 cost of funding program benefits paid by the unemployment insurance agency pursuant to section  
17 2162 of the Layoff Prevention Act of 2012 and an approved program plan under this article, those  
18 benefits may not be charged or billed to a participating employer.

19 **§21A-12-12. Extended Benefits.**

20       An individual who has received all of the program benefits or combined unemployment  
21 insurance and program benefits available in a benefit year is an exhaustee for purposes of extended  
22 benefits, as provided under the provisions of the state's unemployment compensation law relating

1 to extended benefits contained in article six-a of this chapter, and, if otherwise eligible under those  
2 provisions, is eligible to receive extended benefits.

3 **§21A-12-13. Report to the Legislature.**

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

11 (b) The commissioner shall submit the report to the Governor, the President of the Senate,  
12 and the Minority Leader of the Senate, the Speaker of the House of Delegates and the Minority  
13 Leader of the House of Delegates.

NOTE: The purpose of this bill is to create the Valued Employee Retention 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.