

E AND R AMENDMENTS TO LB559

Introduced by Murante, 49, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Section 48-601, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 48-601 Sections 48-601 to 48-671 and sections 2 to 13 of
6 this act shall be known and may be cited as the Employment Security
7 Law.

8 Sec. 2. Sections 2 to 13 of this act create the
9 short-time compensation program.

10 Sec. 3. For purposes of sections 2 to 13 of this act:

11 (1) Affected unit means a specified plant, department,
12 shift, or other definable unit which includes three or more
13 employees to which an approved short-time compensation plan
14 applies;

15 (2) Commissioner means the Commissioner of Labor or any
16 delegate or subordinate responsible for approving applications for
17 participation in a short-time compensation plan;

18 (3) Health and retirement benefits means
19 employer-provided health benefits and retirement benefits under a
20 defined benefit plan, as defined in section 414(j) of the Internal
21 Revenue Code, or contributions under a defined contribution plan,
22 as defined in section 414(i) of the Internal Revenue Code, which
23 are incidents of employment in addition to the cash remuneration

1 earned;

2 (4) Short-time compensation means the unemployment
3 benefits payable to employees in an affected unit under an
4 approved short-time compensation plan, as distinguished from
5 the unemployment benefits otherwise payable under the Employment
6 Security Law;

7 (5) Short-time compensation plan means a plan submitted
8 by an employer, for written approval by the commissioner, under
9 which the employer requests the payment of short-time compensation
10 to workers in an affected unit of the employer to avert layoffs;

11 (6) Unemployment compensation means the unemployment
12 benefits payable under the Employment Security Law other than
13 short-time compensation and includes any amounts payable pursuant
14 to an agreement under any federal law providing for compensation,
15 assistance, or allowances with respect to unemployment; and

16 (7) Usual weekly hours of work means the usual hours of
17 work for full-time or part-time employees in the affected unit when
18 that unit is operating on its regular basis, not to exceed forty
19 hours and not including hours of overtime work.

20 Sec. 4. An employer wishing to participate in the
21 short-time compensation program shall submit a signed written
22 short-time compensation plan to the commissioner for approval. The
23 commissioner shall develop an application form to request approval
24 of a short-time compensation plan and an approval process. The
25 application shall include:

26 (1) The affected unit or units covered by the plan,
27 including the number of full-time or part-time employees in such

1 unit, the percentage of employees in the affected unit covered
2 by the plan, identification of each individual employee in the
3 affected unit by name, social security number, and the employer's
4 unemployment tax account number, and any other information required
5 by the commissioner to identify plan participants;

6 (2) A description of how employees in the affected unit
7 will be notified of the employer's participation in the short-time
8 compensation plan if such application is approved, including how
9 the employer will notify those employees in a collective-bargaining
10 unit as well as any employees in the affected unit who are not
11 in a collective-bargaining unit. If the employer will not provide
12 advance notice to employees in the affected unit, the employer
13 shall explain in a statement in the application why it is not
14 feasible to provide such notice;

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

25 (4)(a) Certification by the employer that, if the
26 employer provides health and retirement benefits to any employee
27 whose usual weekly hours of work are reduced under the program,

1 such benefits will continue to be provided to employees
2 participating in the short-time compensation program under the same
3 terms and conditions as though the usual weekly hours of work of
4 such employee had not been reduced or to the same extent as other
5 employees not participating in the short-time compensation program.

6 (b) For defined benefit retirement plans, the hours
7 that are reduced under the short-time compensation plan shall be
8 credited for purposes of participation, vesting, and accrual of
9 benefits as though the usual weekly hours of work had not been
10 reduced. The dollar amount of employer contributions to a defined
11 contribution plan that are based on a percentage of compensation
12 may be less due to the reduction in the employee's compensation.

13 (c) Notwithstanding subdivisions (4)(a) and (b) of this
14 section, an application may contain the required certification when
15 a reduction in health and retirement benefits scheduled to occur
16 during the duration of the plan will be applicable equally to
17 employees who are not participating in the short-time compensation
18 program and to those employees who are participating;

19 (5) Certification by the employer that the aggregate
20 reduction in work hours is in lieu of layoffs, temporary or
21 permanent layoffs, or both. The application shall include an
22 estimate of the number of employees who would have been laid off in
23 the absence of the short-time compensation plan;

24 (6) Certification by the employer that the short-time
25 compensation program shall not serve as a subsidy of seasonal
26 employment during the off-season, nor as a subsidy of temporary
27 part-time or intermittent employment;

1 (7) Agreement by the employer to: Furnish reports to the
2 commissioner relating to the proper conduct of the plan; allow
3 the commissioner access to all records necessary to approve or
4 disapprove the plan application and, after approval of a plan,
5 to monitor and evaluate the plan; and follow any other directives
6 the commissioner deems necessary for the agency to implement the
7 plan and which are consistent with the requirements for short-time
8 compensation plan applications;

9 (8) Certification by the employer that participation
10 in the short-time compensation plan and its implementation is
11 consistent with the employer's obligations under applicable federal
12 and state laws;

13 (9) The effective date and duration of the plan that
14 shall expire not later than the end of the twelfth full calendar
15 month after the effective date;

16 (10) Certification by the employer that it has obtained
17 the written approval of any applicable collective-bargaining unit
18 representative and has notified all affected employees who are
19 not in a collective-bargaining unit of the proposed short-time
20 compensation plan;

21 (11) Certification by the employer that it will not hire
22 additional part-time or full-time employees for the affected unit
23 while the short-time compensation plan is in effect; and

24 (12) Any other provision added to the application by the
25 commissioner that the United States Secretary of Labor determines
26 to be appropriate for purposes of a short-time compensation
27 program.

1 Sec. 5. (1) The commissioner shall approve or disapprove
2 a short-time compensation plan in writing within thirty days after
3 its receipt and promptly communicate the decision to the employer.
4 A decision disapproving the plan shall clearly identify the reasons
5 for the disapproval. The disapproval shall be final, but the
6 employer shall be allowed to submit another short-time compensation
7 plan for approval not earlier than forty-five days after the date
8 of the disapproval.

9 (2)(a) A short-time compensation plan will only be
10 approved for a contributory employer that (a) is eligible for
11 experience rating under subdivision (4)(a) of section 48-649, (b)
12 has a positive balance in the employer's experience account, (c)
13 has filed all quarterly reports and other reports required under
14 the Employment Security Law, and (d) has paid all obligation
15 assessments, contributions, interest, and penalties due through the
16 date of the employer's application.

17 (b) A short-time compensation plan will only be approved
18 for an employer liable for making payments in lieu of contributions
19 that has filed all quarterly reports and other reports required
20 under the Employment Security Law and has paid all obligation
21 assessments, payments in lieu of contributions, interest, and
22 penalties due through the date of the employer's application.

23 Sec. 6. (1) A short-time compensation plan shall be
24 effective on the date that is mutually agreed upon by the employer
25 and the commissioner, which shall be specified in the notice
26 of approval to the employer. The plan shall expire on the date
27 specified in the notice of approval, which shall be either the date

1 at the end of the twelfth full calendar month after its effective
2 date or an earlier date mutually agreed upon by the employer and
3 the commissioner.

4 (2) If a short-time compensation plan is revoked by the
5 commissioner under section 7 of this act, the plan shall terminate
6 on the date specified in the commissioner's written order of
7 revocation.

8 (3) An employer may terminate a short-time compensation
9 plan at any time upon written notice to the commissioner. Upon
10 receipt of such notice from the employer, the commissioner shall
11 promptly notify each member of the affected unit of the termination
12 date.

13 (4) An employer may submit a new application to
14 participate in another short-time compensation plan at any time
15 after the expiration or termination date.

16 Sec. 7. (1) The commissioner may revoke approval of a
17 short-time compensation plan for good cause at any time, including
18 upon the request of any of the affected unit's employees. The
19 revocation order shall be in writing and shall specify the reasons
20 for the revocation and the date the revocation is effective.

21 (2) The commissioner may periodically review the
22 operation of each employer's short-time compensation plan to assure
23 that no good cause exists for revocation of the approval of the
24 plan. Good cause shall include, but not be limited to, failure
25 to comply with the assurances given in the plan, unreasonable
26 revision of productivity standards for the affected unit, conduct
27 or occurrences tending to defeat the intent and effective operation

1 of the short-time compensation plan, and violation of any criteria
2 on which approval of the plan was based.

3 Sec. 8. (1) An employer may request a modification of an
4 approved plan by filing a written request with the commissioner.
5 The request shall identify the specific provisions proposed to
6 be modified and provide an explanation of why the proposed
7 modification is appropriate for the short-time compensation
8 plan. The commissioner shall approve or disapprove the proposed
9 modification in writing within thirty days after receipt and
10 promptly communicate the decision to the employer.

11 (2) The commissioner may approve a request for
12 modification of the plan based on conditions that have changed
13 since the plan was approved if the modification is consistent
14 with and supports the purposes for which the plan was initially
15 approved. A modification does not extend the expiration date of
16 the original plan, and the commissioner shall promptly notify the
17 employer whether the plan modification has been approved and, if
18 approved, the effective date of the modification.

19 (3) An employer is not required to request approval of
20 a plan modification from the commissioner if the change is not
21 substantial, but the employer must report every change to the
22 plan to the commissioner promptly and in writing. The commissioner
23 may terminate an employer's plan if the employer fails to meet
24 this reporting requirement. If the commissioner determines that the
25 reported change is substantial, the commissioner shall require the
26 employer to request a modification to the plan.

27 Sec. 9. An individual is eligible to receive short-time

1 compensation with respect to any week only if the individual is
2 monetarily eligible for unemployment compensation, not otherwise
3 disqualified for unemployment compensation, and:

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

9 (2) Notwithstanding any other provisions of the
10 Employment Security Law relating to availability for work and
11 actively seeking work, the individual is available for the
12 individual's usual hours of work with the short-time compensation
13 employer, which may include, for purposes of this section,
14 participating in training to enhance job skills that is approved by
15 the commissioner such as employer-sponsored training or training
16 funded under the federal Workforce Investment Act of 1998, 29
17 U.S.C. 2801 et seq.; and

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

24 Sec. 10. (1) The short-time compensation weekly benefit
25 amount shall be the product of the regular weekly unemployment
26 compensation amount for a week of total unemployment multiplied by
27 the percentage of reduction in the individual's usual weekly hours

1 of work.

2 (2) An individual may be eligible for short-time
3 compensation or unemployment compensation, as appropriate, except
4 that no individual shall be eligible for combined benefits in
5 any benefit year in an amount more than the maximum entitlement
6 established for regular unemployment compensation, nor shall an
7 individual be paid short-time compensation benefits for more than
8 fifty-two weeks under a short-time compensation plan.

9 (3) The short-time compensation paid to an individual
10 shall be deducted from the maximum entitlement amount of
11 unemployment compensation established for that individual's benefit
12 year.

13 (4) Provisions applicable to unemployment compensation
14 claimants shall apply to short-time compensation claimants to the
15 extent that they are not inconsistent with short-time compensation
16 provisions. An individual who files an initial claim for short-time
17 compensation benefits shall receive a monetary determination.

18 (5) The following provisions apply to individuals
19 who work for both a short-time compensation employer and
20 another employer during weeks covered by the approved short-time
21 compensation plan:

22 (a) If combined hours of work in a week for both
23 employers does not result in a reduction of at least ten percent,
24 or, if higher, the minimum percentage of reduction required to be
25 eligible for a short-time compensation, of the usual weekly hours
26 of work with the short-time employer, the individual shall not be
27 entitled to short-time compensation;

1 (b) If the combined hours of work for both employers
2 results in a reduction equal to or greater than ten percent,
3 or, if higher, the minimum percentage reduction required to be
4 eligible for short-time compensation, of the usual weekly hours
5 of work for the short-time compensation employer, the short-time
6 compensation payable to the individual is reduced for that week and
7 is determined by multiplying the weekly unemployment benefit amount
8 for a week of total unemployment by the percentage by which the
9 combined hours of work have been reduced by ten percent, or, if
10 higher, the minimum percentage reduction required to be eligible
11 for short-time compensation, or more of the individual's usual
12 weekly hours of work. A week for which benefits are paid under this
13 subdivision shall be reported as a week of short-time compensation;
14 and

15 (c) If an individual worked the reduced percentage of the
16 usual weekly hours of work for the short-time compensation employer
17 and is available for all his or her usual hours of work with the
18 short-time compensation employer, and the individual did not work
19 any hours for the other employer, either because of the lack of
20 work with that employer or because the individual is excused from
21 work with the other employer, the individual shall be eligible for
22 short-time compensation for that week. The benefit amount for such
23 week shall be calculated as provided in subsection (1) of this
24 section.

25 (6) An individual who is not provided any work
26 during a week by the short-time compensation employer, or any
27 other employer, and who is otherwise eligible for unemployment

1 compensation shall be eligible for the amount of unemployment
2 compensation to which he or she would otherwise be eligible.

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

9 Sec. 11. Short-time compensation shall be charged to the
10 employer's experience account in the same manner as unemployment
11 compensation is charged. Employers liable for payments in lieu
12 of contributions shall have short-time compensation attributed
13 to service in their employ in the same manner as unemployment
14 compensation is attributed.

15 Sec. 12. An individual who has received all of the
16 short-time compensation or combined unemployment compensation and
17 short-time compensation available in a benefit year shall be
18 considered an exhaustee for purposes of extended benefits under
19 section 48-628.02 and, if otherwise eligible under such section,
20 shall be eligible to receive extended benefits.

21 Sec. 13. (1) The department shall not use General Funds
22 to implement the short-time compensation program. The department
23 shall use any and all available federal funds to implement the
24 short-time compensation program, including, but not limited to,
25 federal funds distributed to the state under sections 903(c),
26 903(d), 903(f), and 903(g) of the federal Social Security Act, as
27 amended.

1 (2) The department shall submit an annual report to
2 the Governor and the Legislature on the short-time compensation
3 program trends, including the number of employers filing short-time
4 compensation program plans, the number of layoffs averted through
5 the use of the short-time compensation program, the amount
6 of short-time compensation program benefits paid, and other
7 information pertinent to the short-time compensation program.

8 Sec. 14. This act becomes operative on October 1, 2016.

9 Sec. 15. Original section 48-601, Reissue Revised
10 Statutes of Nebraska, is repealed.

11 2. On page 1, line 4, after the semicolon insert "to
12 provide an operative date;".