

# State of South Dakota

## EIGHTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2014

972V0491

### HOUSE BILL NO. 1226

Introduced by: Representatives Ring, Bartling, Bolin, Ecklund, Feickert, Gibson, Greenfield, Haggar (Don), Hajek, Hawks, Hawley, Heinert, Hunhoff (Bernie), Johns, Killer, Kirschman, Parsley, Peterson, Rasmussen, Schoenfish, Schrempp, Soli, Tulson, Tyler, Werner, and Wismer and Senators Kirkeby, Begalka, Bradford, Jones (Tom), Lederman, Lucas, Otten (Ernie), and Welke

1 FOR AN ACT ENTITLED, An Act to create a work-share program available to employers  
2 during times of economic distress.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 61-1-1 be amended by adding thereto a NEW SUBDIVISION to read as  
5 follows:

6 "Work-share program," program approved by the department under which the hours of work  
7 of employees in a work unit are reduced in lieu of the layoffs of one or more employees in the  
8 work unit.

9 "Work unit," operational unit of employees designated by an employer for the purposes of  
10 a work-share program.

11 Section 2. That chapter 61-1 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 Any employer may create a work-share program. Prior to implementing the work-share



1 program, the employer shall submit a work-share plan for approval of the Department of Labor.

2 Each plan shall:

- 3 (1) Specify the work unit in which the plan will be implemented, the affected positions,  
4 and the names of the employees filling those positions at the date of submission;
- 5 (2) Specify the amount of time the plan will be in effect, which may not exceed a total  
6 of twelve months in a five year period within the same work unit. An employer may  
7 submit a new application to participate in another work-sharing plan at any time after  
8 the expiration or termination date, provided the new program does not exceed the  
9 twelve month limit;
- 10 (3) Provide for an apportionment of reduced working hours equitably among employees  
11 in the work-share program;
- 12 (4) Exclude participation by employees employed on a seasonal, temporary, or  
13 intermittent basis;
- 14 (5) Apply only to employees who have been employed for a period of at least three  
15 months on the effective date of the work-share program;
- 16 (6) Specify the normal average hours per week worked by each employee in the work  
17 program and the percentage reduction in the average hours of work, with a decrease  
18 of at least ten percent but no more than sixty percent of the average hours;
- 19 (7) Describe the manner in which the requirements for maximum federal financial  
20 participation, according to Section 2161 of the Middle Class Tax Relief and Job  
21 Creation Act, will be implemented, including a plan for giving notice, where feasible,  
22 to participating employees of changes in work schedules;
- 23 (8) Provide an estimate of the number of layoffs that would occur if the work-share  
24 program were not implemented; and

1       (9)   Specify any fringe benefits provided by the employer to the employees who are  
2           participating in the work-share program, other than the fringe benefits specified by  
3           law.

4       Section 3. The department shall approve any plan which meets the specifications provided  
5       in section two of this Act.

6       Upon application of an employer, the department may approve a modification to the plan.  
7       Any approved modification is effective immediately for the remaining duration of the plan.

8       Section 4. The work-share program becomes effective the second Sunday after approval, or  
9       an otherwise specified date, whichever is later. The program ends twelve months after the  
10      Sunday it begins, or an otherwise specified date, whichever is earlier. The department may  
11      revoke approval of the plan if compliance is not met or for any other good cause. An employer  
12      that creates a work-share plan may terminate the plan before expiration by written notice to the  
13      department.

14      Section 5. Any employee who is subject to a work-share program, and who qualifies to  
15      receive regular benefits for any week during the program, shall receive a benefit payment for  
16      each week equal to the employee's regular benefit eligibility as determined by § 61-6-2,  
17      multiplied by the employee's proportionate reduction in hours worked for that week as a result  
18      of the work-share program. The employee must be available during the work week to be eligible  
19      for benefits.

20      No employee subject to the work-share program is eligible for benefits for any week that the  
21      employee's hours for the employer sponsoring the work-share program, when combined with  
22      hours worked for any other employer, exceed ninety percent of the employee's average hours  
23      at the work-share employer. Eligible employees may participate, as appropriate, in training to  
24      enhance job skills, if such program has been approved by the department. Training hours will

1 not count as hours worked for purposes of this Act.

2 Section 6. An employer that creates a work-share program shall maintain coverage under  
3 any defined benefit or defined contribution to a retirement plan and any health insurance  
4 coverage that the employer provides to the employees in the work-share program. Benefits shall  
5 be maintained at the same terms and conditions as if the employees were not subject to the  
6 program.

7 Section 7. The Department of Labor shall submit an application to the U.S. Department of  
8 Labor to request a share of grant funding for the work-share programs implemented in the state,  
9 and fulfill any other obligations to reach qualification for the grant funding. The application  
10 must be completed and submitted no later than December 31, 2014.