

116TH CONGRESS
2D SESSION

S. 4303

To improve State short-time compensation programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 23, 2020

Mr. REED introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To improve State short-time compensation programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Workforce Retention
5 Act of 2020”.

6 **SEC. 2. EXTENSION OF TEMPORARY FINANCING OF SHORT-**
7 **TIME COMPENSATION PROGRAMS.**

8 (a) STATES WITH PROGRAMS IN LAW.—Section
9 2108(b)(2) of the Relief for Workers Affected by
10 Coronavirus Act (contained in subtitle A of title II of divi-
11 sion A of the CARES Act (Public Law 116–136)) is

1 amended by striking “December 31, 2020” and inserting
2 “December 31, 2022”.

3 (b) STATES WITH SHORT-TIME COMPENSATION
4 AGREEMENTS.—Section 2109(d)(2) of the Relief for
5 Workers Affected by Coronavirus Act (contained in sub-
6 title A of title II of division A of the CARES Act (Public
7 Law 116–136)) is amended by striking “December 31,
8 2020” and inserting “December 31, 2022”.

9 **SEC. 3. IMPROVEMENTS TO SHORT-TIME COMPENSATION**
10 **PROGRAMS.**

11 (a) STATES WITH PROGRAMS IN LAW.—Section
12 2108(a) of the Relief for Workers Affected by Coronavirus
13 Act (contained in subtitle A of title II of division A of
14 the CARES Act (Public Law 116–136)) is amended by
15 striking paragraph (3) and inserting the following:

16 “(3) LIMITATIONS ON PAYMENTS.—No pay-
17 ments shall be made to a State under this section
18 for short-time compensation paid to an individual by
19 the State during a benefit year in excess of 26 times
20 the amount of regular compensation (including de-
21 pendents’ allowances) under the State law payable to
22 such individual for a week of total unemployment.”.

23 (b) STATES WITH SHORT-TIME COMPENSATION
24 AGREEMENTS.—Section 2109 of the Relief for Workers
25 Affected by Coronavirus Act (contained in subtitle A of

1 title II of division A of the CARES Act (Public Law 116–
2 136)) is amended—

3 (1) in subsection (b)—

4 (A) by striking paragraph (2) and insert-
5 ing the following:

6 “(2) LIMITATIONS ON PLANS.—A short-time
7 compensation plan approved by a State shall not
8 permit the payment of short-time compensation to
9 an individual by the State during a benefit year in
10 excess of 26 times the amount of regular compensa-
11 tion (including dependents’ allowances) under the
12 State law payable to such individual for a week of
13 total unemployment.”; and

14 (B) by striking paragraph (3); and

15 (2) in subsection (c)(1)(A), by striking “one-
16 half” and inserting “100 percent”.

17 **SEC. 4. ENACTMENT OF PERMANENT SHORT-TIME COM-**
18 **PENSATION PROGRAMS.**

19 (a) REQUIREMENT.—

20 (1) IN GENERAL.—Section 3304(a) of the In-
21 ternal Revenue Code of 1986 (relating to approval
22 of State unemployment compensation laws) is
23 amended—

1 (A) in paragraph (4)(E), by inserting “, as
2 required under paragraph (19)” after
3 “3306(v)”;

4 (B) in paragraph (18), by striking “and”
5 at the end;

6 (C) by redesignating paragraph (19) as
7 paragraph (20); and

8 (D) by inserting after paragraph (18) the
9 following new paragraph:

10 “(19) payment of short-time compensation is
11 made under a short-time compensation program (as
12 defined in section 3306(v)) under the State law;
13 and”.

14 (2) CONFORMING AMENDMENT.—Section
15 303(a)(5) of the Social Security Act (42 U.S.C.
16 503(a)(5)), is amended, in the fifth proviso, by in-
17 sserting “, as required under section 3304(a)(19) of
18 such Code” after “1986”).

19 (b) EFFECTIVE DATE.—The amendments made by
20 subsection (a) shall apply to weeks of unemployment be-
21 ginning on or after the earlier of—

22 (1) the date the State changes its statutes, reg-
23 ulations, or policies in order to comply with such
24 amendments; or

25 (2) January 1, 2023.

1 **SEC. 5. REQUIREMENTS FOR SHORT-TIME COMPENSATION**
2 **PROGRAMS.**

3 (a) REQUIREMENT.—

4 (1) IN GENERAL.—Section 3304 of the Internal
5 Revenue Code of 1986 (relating to approval of State
6 unemployment compensation laws), as amended by
7 section 3, is amended—

8 (A) in subsection (a)—

9 (i) in paragraph (19)—

10 (I) by inserting “subject to para-
11 graph (20),” before “payment of
12 short-time compensation”; and

13 (II) by striking “and” at the end;

14 (ii) by redesignating paragraph (20)
15 as paragraph (21); and

16 (iii) by inserting after paragraph (19)
17 the following new paragraph:

18 “(20) subject to subsection (g), with respect to
19 the short-time compensation program requirement
20 under paragraph (19), the State law—

21 “(A) does not prohibit any employer, other
22 than an employer that is delinquent in the pay-
23 ment of unemployment insurance taxes, from
24 participating in such program solely based on
25 the employer’s experience rating;

1 “(B) allows any employer with four or
2 more employees to participate in such program;

3 “(C) in the case where the State has con-
4 tinued weakness in economic demand affecting
5 an employer, provides for approval of such em-
6 ployer’s short-time compensation for up to 52
7 weeks;

8 “(D) prohibits a State from relying solely
9 on an employer’s history of recent layoffs as the
10 basis for any disapproval of such employer’s
11 short-time compensation plan;

12 “(E) does not prohibit submission or con-
13 sideration of an employer’s short-time com-
14 pensation plan or any requested extension of
15 such plan less frequently than once in a 2-year
16 period;

17 “(F) requires an employer with an ap-
18 proved short-time compensation plan to certify
19 on a weekly basis the hour reduction for any
20 employees covered under such plan without re-
21 gard for earnings from an employer other than
22 the employer covered under such plan, elimi-
23 nating any requirement that such employees in-
24 dividually certify any hour reduction each week;
25 and

1 “(G) requires a State to increase the max-
 2 imum percentage of workweek reduction to
 3 qualify for a short-time compensation program
 4 from 60 percent to 80 percent; and”;

5 (B) by adding at the end the following new
 6 subsection:

7 “(g) AUTHORITY TO SUNSET.—Any State that en-
 8 acts a State law providing for the payment of short-time
 9 compensation under a short-time compensation program
 10 under paragraph (19) of subsection (a) may include a pro-
 11 vision in such law that permits the requirements under
 12 paragraph (20) of such subsection (a) to expire after De-
 13 cember 31, 2027.”.

14 (2) CONFORMING AMENDMENT.—Section
 15 3306(v)(3) of the Internal Revenue Code of 1986 is
 16 amended by striking “the percentage, if any, that is
 17 determined by the State to be appropriate (but in no
 18 case more than 60 percent),” and inserting “80 per-
 19 cent”.

20 (3) EFFECTIVE DATE.—The amendments made
 21 by subsection (a) shall apply to weeks of unemploy-
 22 ment beginning on or after the earlier of—

23 (A) the date the State changes its statutes,
 24 regulations, or policies in order to comply with
 25 such amendments; or

1 (B) January 1, 2023.

2 (b) PERMANENT FINANCING FOR SHORT-TIME COM-
 3 PENSATION PROGRAMS.—Title IX of the Social Security
 4 Act (42 U.S.C. 1101 et seq.) is amended by adding at
 5 the end the following:

6 **“SEC. 912. PERMANENT FINANCING FOR SHORT-TIME COM-
 7 PENSATION PROGRAMS.**

8 “Beginning on January 1, 2023, there shall be paid
 9 to each State with a State law providing for the payment
 10 of short-time compensation under a permanent short-time
 11 compensation program that meets the requirements for
 12 such a program under section 3306(v) and paragraph (20)
 13 of section 3304(a) of the Internal Revenue Code of 1986,
 14 an amount equal to—

15 “(1) 100 percent of the amount of short-time
 16 compensation paid to individuals by the State pursu-
 17 ant to such program; and

18 “(2) any additional administrative expenses in-
 19 curred by the State by reason of such program (as
 20 determined by the Secretary).”.

21 **SEC. 6. STANDARD FOR TIMELINESS.**

22 Not later than 90 days after the date of enactment
 23 of this Act, the Secretary of Labor shall establish a stand-
 24 ard for timeliness for State determinations of approval of
 25 short-time compensation plans under a short-time com-

1 pension program (as defined in section 3306(v) of the
2 Internal Revenue Code of 1986).

3 **SEC. 7. IMPROVED ADMINISTRATION.**

4 (a) ADMINISTRATIVE IMPROVEMENTS.—Section 303
5 of the Social Security Act (42 U.S.C. 503) is amended
6 by adding at the end the following:

7 “(n) ANNUAL REPORTS ON SHORT-TIME COMPENSA-
8 TION PROGRAMS.—

9 “(1) IN GENERAL.—The State agency charged
10 with the administration of the State law shall—

11 “(A) provide an annual report to the Sec-
12 retary of Labor on short-time compensation
13 program activity within their State, including
14 information regarding—

15 “(i) the number of approved employer
16 short-time compensation plans;

17 “(ii) the size and industry of any cov-
18 ered employer;

19 “(iii) the number of employees covered
20 by any such approved plan;

21 “(iv) the number of layoffs averted as
22 a result of short-time compensation pro-
23 gram utilization; and

1 “(v) the gender, race, ethnicity, and
2 age of any employee covered by any such
3 approved plan; and

4 “(B) review economic data, layoff histories,
5 and industry trends to identify any employer
6 who is at risk for future layoffs and conduct
7 targeted outreach and education on any short-
8 time compensation program offered by the
9 State.

10 “(2) ENFORCEMENT.—Whenever the Secretary
11 of Labor, after reasonable notice and opportunity for
12 hearing to the State agency charged with the admin-
13 istration of the State law, finds that there is a fail-
14 ure to comply substantially with the requirements of
15 paragraph (1), the Secretary of Labor shall notify
16 such State agency that further payments will not be
17 made to the State until the Secretary of Labor is
18 satisfied that there is no longer any such failure.
19 Until the Secretary of Labor is so satisfied, such
20 Secretary shall make no further certification to the
21 Secretary of the Treasury with respect to such
22 State.

23 “(3) FUNDING.—There are appropriated, out of
24 moneys in the Treasury not otherwise appropriated,
25 to the Secretary of Labor, \$20,000,000 to carry out

1 this subsection. Amounts appropriated under the
2 preceding sentence shall remain available until ex-
3 pended.”.

4 (b) EFFECTIVE DATE.—The amendments made by
5 subsection (a) shall apply to weeks of unemployment be-
6 ginning on or after the earlier of—

7 (1) the date the State changes its statutes, reg-
8 ulations, or policies in order to comply with such
9 amendments; or

10 (2) January 1, 2023.

11 **SEC. 8. GRACE PERIOD FOR FULL FINANCING OF SHORT-**
12 **TIME COMPENSATION PROGRAMS.**

13 Section 2108(c) of the Relief for Workers Affected
14 by Coronavirus Act (contained in subtitle A of title II of
15 division A of the CARES Act (Public Law 116–136)) is
16 amended by striking “shall be eligible” and all that follows
17 through the end and inserting the following:

18 “shall be eligible—

19 “(1) for payments under subsection (a) for
20 weeks of unemployment beginning after the effective
21 date of such enactment; and

22 “(2) for an additional payment equal to the
23 total amount of payments for which the State is eli-
24 gible pursuant to an agreement under section 2109

1 for weeks of unemployment before such effective
2 date.”.

3 **SEC. 9. DEPARTMENT OF LABOR STUDY AND REPORT ON**
4 **SHORT-TIME COMPENSATION PROGRAMS.**

5 (a) STUDY.—The Secretary of Labor (in this section
6 referred to as the “Secretary”) shall conduct a study on
7 State short-time compensation programs (as defined in
8 section 3306(v) of the Internal Revenue Code of 1986).
9 Such study shall include an analysis of—

10 (1) the operation and results of the short-time
11 compensation programs contained in the Relief for
12 Workers Affected by Coronavirus Act (contained in
13 subtitle A of title II of division A of the CARES Act
14 (Public Law 116–136));

15 (2) the extent to which such short-time com-
16 pensation programs averted layoffs; and

17 (3) any short-time compensation program, or
18 the equivalent, used in Organisation for Economic
19 Co-operation and Development member countries
20 during the COVID–19 pandemic, with the aim of
21 identifying improvements to the short-time com-
22 pensation programs used in the United States.

23 (b) REPORT.—Not later than January 1, 2025, the
24 Secretary shall submit to Congress a report containing the
25 results of the study conducted under subsection (a), to-

1 gether with recommendations for any such legislation or
 2 administrative action as the Secretary determines appro-
 3 priate.

4 (c) FUNDING.—There are appropriated, out of mon-
 5 eys in the Treasury not otherwise appropriated, to the
 6 Secretary of Labor, \$750,000 to carry out this section.
 7 Amounts appropriated under the preceding sentence shall
 8 remain available until expended.

9 **SEC. 10. INCREASED FUNDING FOR GRANTS FOR SHORT-**
 10 **TIME COMPENSATION PROGRAMS.**

11 Section 2110(g) of the Relief for Workers Affected
 12 by Coronavirus Act (contained in subtitle A of title II of
 13 division A of the CARES Act (Public Law 116–136)) is
 14 amended by striking “100,000,000” and inserting
 15 “250,000,000”.

16 **SEC. 11. SHORT-TIME COMPENSATION ENROLLMENT IN-**
 17 **CENTIVE PAYMENTS.**

18 Section 903 of the Social Security Act (42 U.S.C.
 19 1103) is amended by adding at the end the following:

20 “(j) SHORT-TIME COMPENSATION ENROLLMENT
 21 PAYMENTS.—

22 “(1) IN GENERAL.—For each of the fiscal years
 23 2021 and 2022, the Secretary of Labor shall provide
 24 for the making of short-time compensation enroll-
 25 ment incentive payments (in this subsection referred

1 to as ‘incentive payments’) to the accounts of the
2 States in the Unemployment Trust Fund (as estab-
3 lished by section 904(a)), by transfer from amounts
4 in the Federal unemployment account (as estab-
5 lished by section 905(g)), in accordance with suc-
6 ceeding provisions of this subsection.

7 “(2) CERTIFICATION.—

8 “(A) INITIAL BENCHMARK.—The Sec-
9 retary of Labor shall certify an incentive pay-
10 ment to any State that increases the number of
11 short-time compensation claims as a percentage
12 of all unemployment insurance weekly claims of
13 such State to an average of not less than 5 per-
14 cent for a 3-month period.

15 “(B) ADDITIONAL BENCHMARKS.—The
16 Secretary may create additional benchmarks,
17 upon which to certify an incentive payment, for
18 any State that increases the number of short-
19 time compensation claims as a percentage of all
20 unemployment insurance weekly claims of such
21 State for a 3-month period.

22 “(3) FUNDING.—There are appropriated, out of
23 moneys in the Treasury not otherwise appropriated,
24 to the Federal unemployment account, \$100,000,000
25 to carry out this subsection. Amounts appropriated

1 under the preceding sentence shall remain available
2 through fiscal year 2022.”.

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