

SENATE BILL NO. 369—SENATOR HARDY

MARCH 21, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Requires the establishment of a program of shared work unemployment compensation. (BDR 53-296)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to employment; requiring the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation to establish a program of shared work unemployment compensation upon approval of the Secretary of Labor; requiring employers who wish to participate in the program to submit plans of work sharing to the Administrator for approval; establishing eligibility and other requirements for workers affected by an approved plan of work sharing to receive benefits under the program; exempting from certain taxes wages paid by certain employers to workers affected by an approved plan of work sharing; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 At least 18 states have established what are commonly referred to as “work-
2 sharing programs.” Under such programs, an employer, in lieu of imposing
3 temporary layoffs as a means to reduce labor costs, retains workers who would
4 otherwise be laid off and reduces the normal weekly hours of work for those and
5 other workers to produce a comparable reduction in labor costs. If the employer
6 carries out those reductions as a participant in a work-sharing program established
7 by the state agency that administers the state’s unemployment compensation
8 insurance program, the agency treats the workers as unemployed for the number of
9 hours by which their normal weekly hours of work are reduced and the workers are
10 entitled to receive unemployment compensation benefits for those hours. The
11 payment of such benefits under a state’s unemployment compensation insurance
12 laws is expressly authorized by federal law, if the Secretary of Labor has approved
13 what federal law refers to as the state’s “short-time compensation program.” (26
14 U.S.C. § 3304)



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Section 5 of this bill requires the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation to establish a program of shared work unemployment compensation for this State upon approval of the program by the Secretary of Labor. **Section 6** of this bill requires employers who wish to participate in the program to submit their plans of work sharing to the Administrator for approval. **Section 6** also prescribes certain information that must be included in such plans. **Section 7** of this bill identifies the conditions that an employer's plan of work sharing must satisfy to be approved by the Administrator.

Section 10 of this bill provides that a person will be considered to be unemployed for the number of hours in any week by which an employer has reduced the person's normal weekly hours of work in accordance with a plan of work sharing that has been approved by the Administrator. **Section 10** also provides that to be eligible to receive benefits under this program, a person is required to satisfy the criteria to be eligible for unemployment compensation benefits under existing law, with certain exceptions. Finally, **section 10** establishes the weekly amount of the shared work benefit that an eligible person is entitled to receive.

Existing law imposes a quarterly excise tax on certain businesses other than financial institutions that is calculated as a percentage of the amount of wages paid by any employer during the quarter. The tax is commonly called the modified business tax. The Legislature in 2009 imposed a temporary increase in the amount of the tax on wages paid by an employer in excess of \$62,500 during a quarter from 0.63 percent of the amount of the wages to 1.17 percent of that amount. (NRS 363B.110) This temporary increase expires on June 30, 2011. (Chapter 395, Statutes of Nevada 2009, p. 2188) Nevertheless, if the temporary rate is still in effect when the program of shared work unemployment compensation is established and approved by the Secretary of Labor, **section 14** of this bill exempts the wages paid by an employer during a quarter to workers affected by an approved plan of work sharing from any portion of the modified business tax which exceeds 0.63 percent of the amount of such wages.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 612 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this act.

Sec. 2. *As used in sections 2 to 11, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Affected worker" means a worker whose normal weekly hours of work for his or her regular employer are reduced by the employer in accordance with a plan of work sharing.*

Sec. 4. *"Normal weekly hours of work" means the number of hours that a worker normally would work for his or her regular employer during a week in which the worker's hours are not affected by a temporary layoff or plan of work sharing, or 40 hours, whichever is less.*



1 **Sec. 5. 1.** *The Administrator shall establish and maintain a*
2 *program of shared work unemployment compensation to pay*
3 *benefits under this chapter to eligible workers whose normal*
4 *weekly hours of work are reduced by an employer in accordance*
5 *with a plan of work sharing that is approved by the Administrator.*

6 2. *The program of shared work unemployment compensation*
7 *must be approved by the Secretary of Labor, pursuant to 26 U.S.C.*
8 *§ 3304, as a short-time compensation program.*

9 3. *The Administrator shall adopt regulations to carry out the*
10 *provisions of sections 2 to 11, inclusive, of this act.*

11 **Sec. 6. 1.** *An employer who, in lieu of imposing temporary*
12 *layoffs, wishes to participate in the program of shared work*
13 *unemployment compensation established by the Administrator*
14 *pursuant to section 5 of this act must submit a plan of work*
15 *sharing to the Administrator for approval. The plan must be*
16 *submitted in the form and manner prescribed by the Administrator*
17 *and include, without limitation:*

18 (a) *A brief description of the circumstances that would cause*
19 *the employer to impose temporary layoffs if the plan of work*
20 *sharing is not approved, including, without limitation, the amount*
21 *of money that the layoffs or plan of work sharing are intended to*
22 *save during the period that the layoffs or plan of work sharing*
23 *would be in effect;*

24 (b) *Information concerning each affected worker, including,*
25 *without limitation, the worker's name, social security number and*
26 *normal weekly hours of work;*

27 (c) *The proposed effective and expiration dates for the plan;*
28 *and*

29 (d) *Any information required pursuant to regulations adopted*
30 *by the Administrator.*

31 2. *An employer who has imposed temporary layoffs before*
32 *submitting a proposed plan of work sharing may submit a*
33 *proposed plan of work sharing which provides that, if the plan is*
34 *approved by the Administrator, workers previously laid off will be*
35 *rehired subject to reductions in their hours of work from their*
36 *previous normal weekly hours of work in accordance with the*
37 *plan.*

38 **Sec. 7. 1.** *The Administrator shall not approve a plan of*
39 *work sharing submitted by an employer pursuant to section 6 of*
40 *this act unless:*

41 (a) *The employer certifies that reducing the normal weekly*
42 *hours of work of affected workers in accordance with the plan is*
43 *in lieu of imposing temporary layoffs;*



(b) The plan reduces the normal weekly hours of work of each affected worker by not less than 10 percent and not more than 50 percent;

(c) If any affected workers are covered by a collective bargaining agreement, the bargaining agent designated in the agreement consents to the plan; and

(d) The employer satisfies all other requirements established by the Administrator for participation in the program.

2. The Administrator shall approve or reject a plan of work sharing submitted by an employer within 15 days after the Administrator receives the plan.

Sec. 8. 1. A plan of work sharing that is approved by the Administrator pursuant to section 7 of this act is effective for the purpose of paying benefits under this chapter to affected workers for a period established by the Administrator unless the plan is revoked by the Administrator or cancelled by the employer before the expiration date established by the Administrator. A plan may not be effective for this purpose for more than 52 weeks.

2. The Administrator shall not revoke an approved plan of work sharing before its expiration date except for good cause.

3. An employer who wishes to cancel an approved plan of work sharing before its expiration date must provide notice to the Administrator in the form and manner required by the Administrator.

Sec. 9. 1. An employer conducting business under an approved plan of work sharing shall notify the Administrator of:

(a) Any change in circumstances that materially affects the employer's operations under the plan;

(b) Any change in the reduction in the normal weekly hours of work of affected workers from the reduction established in the plan; and

(c) The identity of each affected worker who enters or leaves the plan.

2. An employer may modify an approved plan of work sharing if the Administrator approves the modification. The employer must request the approval of the modification in the form and manner prescribed by the Administrator. The modification shall be deemed to be approved unless the Administrator notifies the employer, within 10 days after the Administrator receives the request, that the modification is rejected. A modification may not extend the period during which the plan is effective for the purpose of paying benefits under this chapter to more than 52 weeks.

Sec. 10. 1. For the purposes of sections 2 to 11, inclusive, of this act, a person shall be deemed to be unemployed in any week



1 during which the person works at least 10 percent fewer hours for
2 his or her regular employer than the person's normal weekly
3 hours of work if the Administrator finds that the reduction in the
4 number of hours worked by the person is attributable to a plan of
5 work sharing that has been approved by the Administrator.

6 2. An unemployed person is eligible to receive benefits under
7 this section with respect to any week only if the Administrator
8 finds that with respect to that week the person is eligible to receive
9 benefits under this chapter, except that the person:

10 (a) Is not required to register for work or report at an office of
11 the Division pursuant to paragraph (a) of subsection 1 of NRS
12 612.375; and

13 (b) Shall be deemed to be in compliance with paragraph (c) of
14 subsection 1 of NRS 612.375, if the person:

15 (1) Unless excused by his or her regular employer, works
16 the full number of hours during the week that the person is
17 scheduled to work under the employer's plan of work sharing; and

18 (2) Is available to work for his or her regular employer
19 during the hours of the person's normal weekly hours of work that
20 the person is not scheduled to work under the plan.

21 3. Except as otherwise provided in this section, a person who
22 is eligible for benefits under this section for any week must be paid
23 a benefit in an amount equal to the person's weekly benefit
24 amount for 1 week of total unemployment multiplied by the
25 percentage of the reduction in the person's normal weekly hours
26 of work attributable to his or her employer's approved plan of
27 work sharing. The benefit must be reduced by 75 percent of any
28 remuneration payable to the person for personal services
29 performed during that week, other than remuneration payable for
30 the hours of work that the person was scheduled to work under the
31 approved plan of work sharing. The benefit, if not a multiple of
32 \$1, must be computed to the next lower multiple of \$1.

33 4. An otherwise eligible person may not be:

34 (a) Denied benefits under this section during any week in
35 which the person participates in a training program to enhance
36 his or her job skills that is sponsored by the person's regular
37 employer and approved by the Administrator; or

38 (b) Paid benefits under this section for more than 26 weeks in
39 any benefit year.

40 5. For the purposes of NRS 612.355, the amount of benefits
41 paid to a person under this section during a benefit year must be
42 included when computing the total amount of benefits under this
43 chapter to which the person is entitled for the benefit year.

44 6. A person who is eligible to receive benefits under this
45 section with respect to any week is not eligible to receive extended



1 *benefits or additional benefits under NRS 612.377 to 612.3786,*
2 *inclusive, with respect to that week.*

3 **Sec. 11.** *Except when the result would be inconsistent with*
4 *the provisions of sections 2 to 11, inclusive, of this act and any*
5 *regulations adopted pursuant thereto, the provisions of this*
6 *chapter, other than the provisions concerning extended benefits*
7 *and additional benefits set forth in NRS 612.377 to 312.3786,*
8 *inclusive, apply to sections 2 to 11, inclusive, of this act.*

9 **Sec. 12.** NRS 612.350 is hereby amended to read as follows:

10 612.350 1. ~~[Each]~~ *Except as otherwise provided in section*
11 *10 of this act, each* eligible person who is unemployed in any week
12 must be paid for that week a benefit in an amount equal to the
13 person's weekly benefit amount, less 75 percent of the remuneration
14 payable to him or her for that week.

15 2. The benefit, if not a multiple of \$1, must be computed to the
16 next lower multiple of \$1.

17 **Sec. 13.** NRS 612.375 is hereby amended to read as follows:

18 612.375 1. Except as otherwise provided in *section 10 of this*
19 *act and* subsection 2 of NRS 612.3774, an unemployed person is
20 eligible to receive benefits with respect to any week only if the
21 Administrator finds that:

22 (a) The person has registered for work at, and thereafter has
23 continued to report at, an office of the Division in such a manner as
24 the Administrator prescribes, except that the Administrator may by
25 regulation waive or alter either or both of the requirements of this
26 paragraph for persons attached to regular jobs and in other types of
27 cases or situations with respect to which the Administrator finds that
28 compliance with those requirements would be oppressive or
29 inconsistent with the purposes of this chapter.

30 (b) The person has made a claim for benefits in accordance with
31 the provisions of NRS 612.450 and 612.455.

32 (c) The person is able to work, and is available for work, but no
33 claimant may be considered ineligible with respect to any week of
34 unemployment for failure to comply with the provisions of this
35 paragraph if the failure is because of an illness or disability which
36 occurs during an uninterrupted period of unemployment with
37 respect to which benefits are claimed and no work has been offered
38 the claimant which would have been suitable before the beginning
39 of the illness and disability. No otherwise eligible person may be
40 denied benefits for any week in which the person is engaged in
41 training approved pursuant to 19 U.S.C. § 2296 or by the
42 Administrator by reason of any provisions of this chapter relating to
43 availability for work or failure to apply for, or a refusal to accept,
44 suitable work.



(d) The person has within his or her base period been paid wages from employers:

(1) Equal to or exceeding 1 1/2 times the person's total wages for employment by employers during the quarter of the person's base period in which the person's total wages were highest; or

(2) In each of at least three of the four quarters in the person's base period.

➔ If a person fails to qualify for a weekly benefit amount of one twenty-fifth of the person's high-quarter wages but can qualify for a weekly benefit amount of \$1 less than one twenty-fifth of his or her high-quarter wages, the person's weekly benefit amount must be \$1 less than one twenty-fifth of his or her high-quarter wages. No person may receive benefits in a benefit year unless, after the beginning of the next preceding benefit year during which the person received benefits, he or she performed service, whether or not in "employment" as defined in this chapter and earned remuneration for that service in an amount equal to not less than 3 times his or her basic weekly benefit amount as determined for the next preceding benefit year.

2. In addition to fulfilling the requirements set forth in subsection 1, an unemployed person who has been determined to be likely to exhaust his or her regular benefits and to need services to assist in his or her reemployment, pursuant to the system of profiling established by the Administrator pursuant to 42 U.S.C. § 503, is eligible to receive benefits with respect to any week only if the person participates in those services to assist in his or her reemployment, unless the Administrator determines that:

(a) The unemployed person has completed his or her participation in those services; or

(b) There is a justifiable cause for the person's failure to participate in those services.

3. For any week in which a claimant receives any pension or other payment for retirement, including a governmental or private pension, annuity or other, similar periodic payment, except as otherwise provided in subsection 4, the amount payable to the claimant under a plan maintained by a base-period employer or an employer whose account is chargeable with benefit payments must:

(a) Not be reduced by the amount of the pension or other payment if the claimant made any contribution to the pension or retirement plan; or

(b) Be reduced by the entire proportionate weekly amount of the pension or other payment if the employer contributed the entire amount to the pension or retirement plan.



4. The amount of the weekly benefit payable to a claimant must not be reduced by the pension offset in subsection 3 if the services performed by the claimant during the base period, or the compensation the claimant received for those services, from that employer did not affect the claimant's eligibility for, or increase the amount of, the pension or other payment, except for a pension paid pursuant to the Social Security Act or Railroad Retirement Act of 1974, or the corresponding provisions of prior law, which is not eligible for the exclusion provided in this subsection and is subject to the offset provisions of subsection 3.

5. As used in this section, "regular benefits" has the meaning ascribed to it in NRS 612.377.

Sec. 14. Chapter 363B of NRS is hereby amended by adding thereto a new section to read as follows:

1. The wages paid by an employer during a quarter to affected workers by a plan of work sharing approved by the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation pursuant to section 7 of this act are exempt from any portion of the tax imposed pursuant to paragraph (b) of subsection 1 of NRS 363B.110 which exceeds 0.63 percent of the amount of such wages.

2. The Commission shall adopt regulations to carry out the provisions of this section.

Sec. 15. Section 14 of this act:

1. Does not apply to any taxes due pursuant to paragraph (b) of subsection 1 of NRS 363B.110 for any period ending on or before the effective date of section 14 of this act; and

2. Except as otherwise provided in paragraph (a) and notwithstanding the expiration of that section by limitation pursuant to section 16 of this act, applies to any taxes due pursuant to paragraph (b) of subsection 1 of NRS 363B.110 for each calendar quarter ending on or before the expiration of section 14 of this act.

Sec. 16. 1. This section becomes effective upon passage and approval.

2. Sections 1 to 13, inclusive, of this act become effective:

(a) Upon passage and approval for the purposes of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) For all other purposes, on the first day of the quarter after the date on which the Secretary of Labor approves the program of shared work unemployment compensation established pursuant to section 5 of this act as a short-time compensation program.

3. Sections 14 and 15 of this act become effective:



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1 (a) Upon passage and approval for the purposes of adopting
2 regulations and performing any other preparatory administrative
3 tasks that are necessary to carry out the provisions of this act; and

4 (b) For all other purposes, if and only if the amendatory
5 provisions of section 3 of chapter 395, Statutes of Nevada 2009, at
6 page 2190, are in effect, on the first day of the quarter after the date
7 on which the Secretary of Labor approves the program of shared
8 work unemployment compensation established pursuant to section 5
9 of this act as a short-time compensation program.

10 4. Section 14 of this act expires by limitation on the date on
11 which the amendatory provisions of section 3 of chapter 395,
12 Statutes of Nevada 2009, at page 2190, expire.

