

HOUSE BILL No. 1338

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-4.

Synopsis: Work sharing unemployment benefits. Establishes a work sharing unemployment insurance program. Requires an employer that wishes to participate in the work sharing unemployment insurance program to submit a work sharing plan for approval by the commissioner of the department of workforce development. Establishes the work sharing benefit as equal to an affected employee's unemployment benefit reduced by a percentage that is equivalent to the number of hours by which an affected employee's normal weekly work hours are reduced divided by the employer's number of normal weekly work hours.

Effective: July 1, 2014.

**Dermody, Eberhart, DeLaney,
Macer**

January 15, 2014, read first time and referred to Committee on Employment, Labor and Pensions.



Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1338

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-4-15-1, AS AMENDED BY P.L.175-2009,
2 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 1. (a) With respect to benefit periods established
4 on and after July 6, 1980, an individual who has voluntarily left the
5 individual's most recent employment without good cause in connection
6 with the work or who was discharged from the individual's most recent
7 employment for just cause is ineligible for waiting period or benefit
8 rights for the week in which the disqualifying separation occurred and
9 until the individual has earned remuneration in employment equal to
10 or exceeding the weekly benefit amount of the individual's claim in
11 each of eight (8) weeks. If the qualification amount has not been earned
12 at the expiration of an individual's benefit period, the unearned amount
13 shall be carried forward to an extended benefit period or to the benefit
14 period of a subsequent claim.
15 (b) When it has been determined that an individual has been
16 separated from employment under disqualifying conditions as outlined



1 in this section, the maximum benefit amount of the individual's current
2 claim, as initially determined, shall be reduced by an amount
3 determined as follows:

4 (1) For the first separation from employment under disqualifying
5 conditions, the maximum benefit amount of the individual's
6 current claim is equal to the result of:

7 (A) the maximum benefit amount of the individual's current
8 claim, as initially determined; multiplied by

9 (B) seventy-five percent (75%);

10 rounded (if not already a multiple of one dollar (\$1)) to the next
11 higher dollar.

12 (2) For the second separation from employment under
13 disqualifying conditions, the maximum benefit amount of the
14 individual's current claim is equal to the result of:

15 (A) the maximum benefit amount of the individual's current
16 claim determined under subdivision (1); multiplied by

17 (B) eighty-five percent (85%);

18 rounded (if not already a multiple of one dollar (\$1)) to the next
19 higher dollar.

20 (3) For the third and any subsequent separation from employment
21 under disqualifying conditions, the maximum benefit amount of
22 the individual's current claim is equal to the result of:

23 (A) the maximum benefit amount of the individual's current
24 claim determined under subdivision (2); multiplied by

25 (B) ninety percent (90%);

26 rounded (if not already a multiple of one dollar (\$1)) to the next
27 higher dollar.

28 (c) The disqualifications provided in this section shall be subject to
29 the following modifications:

30 (1) An individual shall not be subject to disqualification because
31 of separation from the individual's employment if:

32 (A) the individual left to accept with another employer
33 previously secured permanent full-time work which offered
34 reasonable expectation of continued covered employment and
35 betterment of wages or working conditions and thereafter was
36 employed on said job;

37 (B) having been simultaneously employed by two (2)
38 employers, the individual leaves one (1) such employer
39 voluntarily without good cause in connection with the work
40 but remains in employment with the second employer with a
41 reasonable expectation of continued employment; or

42 (C) the individual left to accept recall made by a base period



- 1 employer.
- 2 (2) An individual whose unemployment is the result of medically
3 substantiated physical disability and who is involuntarily
4 unemployed after having made reasonable efforts to maintain the
5 employment relationship shall not be subject to disqualification
6 under this section for such separation.
- 7 (3) An individual who left work to enter the armed forces of the
8 United States shall not be subject to disqualification under this
9 section for such leaving of work.
- 10 (4) An individual whose employment is terminated under the
11 compulsory retirement provision of a collective bargaining
12 agreement to which the employer is a party, or under any other
13 plan, system, or program, public or private, providing for
14 compulsory retirement and who is otherwise eligible shall not be
15 deemed to have left the individual's work voluntarily without
16 good cause in connection with the work. However, if such
17 individual subsequently becomes reemployed and thereafter
18 voluntarily leaves work without good cause in connection with the
19 work, the individual shall be deemed ineligible as outlined in this
20 section.
- 21 (5) An otherwise eligible individual shall not be denied benefits
22 for any week because the individual is in training approved under
23 Section 236(a)(1) of the Trade Act of 1974, nor shall the
24 individual be denied benefits by reason of leaving work to enter
25 such training, provided the work left is not suitable employment,
26 or because of the application to any week in training of provisions
27 in this law (or any applicable federal unemployment
28 compensation law), relating to availability for work, active search
29 for work, or refusal to accept work. For purposes of this
30 subdivision, the term "suitable employment" means with respect
31 to an individual, work of a substantially equal or higher skill level
32 than the individual's past adversely affected employment (as
33 defined for purposes of the Trade Act of 1974), and wages for
34 such work at not less than eighty percent (80%) of the individual's
35 average weekly wage as determined for the purposes of the Trade
36 Act of 1974.
- 37 (6) An individual is not subject to disqualification because of
38 separation from the individual's employment if:
- 39 (A) the employment was outside the individual's labor market;
40 (B) the individual left to accept previously secured full-time
41 work with an employer in the individual's labor market; and
42 (C) the individual actually became employed with the



- 1 employer in the individual's labor market.
- 2 (7) An individual who, but for the voluntary separation to move
- 3 to another labor market to join a spouse who had moved to that
- 4 labor market, shall not be disqualified for that voluntary
- 5 separation, if the individual is otherwise eligible for benefits.
- 6 Benefits paid to the spouse whose eligibility is established under
- 7 this subdivision shall not be charged against the employer from
- 8 whom the spouse voluntarily separated.
- 9 (8) An individual shall not be subject to disqualification if the
- 10 individual voluntarily left employment or was discharged due to
- 11 circumstances directly caused by domestic or family violence (as
- 12 defined in IC 31-9-2-42). An individual who may be entitled to
- 13 benefits based on this modification may apply to the office of the
- 14 attorney general under IC 5-26.5 to have an address designated by
- 15 the office of the attorney general to serve as the individual's
- 16 address for purposes of this article.
- 17 **(9) An individual who is an affected employee (as defined in**
- 18 **IC 22-4-44-1(1)) and is subject to the work sharing**
- 19 **unemployment insurance program under IC 22-4-44 is not**
- 20 **disqualified for participating in the work sharing**
- 21 **unemployment insurance program.**
- 22 As used in this subsection, "labor market" means the area surrounding
- 23 an individual's permanent residence, outside which the individual
- 24 cannot reasonably commute on a daily basis. In determining whether
- 25 an individual can reasonably commute under this subdivision, the
- 26 department shall consider the nature of the individual's job.
- 27 (d) "Discharge for just cause" as used in this section is defined to
- 28 include but not be limited to:
- 29 (1) separation initiated by an employer for falsification of an
- 30 employment application to obtain employment through
- 31 subterfuge;
- 32 (2) knowing violation of a reasonable and uniformly enforced rule
- 33 of an employer, including a rule regarding attendance;
- 34 (3) if an employer does not have a rule regarding attendance, an
- 35 individual's unsatisfactory attendance, if the individual cannot
- 36 show good cause for absences or tardiness;
- 37 (4) damaging the employer's property through willful negligence;
- 38 (5) refusing to obey instructions;
- 39 (6) reporting to work under the influence of alcohol or drugs or
- 40 consuming alcohol or drugs on employer's premises during
- 41 working hours;
- 42 (7) conduct endangering safety of self or coworkers;



1 (8) incarceration in jail following conviction of a misdemeanor or
 2 felony by a court of competent jurisdiction; or

3 (9) any breach of duty in connection with work which is
 4 reasonably owed an employer by an employee.

5 (e) To verify that domestic or family violence has occurred, an
 6 individual who applies for benefits under subsection (c)(8) shall
 7 provide one (1) of the following:

8 (1) A report of a law enforcement agency (as defined in
 9 IC 10-13-3-10).

10 (2) A protection order issued under IC 34-26-5.

11 (3) A foreign protection order (as defined in IC 34-6-2-48.5).

12 (4) An affidavit from a domestic violence service provider
 13 verifying services provided to the individual by the domestic
 14 violence service provider.

15 SECTION 2. IC 22-4-44 IS ADDED TO THE INDIANA CODE AS
 16 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 17 1, 2014]:

18 **Chapter 44. Work Sharing**

19 **Sec. 1. The following definitions apply throughout this chapter:**

20 (1) **"Affected employee" means an individual:**

21 (A) **who has been continuously on the payroll of an affected**
 22 **unit for at least three (3) months; and**

23 (B) **who works at least thirty (30) normal weekly work**
 24 **hours for the affected unit before a reduction under an**
 25 **approved work sharing plan.**

26 (2) **"Affected unit" means a specific plant, department, shift,**
 27 **or other definable unit of an employing unit:**

28 (A) **that has at least two (2) employees; and**

29 (B) **to which an approved work sharing plan applies.**

30 (3) **"Approved work sharing plan" means a plan that satisfies**
 31 **the purpose set forth in section 2 of this chapter and has the**
 32 **approval of the commissioner.**

33 (4) **"Intermittent employment" means periodic intervals that**
 34 **are not continuous during which an individual works for an**
 35 **employing unit.**

36 (5) **"Normal weekly work hours" means the lesser of the**
 37 **following:**

38 (A) **The number of hours that an employee in the affected**
 39 **unit works in a week when the unit is operating on its**
 40 **normal full-time basis.**

41 (B) **Forty (40) hours in a week.**

42 (6) **"Part-time employment" means that an individual works**



1 in a position in a week for an employing unit in which the
 2 number of scheduled work hours are fewer than the normal
 3 weekly work hours for the position.

4 (7) "Payments in lieu of contributions" has the meaning set
 5 forth in IC 22-4-2-32.

6 (8) "Work sharing benefit" means a benefit payable to an
 7 affected employee for work performed under an approved
 8 work sharing plan, but does not include benefits that are
 9 otherwise payable under this article.

10 (9) "Work sharing employer" means an employing unit for
 11 which a work sharing plan has been approved.

12 (10) "Work sharing plan" means a plan of an employing unit
 13 under which:

14 (A) normal weekly work hours of the affected employees
 15 are reduced instead of a layoff of a part or all of the
 16 affected employees; and

17 (B) the affected employees share the work that remains
 18 after the reduction.

19 **Sec. 2. The work sharing unemployment insurance program**
 20 **seeks to:**

21 (1) preserve the jobs of employees and the work force of an
 22 employer during lowered economic activity by reduction in
 23 work hours or workdays rather than by a layoff of some
 24 employees while other employees continue their normal
 25 weekly work hours or workdays; and

26 (2) ameliorate the adverse effect of reduction in business
 27 activity by providing benefits for the part of the normal
 28 weekly work hours or workdays in which an employee does
 29 not work.

30 **Sec. 3. (a) An employing unit that meets all the following**
 31 **requirements is eligible to participate in the work sharing**
 32 **unemployment insurance program established by this chapter:**

33 (1) The employing unit is subject to this article for wages paid
 34 during a calendar year.

35 (2) The employing unit's:

36 (A) contribution rate for the calendar year; or

37 (B) payments in lieu of contributions;

38 are determined under IC 22-4-10, IC 22-4-11, IC 22-4-11.5, or
 39 IC 22-4-37-3.

40 (3) The employing unit is not delinquent as determined under
 41 IC 22-4-11-2.

42 (4) The employing unit had an experience account with a



1 credit balance on the latest computation date.

2 (b) An employing unit that:

3 (1) meets the eligibility requirements under subsection (a);

4 and

5 (2) wishes to participate in the work sharing unemployment
6 insurance program established by this chapter;

7 shall submit a written work sharing plan to the commissioner.

8 Sec. 4. (a) Not later than fifteen (15) calendar days after receipt
9 of a work sharing plan, the commissioner shall give written
10 approval or disapproval of the work sharing plan to the employing
11 unit.

12 (b) The decision of the commissioner to disapprove a work
13 sharing plan is final and may not be appealed.

14 (c) An employing unit may not submit a new work sharing plan
15 less than fifteen (15) calendar days after the date of the
16 commissioner's disapproval of a work sharing plan in accordance
17 with subsection (a).

18 Sec. 5. The commissioner shall approve a work sharing plan
19 that meets the following requirements:

20 (1) The work sharing plan must apply to the greater of:

21 (A) ten percent (10%) of the employees in an affected unit;

22 or

23 (B) two (2) employees in an affected unit.

24 (2) The normal weekly work hours of the affected employees
25 in the affected unit shall be reduced by at least ten percent
26 (10%), but the reduction may not exceed fifty percent (50%).

27 The reduction in normal weekly work hours must be spread
28 equally among the affected employees.

29 Sec. 6. (a) A work sharing plan must:

30 (1) identify the affected unit or units to which the work
31 sharing plan applies;

32 (2) state:

33 (A) the reason or reasons resulting in the reduction in
34 normal weekly work hours under section 5(2) of this
35 chapter; and

36 (B) the expected duration of the reduction in normal
37 weekly work hours under section 5(2) of this chapter;

38 (3) specify the effective date of the work sharing plan;

39 (4) specify an expiration date that is not more than twelve (12)
40 months after the effective date of the work sharing plan;

41 (5) identify each employee in the affected unit by:

42 (A) name;



- 1 (B) Social Security number;
 2 (C) the normal weekly work hours of the employee;
 3 (D) the reductions in the number of hours and the amount
 4 of wages proposed for the employee by the work sharing
 5 plan; and
 6 (E) any other information the commissioner requires;
 7 (6) specify that the work sharing plan will not affect the fringe
 8 benefits of any employee in the affected unit, including:
 9 (A) health insurance for hospital, medical, dental, and
 10 similar services;
 11 (B) retirement benefits under benefit pension plans as
 12 defined in the federal Employee Retirement Income
 13 Security Act (29 U.S.C. 1001 et seq.);
 14 (C) holiday and vacation pay;
 15 (D) sick leave; and
 16 (E) other similar benefits that are incidents of
 17 employment;
 18 (7) certify that:
 19 (A) each affected employee:
 20 (i) has been continuously on the payroll of the employing
 21 unit for at least three (3) months; and
 22 (ii) works at least thirty (30) normal weekly work hours
 23 for the affected unit;
 24 immediately before the date on which the employing unit
 25 submits the work sharing plan;
 26 (B) the total reduction in normal weekly work hours is in
 27 place of layoffs that would have:
 28 (i) affected at least the number of employees specified in
 29 section 5(1) of this chapter; and
 30 (ii) resulted in an equivalent reduction in work hours;
 31 and
 32 (C) the work sharing plan will not serve as a subsidy of:
 33 (i) seasonal employment as determined by the
 34 department as a seasonal determination under
 35 IC 22-4-7-3;
 36 (ii) temporary part-time employment; or
 37 (iii) intermittent employment; and
 38 (8) contain:
 39 (A) the written approval of the collective bargaining agent
 40 for each collective bargaining agreement that covers any
 41 affected employee in the affected unit; or
 42 (B) in the absence of a collective bargaining agreement, a



1 certification by the employing unit that the proposed work
 2 sharing plan, or a summary of the work sharing plan, has
 3 been made available to each affected employee in the
 4 affected unit.

5 (b) A work sharing plan may include an option that allows an
 6 affected employee to attend work related training or retraining
 7 approved by the employing unit during the affected employee's
 8 work hours. The commissioner shall approve the training offered
 9 under this subsection.

10 Sec. 7. A work sharing employer shall agree to:

11 (1) submit reports that are necessary to administer the work
 12 sharing plan; and

13 (2) allow the department to have access to all records
 14 necessary to:

15 (A) verify the work sharing plan before its approval; and

16 (B) monitor and evaluate the application of the work
 17 sharing plan after its approval.

18 Sec. 8. (a) An approved work sharing plan may be modified if:

19 (1) the work sharing employer notifies the commissioner in
 20 writing not later than fifteen (15) calendar days after the date
 21 the modification is made whenever the modification is not
 22 substantial; or

23 (2) whenever the modification is substantial:

24 (A) the modification meets the requirements for approval
 25 under section 6 of this chapter; and

26 (B) the commissioner approves the modification.

27 If the commissioner determines that a modification reported under
 28 subdivision (1) is substantial, the commissioner shall notify the
 29 work sharing employer of the commissioner's determination and
 30 require the work sharing employer to request approval of the
 31 modification under subdivision (2).

32 (b) An employing unit may add an employee who works at least
 33 thirty (30) normal weekly work hours to a work sharing plan when
 34 the employee has been continuously on the payroll for at least three
 35 (3) months.

36 (c) The commissioner shall not approve a modification of a work
 37 sharing plan that extends the expiration date of the work sharing
 38 plan.

39 (d) The decision of the commissioner to disapprove a
 40 modification to a work sharing plan is final and may not be
 41 appealed.

42 Sec. 9. (a) An affected employee is eligible under this chapter to



1 receive work sharing benefits for each week in which the
2 commissioner determines that the affected employee is:

3 (1) able to work; and

4 (2) available for more hours of work or full-time work for the
5 work sharing employer.

6 (b) An affected employee who otherwise is eligible may not be
7 denied work sharing benefits for lack of effort to secure work as set
8 forth in IC 22-4-14-3 or for failure to apply for available suitable
9 work as set forth in IC 22-4-15-2 from a person other than the
10 work sharing employer.

11 (c) An affected employee shall apply for benefits under
12 IC 22-4-17-1.

13 (d) An affected employee who otherwise is eligible for benefits
14 is:

15 (1) considered to be unemployed for the purpose of the work
16 sharing unemployment insurance program; and

17 (2) not subject to the requirements of IC 22-4-14-2.

18 **Sec. 10.** The unemployment compensation weekly work sharing
19 benefit due to an affected worker is determined in STEP FIVE of
20 the following formula:

21 **STEP ONE:** Determine the weekly benefit that would be due
22 to the affected employee under IC 22-4-12-4.

23 **STEP TWO:** Subtract the number of the employee's work
24 hours under the approved work sharing plan from the
25 number of the employee's normal weekly work hours.

26 **STEP THREE:** Divide the STEP TWO result by the number
27 of the employee's normal weekly work hours.

28 **STEP FOUR:** Multiply the number determined in STEP ONE
29 by the quotient determined in STEP THREE.

30 **STEP FIVE:** If the product determined under STEP FOUR is
31 not a multiple of one dollar (\$1), round down to the nearest
32 lower multiple of one dollar (\$1).

33 **Sec. 11. (a)** An affected employee may not receive more than
34 fifty-two (52) weeks of work sharing benefits during each benefit
35 year.

36 (b) The total amount of benefits payable under IC 22-4-12-4 and
37 work sharing benefits payable under this chapter may not exceed
38 the total payable for the benefit year under IC 22-4-12-4(a).

39 **Sec. 12.** During a week in which an affected employee who
40 otherwise is eligible for benefits does not work for the work
41 sharing employer:

42 (1) the individual shall be paid unemployment insurance



1 benefits in accordance with IC 22-4-12; and

2 (2) the week does not count as a week for which a work
3 sharing benefit is received.

4 **Sec. 13. During a week in which an employee earns wages under**
5 **an approved work sharing plan and other wages, the work sharing**
6 **benefit shall be reduced by the same percentage that the combined**
7 **wages are of wages for normal weekly work hours if the other**
8 **wages:**

9 (1) exceed the wages earned under the approved work sharing
10 plan; and

11 (2) do not exceed ninety percent (90%) of the wages that the
12 individual earns for normal weekly work hours.

13 **This computation applies regardless of whether the employee**
14 **earned the other wages from the work sharing employer or**
15 **another employer.**

16 **Sec. 14. While an affected employee applies for or receives work**
17 **sharing benefits, the affected employee is not eligible for:**

18 (1) extended benefits under IC 22-4-12-4; or

19 (2) supplemental federal unemployment compensation.

20 **Sec. 15. Work sharing benefits shall be charged to the work**
21 **sharing employer's experience balance in the same manner as**
22 **unemployment insurance is charged under this article. Employers**
23 **liable for payments in lieu of contributions shall have work sharing**
24 **benefits attributed to service in their employ in the same manner**
25 **as unemployment insurance is attributed under this article.**
26 **However, during a period in which the federal government**
27 **reimburses the state for work sharing benefits under Section 2162**
28 **(the federal Layoff Prevention Act of 2012) of Subtitle D, Title II**
29 **(the federal Extended Benefits, Reemployment, and Program**
30 **Integrity Improvement Act) of the federal Middle Class Tax Relief**
31 **and Job Creation Act of 2012 (P.L. 112-96, 126 Stat. 156), the state**
32 **may not:**

33 (1) charge an employer's experience account; or

34 (2) require payments in lieu of contributions;

35 **for work sharing benefits paid under this article.**

36 **Sec. 16. (a) The commissioner may revoke approval of an**
37 **approved work sharing plan for good cause, including:**

38 (1) conduct or an occurrence that tends to defeat the intent
39 and effective operation of the approved work sharing plan;

40 (2) failure to comply with an assurance in the approved work
41 sharing plan;

42 (3) unreasonable revision of a productivity standard of the



- 1 affected unit;
- 2 (4) violation of a criterion on which the commissioner based
- 3 the approval of the work sharing plan; or
- 4 (5) failure of the employing unit to comply with the eligibility
- 5 requirements under section 3(a) of this chapter for
- 6 participation in the work sharing unemployment insurance
- 7 program.
- 8 (b) An employing unit may terminate an approved work sharing
- 9 plan at any time by notifying the following at least fifteen (15)
- 10 calendar days before the termination of the plan:
- 11 (1) The commissioner.
- 12 (2) One (1) of the following:
- 13 (A) The collective bargaining agent for each collective
- 14 bargaining agreement that covers any affected employee
- 15 in the affected unit.
- 16 (B) In the absence of a collective bargaining agreement,
- 17 each affected employee in the affected unit.
- 18 (c) An affected employee in an affected unit or the collective
- 19 bargaining agent representing an affected employee in an affected
- 20 unit may request that the commissioner take action to revoke the
- 21 approval of an approved work sharing plan.
- 22 (d) The commissioner shall give written notice of a revocation
- 23 to the employing unit specifying:
- 24 (1) the date the revocation is effective; and
- 25 (2) the reason or reasons for the revocation.
- 26 (e) The commissioner's decision to revoke approval of an
- 27 approved work sharing plan is final and may not be appealed.
- 28 (f) The department shall review the operation of all approved
- 29 work sharing plans at least once during the period that the work
- 30 sharing plan is in effect to ensure that the work sharing employer
- 31 is complying with the requirements of the work sharing plan as
- 32 approved by the commissioner.

