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SENATE BILL NO. 1230

Offered January 9, 2013

Prefiled January 9, 2013

A BILL to amend the Code of Virginia by adding in Title 60.2 a chapter numbered 7, consisting of sections numbered 60.2-700 through 60.2-710, relating to unemployment compensation; short-time compensation program; reports.

Patrons—Barker and Stanley

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 60.2 a chapter numbered 7, consisting of sections numbered 60.2-700 through 60.2-710, as follows:

CHAPTER 7.

SHORT-TIME COMPENSATION PROGRAM.

§ 60.2-700. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affected unit" means a specific plant, department, shift, or other definable unit of an employing unit that has at least two employees to which an approved short-time compensation plan applies.

"Approved short-time compensation plan" means a plan that is approved by the Commission as provided by this chapter.

"Health and retirement benefits" means employer-provided health benefits, and retirement benefits under a defined benefit pension plan as defined in § 414(j) of the Internal Revenue Code or contributions under a defined contribution plan as defined in § 414(i) of the Internal Revenue Code, that are incidents of employment in addition to the cash remuneration earned.

"Program" means the short-time compensation program established pursuant to this chapter.

"Short-time compensation" means the unemployment benefits payable to employees in an affected unit under an approved short-time compensation plan, as distinguished from the unemployment benefits otherwise payable under the unemployment compensation provisions of a state law.

"Short-time compensation plan" or "plan" means a plan submitted by an employer for approval by the Commission, under which the employer requests the payment of short-time compensation to workers in an affected unit of the employer to avert layoffs.

"Unemployment compensation" means the unemployment benefits payable under this title other than short-time compensation and includes any amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

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

§ 60.2-701. Application to participate in short-time compensation program.

An employer that wishes to participate in the Program shall submit to the Commission a signed, written short-time compensation plan for approval. The Commission shall develop an application form to request approval of a plan and an approval process. The application shall include:

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

2. A description of how workers in the affected unit will be notified of the employer's participation in the plan if such application is approved, including how the employer will notify those workers in a collective bargaining unit as well as any workers in the affected unit who are not in a collective bargaining unit. If the employer will not provide advance notice to workers in the affected unit, the employer shall explain in a statement in the application why it is not feasible to provide such notice.

3. A requirement that the employer identify the usual weekly hours of work for employees in the affected unit and the specific percentage by which their hours will be reduced during all weeks covered by the plan. An application shall specify the percentage of reduction for which a short-time compensation application may be approved, which shall be not less than 10 percent and not more than 60 percent. If the plan includes any week for which the employer regularly provides no work due to a holiday or other plant closing, then such week shall be identified in the application.

4. Certification by the employer that, if the employer provides health benefits and retirement benefits to any employee whose usual weekly hours of work are reduced under the Program, such benefits will continue to be provided to employees participating in the Program under the same terms and conditions as though the usual weekly hours of work of such employee had not been reduced or to the same extent as other employees not participating in the Program. For defined benefit retirement plans, the hours that are reduced under the plan shall be credited for purposes of participation, vesting, and accrual of benefits as though the usual weekly hours of work had not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be less due to the reduction in the employee's compensation. However, an application may contain the required certification when a reduction in health and retirement benefits scheduled to occur during the duration of the plan will be applicable equally to employees who are not participating in the Program and to those employees who are participating.

5. Certification by the employer that the aggregate reduction in work hours is in lieu of layoffs, whether temporary or permanent layoffs or both. The application shall include an estimate of the number of workers who would have been laid off in the absence of the plan.

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

7. Certification by the employer that participation in the plan and its implementation is consistent with the employer's obligations under applicable federal and state laws.

8. The effective date and duration of the plan, which shall expire not later than the end of the twelfth full calendar month after the effective date.

9. Any other provision added to the application by the Commission that the U.S. Secretary of Labor determines to be appropriate for purposes of a Program.

§ 60.2-702. Approval and disapproval of plan.

The Commission shall approve or disapprove a short-time compensation plan in writing within 30 days of its receipt and promptly communicate the decision to the employer. A decision disapproving the plan shall clearly identify the reasons for the disapproval. The disapproval shall be final, but the employer shall be allowed to submit another plan for approval not earlier than 90 days from the date of the disapproval.

§ 60.2-703. Effective date and duration of plan.

A short-time compensation plan shall be effective on the date that is mutually agreed upon by the employer and the Commission, which shall be specified in the notice of approval to the employer. The plan shall expire on the date specified in the notice of approval, which shall be either the date at the end of the twelfth full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the Commission. However, if a short-time compensation plan is revoked by the Commission under § 60.2-704, the plan shall terminate on the date specified in the Commission's written order of revocation. An employer may terminate a plan at any time upon written notice to the Commission. Upon receipt of such notice from the employer, the Commission shall promptly notify each member of the affected unit of the termination date. An employer may submit a new application to participate in another plan at any time after the expiration or termination date.

§ 60.2-704. Revocation of approval of plan.

A. The Commission may revoke approval of a short-time compensation plan for good cause at any time, including upon the request of any of the affected unit's employees. The revocation order shall be in writing and shall specify the reasons for the revocation and the date the revocation is effective.

B. The Commission may periodically review the operation of each employer's plan to assure that no good cause exists for revocation of the approval of the plan. Good cause shall include, but not be limited to, failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the plan, and violation of any criteria on which approval of the plan was based.

§ 60.2-705. Modification of approved plan.

A. An employer may request a modification of an approved plan by filing a written request to the Commission. The request shall identify the specific provisions proposed to be modified and provide an explanation of why the proposed modification is appropriate for the plan. The Commission shall approve or disapprove the proposed modification in writing within 30 days of receipt and promptly communicate the decision to the employer.

B. The Commission, in its discretion, may approve a request for modification of the plan based on conditions that have changed since the plan was approved, provided that the modification is consistent with and supports the purposes for which the plan was initially approved. A modification shall not extend the expiration date of the original plan, and the Commission shall promptly notify the employer

whether the plan modification has been approved and, if approved, the effective date of the modification.

C. An employer is not required to request approval of a plan modification from the Commission if the change is not substantial, but the employer shall report every change to the plan to the Commission promptly and in writing. The Commission may terminate an employer's plan if the employer fails to meet this reporting requirement. If the Commission determines that the reported change is substantial, the Commission shall require the employer to request a modification to the plan.

§ 60.2-706. Eligibility for short-time compensation.

An individual is eligible to receive short-time compensation with respect to any week only if the individual is monetarily eligible for unemployment compensation, not otherwise disqualified for unemployment compensation, and:

1. During the week, the individual is employed as a member of an affected unit under an approved short-time compensation plan, which was approved prior to that week, and the plan is in effect with respect to the week for which short-time compensation is claimed;

2. Notwithstanding any other provisions of this title relating to availability for work and actively seeking work, the individual is available for the individual's usual hours of work with the short-time compensation employer, which may include, for purposes of this section, participating in training to enhance job skills that is approved by the Commission such as employer-sponsored training or training funded under the Workforce Investment Act of 1998; and

3. Notwithstanding any other provision of law, an individual covered by a plan is deemed unemployed in any week during the duration of such plan if the individual's remuneration as an employee in an affected unit is reduced based a reduction of the individual's usual weekly hours of work under an approved short-time compensation plan.

§ 60.2-707. Benefits.

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

B. An individual may be eligible for short-time compensation or unemployment compensation, as appropriate, except that (i) no individual shall be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for regular unemployment compensation and (ii) no individual shall be paid short-time compensation benefits for more than 52 weeks under a plan.

C. The short-time compensation paid to an individual shall be deducted from the maximum entitlement amount of regular unemployment compensation established for that individual's benefit year.

D. Provisions applicable to unemployment compensation claimants shall apply to short-time compensation claimants to the extent that they are not inconsistent with the Program's provisions. An individual who files an initial claim for short-time compensation benefits shall receive a monetary determination.

E. The following provisions apply to individuals who work for both a short-time compensation employer and another employer during weeks covered by the approved short-time compensation plan:

1. If combined hours of work in a week for both employers does not result in a reduction of at least 10 percent or, if higher, the minimum percentage of reduction required to be eligible for a short-time compensation benefit as provided in this title, of the usual weekly hours of work with the short-time employer, the individual shall not be entitled to benefits under these short-time compensation provisions.

2. If the combined hours of work for both employers results in a reduction equal to or greater than 10 percent or, if higher, the minimum percentage reduction required to be eligible for a short-time compensation benefit as provided in this title, of the usual weekly hours of work for the short-time compensation employer, the short-time compensation benefit amount payable to the individual is reduced for that week and is determined by multiplying the weekly unemployment benefit amount for a week of total unemployment by the percentage by which the combined hours of work have been reduced by 10 percent or, if higher, the minimum percentage reduction required to be eligible for a short-time compensation benefit as provided in this title, or more of the individual's usual weekly hours of work. A week for which benefits are paid under this subdivision shall be reported as a week of short-time compensation.

3. If an individual worked the reduced percentage of the usual weekly hours of work for the short-time compensation employer and is available for all his usual hours of work with the short-time compensation employer, and the individual did not work any hours for the other employer, either because of the lack of work with that employer or because the individual is excused from work with the other employer, the individual shall be eligible for short-time compensation for that week. The benefit amount for such week shall be calculated as provided in subsection A.

F. An individual who is not provided any work during a week by the short-time compensation employer, or any other employer, and who is otherwise eligible for unemployment compensation shall be eligible for the amount of regular unemployment compensation to which he would otherwise be eligible.

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

§ 60.2-708. Charging short-time compensation benefits.

Short-time compensation shall be charged to employers' experience rating accounts in the same manner as unemployment compensation is charged under this title. Employers liable for payments in lieu of contributions shall have short-time compensation attributed to service in their employ in the same manner as unemployment compensation is attributed.

§ 60.2-709. Extended benefits.

An individual who has received all of the short-time compensation or combined unemployment compensation and short-time compensation available in a benefit year shall be considered an exhaustee for purposes of extended benefits, as provided under the provisions of Article 3 (§ 60.2-610 et seq.) of Chapter 6, and, if otherwise eligible under those provisions, shall be eligible to receive extended benefits.

§ 60.2-710. Severability.

If any provision of this chapter is found by the U.S. Department of Labor to be in violation of federal law, such finding shall render such provision of this chapter inoperative, but such finding shall (i) not affect, impair, or invalidate the remaining provisions of this chapter and (ii) be confined in its operation to the specific provision found to be in violation of federal law.

2. That the Virginia Employment Commission shall submit to the Governor and the General Assembly (i) a report no later than January 1, 2014, on the status of the implementation of short-time compensation programs pursuant to Chapter 7 (§ 60.2-700 et seq.) of Title 60.2 as created by this act; (ii) a report no later than January 1, 2015, on the status and accomplishments of such programs, which report shall include recommendations for alterations to the statutory authorization for such programs that may be appropriate to improve the effectiveness of such programs; and (iii) additional reports thereafter as the Virginia Employment Commission finds are appropriate.

3. That the provisions of this act enhance the benefits payable to an individual pursuant to Title 60.2 of the Code of Virginia. Pursuant to § 30-19.03:1.2 of the Code of Virginia, the Virginia Employment Commission, in consultation with the Department of Planning and Budget, estimates that over the ensuing eight years (i) the provisions of this act are projected to reduce the solvency level of the Unemployment Trust Fund by an average of 0 percent in each of the eight years and (ii) the projected average annual increase in state unemployment tax liability of employers on a per-employee basis that would result from the provisions of this act is $0.36.