

Amendment No. 419

Senate Amendment to Senate Bill No. 308	(BDR 53-716)
Proposed by: Senate Committee on Commerce and Labor	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

AAS/AAK



Date: 4/16/2021

S.B. No. 308—Provides for the establishment of a worksharing program.
(BDR 53-716)



SENATE BILL NO. 308--SENATOR DONDERO LOOP

MARCH 22, 2021

Referred to Committee on Commerce and Labor

SUMMARY—Provides for the establishment of a worksharing program.
(BDR 53-716)

FISCAL NOTE: Effect on Local Government: No.
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 unemployment compensation; requiring the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation to establish a worksharing program to provide for the payment of certain benefits to eligible employees whose usual weekly hours of work have been reduced in accordance with a worksharing plan; setting forth various requirements for the operation of the worksharing program; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The Unemployment Compensation Law generally: (1) requires employers to pay contributions into the Unemployment Compensation Fund at a certain rate of the wages paid by the employer for employment; and (2) makes persons who have become unemployed and comply with certain requirements eligible for benefits from the Unemployment Compensation Fund in an amount based on the person's previous wages for employment. (Chapter 612 of NRS)

Existing federal law authorizes a state to use funds from the state's account in the Unemployment Trust Fund in the United States Treasury to pay benefits to eligible persons under a short-time compensation program that meets certain specified requirements. (26 U.S.C. § 3306(f), 3306(v)) Under a short-time compensation program, commonly referred to as a worksharing program, an employer reduces the hours for a group of employees rather than implementing layoffs. These employees in turn receive a reduced unemployment benefit payment in addition to the pay they receive for the hours they continue to work under the worksharing program. **Section 11** of this bill requires the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation to establish a worksharing program ~~that~~, ***to the extent of available funding***. **Sections 2-21** of this bill set forth various requirements for the worksharing program.

Section 12 of this bill requires an employer who wishes to participate in the worksharing program to submit a worksharing plan to the Administrator for approval. **Section 12** requires a worksharing plan to contain certain items, including the identification of each affected unit of employees to be covered by the worksharing plan and the percentage by which the usual hours of work for those employees will be reduced. **Sections 12 and 13** of this bill require a worksharing employer who provides health and retirement benefits to employees covered under a worksharing plan to continue such benefits in generally the same manner as when the

employees worked their usual weekly hours of work or to the same extent as employees not covered under the worksharing plan.

Section 14 of this bill sets forth certain requirements for the approval or disapproval of a worksharing plan by the Administrator. **Section 15** of this bill sets forth certain requirements relating to the duration of an approved worksharing plan. **Section 16** of this bill establishes the circumstances under which the Administrator is authorized to revoke approval of a worksharing plan. **Section 17** of this bill sets forth the process by which a worksharing employer is authorized to modify an approved worksharing plan. **Section 18** of this bill establishes certain requirements for an employee in an affected unit under a worksharing plan to be eligible for worksharing benefits.

Section 19 of this bill prescribes the manner by which the weekly benefit amount for worksharing benefits is calculated. Under **section 19**, the weekly benefit amount for worksharing benefits is proportional to the reduction in hours for that employee under the worksharing plan. **Section 19** also sets forth various requirements for determining the eligibility for and amount of worksharing benefits for a person who works for both a worksharing employer and another employer during a week covered by an approved worksharing plan.

Section 20 of this bill requires worksharing benefits to be treated in the same manner as regular unemployment compensation with respect to charges to the experience rating account of an employer and the determination of the amount of reimbursement in lieu of contributions due from an employer that elects to make reimbursement in lieu of contributions.

Existing law provides, under certain circumstances, for the provision of extended benefits to persons who are unemployed and have exhausted their regular unemployment compensation benefits. (NRS 612.377-612.3786) **Section 21** of this bill provides that a person who has received all of the worksharing benefits or combined unemployment compensation and worksharing benefits for which the person is eligible may be eligible for extended benefits in accordance with the provisions of existing law governing the provision of extended benefits.

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 21, inclusive, of this act.

Sec. 2. *As used in sections 2 to 21, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Affected unit” means a specified plant, department, shift or other definable unit that includes two or more employees to which an approved worksharing plan applies.*

Sec. 4. *“Health and retirement benefits” means health benefits and retirement benefits provided by an employer under a defined benefit plan, as defined in 26 U.S.C. § 414(j), or contributions under a defined contribution plan, as defined in 26 U.S.C. § 414(i), which are incidents of employment in addition to the cash remuneration earned.*

Sec. 5. *“Unemployment compensation” means the benefits payable under this chapter other than worksharing benefits, including, without limitation, any amounts payable pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment.*

Sec. 6. *“Usual weekly hours of work” means the usual hours of work for full-time or regular part-time employees in an affected unit when that unit is operating on its regular basis, not to exceed 40 hours and not including hours of overtime.*

1 Sec. 7. "Worksharing benefits" means the benefits payable to an employee
2 in an affected unit under an approved worksharing plan, as distinguished from
3 the benefits otherwise payable under the provisions of this chapter.

4 Sec. 8. "Worksharing employer" means an employer whose worksharing
5 plan has been approved by the Administrator and is in effect.

6 Sec. 9. "Worksharing plan" means a plan submitted by an employer
7 pursuant to section 12 of this act under which the employer requests the payment
8 of worksharing benefits to employees in an affected unit of the employer to avert
9 layoffs.

10 Sec. 10. "Worksharing program" means the program established by the
11 Administrator pursuant to section 11 of this act.

12 Sec. 11. 1. ~~The~~ To the extent of available funding, the Administrator
13 shall establish and maintain a worksharing program for the purpose of
14 authorizing the payment of worksharing benefits to eligible employees of an
15 affected unit whose usual weekly hours of work have been reduced by a
16 worksharing employer in accordance with a worksharing plan approved by the
17 Administrator.

18 2. The Administrator may adopt regulations as necessary to administer the
19 worksharing program.

20 Sec. 12. An employer who wishes to participate in the worksharing
21 program must submit a worksharing plan to the Administrator for approval. Such
22 a plan must be submitted in the form and manner prescribed by the
23 Administrator and include, without limitation:

24 1. An identification of each affected unit covered by the worksharing plan
25 and the following information concerning each affected unit:

26 (a) The number of full-time and part-time employees in the affected unit;

27 (b) The percentage of employees in the affected unit covered by the
28 worksharing plan; and

29 (c) Identifying information regarding each employee in the affected unit,
30 including, without limitation:

31 (1) The name and social security number or alternative personally
32 identifying number, including, without limitation, an individual taxpayer
33 identification number, of each such employee; and

34 (2) Any other identifying information the Administrator deems
35 necessary.

36 2. A description of how the employer will notify employees in the affected
37 unit of the worksharing plan in advance, including, without limitation, how the
38 employer will notify employees in a collective bargaining unit as well as any
39 employees in the affected unit who are not in a collective bargaining unit. If the
40 employer will not provide advance notice to workers in the affected unit, the
41 employer shall include an explanation of why it is not feasible to provide such
42 notice.

43 3. An identification of the usual weekly hours of work for employees in the
44 affected unit and the specific percentage by which such hours will be reduced
45 during all weeks covered by the worksharing plan, which must be a reduction of
46 not less than 10 percent and not more than 60 percent. If the worksharing plan
47 includes any week for which the employer regularly provides no work due to a
48 holiday or other plant closing, the employer must identify each such week.

49 4. A certification by the employer that if the employer provides health and
50 retirement benefits to any employee whose usual weekly hours of work are
51 reduced under the worksharing plan, such benefits will continue to be provided to
52 the employee under the same terms and conditions as when the employee worked

1 *his or her usual weekly hours of work or to the same extent as other employees*
2 *who are not covered by the worksharing plan.*

3 *5. A certification by the employer that the aggregate reduction in work*
4 *hours is in lieu of temporary or permanent layoffs, or both.*

5 *6. An estimate of the number of employees who would have been laid off in*
6 *the absence of the worksharing plan.*

7 *7. A certification by the employer that the participation in the worksharing*
8 *plan is consistent with the obligations of the employer under state and federal*
9 *law.*

10 *8. If any employee in an affected unit is covered by a collective bargaining*
11 *agreement, the written approval of the bargaining agent designated in the*
12 *agreement.*

13 *9. The effective date and duration of the worksharing plan, which must*
14 *expire not later than the end of the 12th full calendar month after the effective*
15 *date.*

16 *10. An agreement by the employer to:*

17 *(a) Furnish reports to the Administrator relating to the proper*
18 *implementation of the worksharing plan;*

19 *(b) Allow the Administrator or his or her designated representative access to*
20 *all records necessary to approve or disapprove the worksharing plan and, after*
21 *approval of a worksharing plan, to monitor and evaluate the plan; and*

22 *(c) Follow any other directives the Administrator deems necessary to*
23 *implement the worksharing plan that are consistent with the requirements for a*
24 *worksharing plan.*

25 *11. Any other provision added to the worksharing plan by the Administrator*
26 *that the Secretary of Labor determines to be appropriate for a worksharing plan.*

27 **Sec. 13.** *1. If a worksharing employer provides health and retirement*
28 *benefits to an employee under a defined benefit plan, the hours that are reduced*
29 *under the worksharing plan must be credited for purposes of participation,*
30 *vesting and accrual of benefits as though the usual weekly hours of work of the*
31 *employee had not been reduced. The dollar amount of employer contributions to*
32 *a defined contribution plan that are based on a percentage of compensation may*
33 *be less due to the reduction in the compensation of the employee.*

34 *2. A reduction in health and retirement benefits scheduled to occur during*
35 *the duration of a worksharing plan that is equally applicable to employees who*
36 *are not participating in the worksharing plan and to employees who are*
37 *participating in the worksharing plan does not violate the certification made by*
38 *the worksharing employer pursuant to subsection 4 of section 12 of this act.*

39 **Sec. 14.** *1. The Administrator shall approve or disapprove a worksharing*
40 *plan not later than 15 days after its receipt and promptly give written notice of the*
41 *approval or disapproval to the employer who submitted the worksharing plan.*

42 *2. The Administrator shall not approve a worksharing plan if:*

43 *(a) The reserve ratio of the employer who submitted the plan is negative as of*
44 *the most recent computation date; or*

45 *(b) The worksharing plan serves as a subsidy of seasonal employment during*
46 *the off-season or as a subsidy of temporary part-time or intermittent employment.*

47 *3. The disapproval of a worksharing plan is final, but the employer may*
48 *submit another worksharing plan for approval not earlier than 7 days after the*
49 *date of the disapproval.*

50 *4. As used in this section, "computation date" and "reserve ratio" have the*
51 *meanings ascribed to them in NRS 612.550.*

52 **Sec. 15.** *1. A worksharing plan becomes effective on the date that is*
53 *mutually agreed upon by the employer and the Administrator, which must be*

1 specified in the notice of approval given to the employer pursuant to section 14 of
2 this act. The worksharing plan expires on the date specified in the notice of
3 approval, which must be either the date at the end of the 12th full calendar month
4 after its effective date or an earlier date mutually agreed upon by the employer
5 and the Administrator.

6 2. If approval of a worksharing plan is revoked by the Administrator
7 pursuant to section 16 of this act, the worksharing plan terminates on the date
8 specified in the revocation order issued by the Administrator.

9 3. A worksharing employer may terminate a worksharing plan at any time
10 upon written notice to the Administrator. Upon receipt of such notice from the
11 worksharing employer, the Administrator shall promptly notify each employee in
12 the affected unit of the termination date.

13 4. An employer may submit a new application to participate in another
14 worksharing plan at any time after the expiration or termination date of a
15 worksharing plan.

16 **Sec. 16.** 1. The Administrator may revoke approval of a worksharing plan
17 for good cause at any time.

18 2. If the Administrator revokes approval of a worksharing plan, the
19 Administrator shall issue a revocation order in writing that specifies the reasons
20 for the revocation and the date the revocation is effective.

21 3. The Administrator may periodically review the operation of each
22 worksharing plan to ensure that no good cause exists for revocation of approval
23 of the worksharing plan.

24 4. Good cause for revocation of approval of a worksharing plan pursuant to
25 this section includes, without limitation:

26 (a) The request of any employees in the affected unit to revoke approval of
27 the worksharing plan;

28 (b) Failure of the worksharing employer to comply with the assurances given
29 by the employer in the worksharing plan;

30 (c) Unreasonable revision of productivity standards for the affected unit;

31 (d) Conduct or occurrences tending to defeat the intent and effective
32 operation of the worksharing plan; and

33 (e) Violation of any criteria on which approval of the worksharing plan was
34 based.

35 **Sec. 17.** 1. A worksharing employer may request a modification of an
36 approved worksharing plan by filing a written request with the Administrator.
37 The request must identify the specific provisions proposed to be modified and
38 provide an explanation of why the proposed modification is appropriate for the
39 worksharing plan. The Administrator shall approve or disapprove the proposed
40 modification in writing not more than 15 days after receipt and promptly
41 communicate the decision to the worksharing employer.

42 2. The Administrator may approve a request for modification based on
43 conditions that have changed since the worksharing plan was approved if the
44 modification is consistent with and supports the purposes for which the
45 worksharing plan was initially approved. A modification does not extend the
46 expiration date of the original worksharing plan and the Administrator must
47 promptly notify the worksharing employer whether the proposed modification has
48 been approved and, if approved, the effective date of the modification.

49 3. A worksharing employer is not required to request approval of the
50 Administrator for a modification of a worksharing plan if the change is not
51 substantial, but the employer shall report every change to the worksharing plan
52 to the Administrator promptly and in writing. The Administrator may terminate
53 the worksharing plan of a worksharing employer who fails to report such

1 *changes. If the Administrator determines that the reported change is substantial,*
2 *the Administrator shall require the worksharing employer to request a*
3 *modification of the worksharing plan.*

4 **Sec. 18.** *A person is eligible to receive worksharing benefits with respect to*
5 *any week only if the person is monetarily eligible for unemployment*
6 *compensation, not otherwise disqualified for unemployment compensation and:*

7 *1. During the week, the person is employed as a member of an affected unit*
8 *under an approved worksharing plan, which was approved before that week, and*
9 *the worksharing plan is in effect during the week for which worksharing benefits*
10 *are claimed.*

11 *2. Notwithstanding any provision of this chapter relating to availability for*
12 *work or actively seeking work, the person is available to work the usual hours of*
13 *work for the worksharing employer, which may include, for the purposes of this*
14 *section, participating in training to enhance job skills that is approved by the*
15 *Administrator, including, without limitation, employer-sponsored training or*
16 *training funded under the federal Workforce Innovation and Opportunity Act, 29*
17 *U.S.C. §§ 3101 et seq.*

18 *3. Notwithstanding any other provision of law, a person covered by a*
19 *worksharing plan is deemed unemployed in any week during the duration of such*
20 *worksharing plan if the remuneration of the person as an employee in an*
21 *affected unit is reduced based on a reduction of the person's usual weekly hours*
22 *of work under an approved worksharing plan.*

23 **Sec. 19.** *1. The weekly benefit amount for worksharing benefits must be*
24 *the product of the weekly benefit amount for regular unemployment*
25 *compensation for a week of total unemployment multiplied by the percentage of*
26 *the reduction in the person's usual weekly hours of work.*

27 *2. A person may be eligible for worksharing benefits or unemployment*
28 *compensation, as appropriate, except that a person shall not be eligible for*
29 *combined benefits in any benefit year in an amount more than the maximum*
30 *entitlement established for regular unemployment compensation, nor shall a*
31 *person be paid worksharing benefits for more than 52 weeks under a*
32 *worksharing plan.*

33 *3. The worksharing benefits paid to a person shall be deducted from the*
34 *maximum entitlement amount of regular unemployment compensation*
35 *established for the benefit year of the person.*

36 *4. The provisions of this chapter applicable to claimants for unemployment*
37 *compensation also apply to claimants for worksharing benefits to the extent that*
38 *they are not inconsistent with the provisions of sections 2 to 21, inclusive, of this*
39 *act. A person who files an initial claim for worksharing benefits shall receive a*
40 *monetary determination.*

41 *5. For a person who works for both a worksharing employer and another*
42 *employer during weeks covered by an approved worksharing plan:*

43 *(a) If the combined hours of work in a week for both employers results in a*
44 *reduction of less than 10 percent of the usual weekly hours of work with the*
45 *worksharing employer, the person shall not be entitled to worksharing benefits.*

46 *(b) If the combined hours of work for both employers results in a reduction*
47 *equal to or more than 10 percent of the usual weekly hours of work with the*
48 *worksharing employer, the amount of worksharing benefits must be reduced for*
49 *that week and must be determined by multiplying the weekly benefit amount for*
50 *regular unemployment compensation for a week of total unemployment by the*
51 *percentage by which the combined hours of work have been reduced relative to*
52 *the usual weekly hours of work of the person. A week for which benefits are paid*
53 *under this paragraph must be reported as a week of worksharing.*

1 (c) If a person worked the reduced percentage of the usual weekly hours of
2 work for the worksharing employer, was available for all of the person's usual
3 weekly hours of work with the worksharing employer and did not work any hours
4 for the other employer, either because of a lack of work with the other employer
5 or because the person was excused from work with the other employer, the person
6 shall be eligible for worksharing benefits for that week. The benefit amount for
7 such week must be calculated as provided in subsection 1.

8 6. A person who is not provided any work during a week by a worksharing
9 employer or any other employer, and who is otherwise eligible for unemployment
10 compensation, shall be eligible for the amount of unemployment compensation to
11 which the person would otherwise be eligible.

12 7. A person who is not provided any work by a worksharing employer
13 during a week but who works for another employer and is otherwise eligible may
14 be paid unemployment compensation for that week subject to the disqualifying
15 income and other provisions applicable to claims for regular unemployment
16 compensation.

17 Sec. 20. Worksharing benefits must be charged to the employer's
18 experience rating account in the same manner as unemployment compensation is
19 charged pursuant to this chapter. Employers liable for payments by way of
20 reimbursement in lieu of contributions shall have worksharing benefits attributed
21 to service in their employ in the same manner as unemployment compensation is
22 attributed.

23 Sec. 21. 1. A person who has received all the worksharing benefits or
24 combined unemployment compensation and worksharing benefits for which the
25 person is eligible is an exhaustee and may be eligible to receive extended benefits
26 in accordance with the provisions of NRS 612.377 to 612.3786, inclusive.

27 2. As used in this section, the terms "exhaustee" and "extended benefits"
28 have the meanings ascribed to them in NRS 612.377.

29 Sec. 22. 1. This section becomes effective upon passage and approval.

30 2. Sections 1 to 21, inclusive, of this act become effective:

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

34 (b) On July 1, 2022, for all other purposes.