

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Engrossed

House Bill 3294

BY DELEGATES CAPITO, FAST, YOUNG, L. PACK,

LOVEJOY, ZUKOFF AND PUSHKIN

[Originating in the Committee on Judiciary; reported
on March 19, 2021]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §21A-2D-1, §21A-2D-2, §21A-2D-3, §21A-2D-4, §21A-2D-5, §21A-2D-6,
3 §21A-2D-7, §21A-2D-8, and §21A-2D-9; amending said code by adding thereto a new
4 article designated §21A-6B-1, §21A-6B-2, §21A-6B-3, §21A-6B-4, §21A-6B-5, §21A-6B-
5 6, and §21A-6B-7; all generally relating to unemployment insurance; creating the
6 Unemployment Insurance Program Integrity Act; providing short title; providing definitions;
7 providing the commissioner, on a weekly basis, check unemployment insurance rolls
8 against Division of Corrections and Rehabilitation's list of imprisoned individuals, check
9 new hire records against the National Directory of New Hires, and check unemployment
10 insurance rolls against the Integrity Data Hub; providing for data sharing between
11 Workforce West Virginia and other departments, agencies, or divisions; providing for
12 action by bureau to make new eligibility determinations; requiring commissioner to
13 implement internal administrative policies regarding the recovery of fraudulent
14 unemployment overpayments, cooperative agreements with the U.S. Department of Labor
15 to investigate unemployment fraud, and recover overpayments of unemployment benefits;
16 providing a mechanism for an employer to contact Workforce when an employee is offered
17 their job back but refuses to be rehired; reporting of relevant data, to the extent permitted
18 by federal law, by commissioner to the Legislature; providing for rulemaking; providing an
19 effective date; establishing the Short Time Compensation Program within Workforce West
20 Virginia; defining terms; providing that the commissioner of Workforce West Virginia
21 establish and implement a short-time compensation program by July 1, 2023; requiring
22 program to meet applicable federal and state law; providing that an employer that wishes
23 to participate submit an application; requiring the commissioner to develop an employer
24 application form to request approval of a plan and an approval process to participate in
25 the program; establishing requirements for an application; providing procedure for
26 commissioner approval or disapproval of a plan; providing for the effective date of a plan,
27 expiration of a plan, revocation of a plan, and modification of a plan; employee eligibility

28 requirements to receive short-time compensation under a plan; prescribing employee
29 benefits and limitations on benefits; and providing for rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2C. UNEMPLOYMENT INSURANCE PROGRAM INTEGRITY ACT.

§21A-2D-1. Definitions.

1 This article may be cited as the Unemployment Insurance Program Integrity Act. For the
2 purposes of this article the following terms shall have the following meanings, unless the context
3 in which they are used clearly indicates otherwise:

4 (1) "Division of Corrections and Rehabilitation" means the Division of Corrections and
5 Rehabilitation, as defined in §15A-3-2 of this code.

6 (2) "Department of Commerce" means the Department of Commerce, as defined in §5B-
7 1-1 of this code.

8 (3) "New hire records" means any available directory of newly hired and re-hired
9 employees reported under state and federal law and managed by the state Department of
10 Commerce.

11 (4) "Unemployment insurance enrollment" means the list of all jobless workers receiving
12 unemployment insurance at a given moment in time.

13 (5) "Commissioner" means the Workforce West Virginia Commissioner, formerly known
14 as the Bureau of Employment Programs' Commissioner, as defined in §21A-1A-12 of this code.

15 (6) "Bureau" means Workforce West Virginia, formerly known as the Bureau of
16 Employment Programs, as defined in §21A-1-4 of this code.

§21A-2D-2. Unemployment insurance program integrity.

1 The commissioner shall, on a weekly basis, be required to:

2 (a) Check the unemployment insurance rolls against the Division of Corrections and
3 Rehabilitation's list of imprisoned individuals to verify eligibility for unemployment benefits and
4 ensure program integrity;

5 (b) Check new hire records against the National Directory of New Hires to verify eligibility
6 for unemployment benefits; and

7 (c) Check the unemployment insurance rolls against a commercially available database
8 that provides cross-matching functions to verify eligibility for unemployment benefits.

§21A-2D-3. Data sharing.

1 The commissioner shall have the authority to execute a memorandum of understanding
2 with any department, agency, or division for information required to be shared between agencies
3 outlined in this article.

§21A-2D-4. Action on eligibility determinations.

1 If the bureau receives information concerning an individual receiving unemployment
2 insurance benefits that indicates a change in circumstances that may affect eligibility, the bureau
3 shall review the individual's case and make a new eligibility determination within one week of
4 receiving the information.

§21A-2D-5. Recovering overpayments and preventing fraud.

1 The commissioner shall adopt and implement internal administrative policy to:

2 (a) Prioritize and always pursue the recovery of fraudulent unemployment overpayments
3 to the fullest extent allowable under state and federal law;

4 (b) Enter into a cooperative agreement with the U.S. Department of Labor Office of
5 Inspector General to proactively detect and investigate cases of unemployment fraud; and

6 (c) Recover improper overpayments of unemployment benefits, without exception, to the
7 fullest extent possible by state and federal law.

§21A-2D-6. Employer reporting procedure to Workforce West Virginia when employees
refuse re-hire opportunities.

1 An employer may contact Workforce West Virginia by e-mail, telephone, or other method
2 of communication in situations when an employee who was previously laid off by that employer
3 is given the opportunity to be rehired but declines to do so. The bureau shall investigate such

4 contacts from employers to determine whether the employee should continue to receive
5 unemployment benefits.

§21A-2D-7. Reporting to the Legislature.

1 The commissioner shall maintain detailed records on the ability of the bureau to carry out
2 and implement the actions required in this article. The commissioner shall issue a written report
3 to the legislature annually, no later than December 31. This report shall include relevant data, to
4 the extent permitted by federal law, including, but not limited to:

5 (a) Whether cross-checks referenced in §21A-2D-2 of this code occurred and with what
6 consistency they occurred;

7 (b) Improper unemployment benefit payment rates;

8 (c) Recovery of overpayments;

9 (d) The reasoning for and extent to which any improper unemployment benefit payments
10 are not corrected or recovered;

11 (e) The number of contacts from employers under §21A-2D-6 of this code;

12 (f) The results of any state-federal cooperative fraud investigations; and

13 (g) Any savings produced or monies from activities of the bureau.

§21A-2D-8. Rulemaking.

1 Workforce West Virginia shall promulgate and propose rules under §29A-3-1, et seq. of
2 this code for implementing this article.

§21A-2D-9. Effective date.

1 This article shall take effect July 1, 2022.

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 “Commissioner” means the Workforce West Virginia Commissioner, formerly known as
6 the Bureau of Employment Programs’ Commissioner, as defined in §21A-1A-12 of this code.

7 “Exhaustee” has the same meaning as defined in §21A-6A-1 of this code.

8 “Health and retirement benefits” means employer-provided health benefits and retirement
9 benefits under a defined benefit pension plan as defined in 26 U.S.C. §414(j) or contributions
10 under a defined contribution plan as defined in 26 U.S.C. §414(i) that are incidents of employment
11 in addition to the cash remuneration earned.

12 “Program” means the short-time compensation program established pursuant to this
13 article.

14 “Short-time compensation” means the unemployment benefits payable to employees in
15 an affected unit under an approved short-time compensation plan, as distinguished from the
16 unemployment benefits otherwise payable under the unemployment benefits provisions of this
17 chapter.

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

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

1 (a) The commissioner shall establish and implement a short-time compensation program
2 by July 1, 2023. The program shall meet the requirements of 26 U.S.C. §3306(v) and all other
3 applicable federal and state laws.

4 (b) An employer that wishes to participate in the program shall submit to the commissioner
5 a signed, written work sharing plan for approval. The commissioner shall develop an application
6 form to 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 commissioner to
11 identify 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 work closure, 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, to the best of the employer's available knowledge,
41 participation in the plan and its implementation is consistent with the employer's obligations under
42 applicable federal and state laws.

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

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

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

1 The commissioner shall approve or disapprove a work sharing plan in writing within 10
2 business 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 of plan, revocation of plan, 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 commissioner, which shall be specified in the notice of approval to the employer.

3 The plan shall expire on the date specified in the notice of approval, which shall be either the date
4 at 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 commissioner. However, if a work sharing plan is revoked by the
6 commissioner under subsection (b) of this section, the plan shall terminate on the date specified
7 in commissioner's written order of revocation. An employer may terminate a plan at any time upon
8 written notice to the commissioner. Upon receipt of such notice from the employer, the
9 commissioner shall promptly notify each member of the affected unit of the termination date. An
10 employer may submit a new application to participate in another plan at any time after the
11 expiration or termination date.

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

21 (c) An employer may request a modification of an approved plan by filing a written request
22 to the commissioner. The request shall identify the specific provisions proposed to be modified
23 and provide an explanation of why the proposed modification is appropriate for the plan. The
24 commissioner shall approve or disapprove the proposed modification in writing within 10 working
25 days and promptly communicate the decision to the employer. An employer is not required to
26 request approval of a plan modification from the commissioner if the change is not substantial,
27 but the employer shall report every change to the plan to the commissioner promptly and in
28 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 benefits,
3 not otherwise disqualified for unemployment benefits, 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, Pub. L. No. 113-128, 128 Stat. 1425 (2014) to enhance job skills
12 that is approved by the commissioner.

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

17 (c) The short-term compensation program shall not serve as a subsidy of seasonal
18 employment during the off-season, nor as a subsidy of temporary part-time or intermittent
19 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 benefits,
5 as appropriate: *Provided*, That no individual shall be eligible for combined benefits in any benefit
6 year in an amount more than the maximum entitlement established for regular unemployment

7 benefits: *Provided, however,* That no individual shall be paid short-time compensation benefits
8 for more than 26 weeks under a plan.

9 (c) Provisions applicable to unemployment benefits claimants shall apply to short-time
10 compensation claimants to the extent that they are not inconsistent with the program's provisions.
11 An individual who files an initial claim for short-time compensation benefits shall receive a
12 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 benefits shall be eligible for the amount of regular unemployment compensation to which he or
16 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 benefits for that week subject to the disqualifying income and other provisions
20 applicable to claims for regular unemployment benefits.

21 (f) An employee who has received all of the short-time compensation or combined
22 unemployment benefits 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.

§21A-6B-7. Rulemaking.

1 Workforce West Virginia shall promulgate and propose rules under §29A-3-1, *et seq.* of
2 this code for implementing this article.