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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 680      Session of  
2001

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INTRODUCED BY SCHWARTZ, MELLOW, RHOADES, TARTAGLIONE, COSTA,  
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MARCH 20, 2001

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REFERRED TO LABOR AND INDUSTRY, MARCH 20, 2001

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AN ACT

1 Requiring notification of employees, the Department of Labor and  
2 Industry and municipalities when mass layoffs and plant  
3 closings occur; and providing for civil penalties and for  
4 powers and duties of the Department of Labor and Industry.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Mass Layoff  
9 and Plant Closing Notification Act.

10 Section 2. Declaration of policy.

11 The General Assembly finds and declares as follows:

12 (1) The impact of plant closings and job loss due to  
13 mergers and downsizing can be devastating to both individuals  
14 and communities.

15 (2) With adequate notice of plant closings and job loss  
16 due to mergers and downsizing, employees, unions, State and  
17 local government and business leaders can take action to  
18 prevent the job loss or to implement plans for new employment

1 opportunities.

2 Section 3. Definitions.

3 The following words and phrases when used in this act shall  
4 have the meanings given to them in this section unless the  
5 context clearly indicates otherwise:

6 "Affected employee." An employee who may reasonably be  
7 expected to experience an employment loss as a consequence of a  
8 proposed plant closing or mass layoff by the employee's  
9 employer.

10 "Employer." A business enterprise that employs:

11 (1) 100 or more employees, excluding part-time  
12 employees, whether at one or multiple sites; or

13 (2) 100 or more employees who in the aggregate work at  
14 least 4,000 hours per week, exclusive of hours of overtime.

15 "Employment loss." Any of the following:

16 (1) An employment termination, other than a discharge  
17 for cause, voluntary departure or retirement.

18 (2) A layoff exceeding six months.

19 (3) A reduction in hours of work of more than 50% during  
20 each month of any six-month period.

21 "Mass layoff." A reduction in force which meets both of the  
22 following criteria:

23 (1) Is not the result of a plant closing.

24 (2) Results in an employment loss at the single or  
25 multiple sites of employment during any 30-day period for:

26 (i) (A) At least 33% of the employees; and

27 (B) at least 50 employees; or

28 (ii) at least 500 employees.

29 "Part-time employee." An employee who is employed for an  
30 average of fewer than 20 hours per week or who has been employed

1 for fewer than 6 of the 12 months preceding the date on which  
2 notice is required.

3 "Plant closing." The permanent or temporary shutdown of a  
4 single site of employment, or one or more facilities or  
5 operating units within a single site of employment, if the  
6 shutdown results in an employment loss at the single site of  
7 employment during any 30-day period for 50 or more employees,  
8 excluding any part-time employees.

9 "Representative." An exclusive representative of employees  
10 for collective bargaining purposes.

11 Section 4. Notice required before plant closing and mass  
12 layoffs.

13 (a) Parties to be notified.--An employer may not order a  
14 plant closing or mass layoff until the end of a 120-day period  
15 after the employer serves written notice of the closing or  
16 layoff order:

17 (1) To each representative of the affected employees as  
18 of the time of the notice or, if there is no representative  
19 at that time, to each affected employee.

20 (2) To the Department of Labor and Industry and the  
21 chief elected official of the municipality within which the  
22 closing or layoff is to occur. If there is more than one  
23 municipality, the municipality which the employer shall  
24 notify is the municipality to which the employer pays the  
25 highest taxes for the year preceding the year for which the  
26 determination is made.

27 (b) Reduction of notification period.--

28 (1) An employer may order a plant closing or mass layoff  
29 before the conclusion of the 120-day period if the closing or  
30 mass layoff is caused by business circumstances that were not

1 reasonably foreseeable as of the time that notice would have  
2 been required.

3 (2) No notice under this act shall be required if the  
4 plant closing or mass layoff is due to any form of natural  
5 disaster, including, but not limited to, a flood, earthquake  
6 or drought.

7 (3) An employer relying on this subsection shall give as  
8 much notice as is practicable and at that time shall give a  
9 brief statement of the basis for reducing the notification  
10 period.

11 (c) Extension of layoff period.--A layoff of more than six  
12 months which, at its outset, was announced to be a layoff of six  
13 months or less shall be treated as an employment loss under this  
14 act unless:

15 (1) The extension beyond six months is caused by  
16 business circumstances, including unforeseeable changes in  
17 price or cost, not reasonably foreseeable at the time of the  
18 initial layoff.

19 (2) Notice is given at the time it becomes reasonably  
20 foreseeable that the extension beyond six months is required.

21 (d) Determinations with respect to employment loss.--For  
22 purposes of this section, in determining whether a plant closing  
23 or mass layoff has occurred or will occur, employment losses for  
24 two or more groups at a single site of employment, each of which  
25 is less than the minimum number of employees specified in the  
26 definition of "mass layoff" or "plant closing" under section 3,  
27 but which in the aggregate exceed that minimum number, and which  
28 occur within any 90-day period shall be considered to be a plant  
29 closing or mass layoff unless:

30 (1) the employer demonstrates that the employment losses

1 are the result of separate and distinct actions and causes;  
2 and

3 (2) the employer demonstrates that the employment losses  
4 are not an attempt by the employer to evade the requirements  
5 of this act.

6 Section 5. Special circumstances.

7 (a) Sale or merger of business.--

8 (1) In the case of a sale or merger of part or all of an  
9 employer's business, the seller or original employer shall be  
10 responsible for providing notice for any plant closing or  
11 mass layoff in accordance with section 4, up to and including  
12 the effective date of the sale or merger.

13 (2) After the effective date of the sale or merger of  
14 part or all of an employer's business, the purchaser or  
15 resulting merged entity shall be responsible for providing  
16 notice for any plant closing or mass layoff in accordance  
17 with section 4.

18 (3) Notwithstanding any other provision of this act, any  
19 person who is an employee of the seller or original employer  
20 other than a part-time employee as of the effective date of  
21 the sale or merger shall be considered an employee of the  
22 purchaser or resulting merged entity immediately after the  
23 effective date of the sale or merger.

24 (b) Exception.--An employee may not be considered to have  
25 experienced an employment loss if the closing or layoff is the  
26 result of the relocation or consolidation of part or all of the  
27 employer's business and, prior to the closing or layoff:

28 (1) the employer offers to transfer the employee to a  
29 different site of employment within a reasonable commuting  
30 distance with no more than a six-month break in employment;

1 or

2 (2) the employer offers to transfer the employee to any  
3 other site of employment regardless of distance with no more  
4 than a six-month break in employment and the employee accepts  
5 within 30 days of the offer or of the closing or layoff,  
6 whichever is later.

7 Section 6. Exemptions.

8 (a) General rule.--This act shall not apply to a plant  
9 closing or mass layoff if:

10 (1) The closing is of a temporary facility or the  
11 closing or layoff is the result of the completion of a  
12 particular project or undertaking and the affected employees  
13 were hired with the understanding that their employment was  
14 limited to the duration of the facility or the project or  
15 undertaking.

16 (2) The closing or layoff constitutes a strike or  
17 constitutes a lockout not intended to evade the requirements  
18 of this act.

19 (b) Economic strikers.--Nothing in this act shall require an  
20 employer to serve written notice pursuant to section 4 when  
21 permanently replacing a person who is deemed to be an economic  
22 striker under the National Labor Relations Act (49 Stat. 449, 29  
23 U.S.C. § 151 et seq.). Nothing in this act shall be deemed to  
24 validate or invalidate any judicial or administrative ruling  
25 relating to the hiring of permanent replacements for economic  
26 strikers under the National Labor Relations Act.

27 Section 7. Administration and enforcement of requirements.

28 (a) Civil actions against employers.--

29 (1) Any employer who orders a plant closing or mass  
30 layoff in violation of section 4 shall be liable to each

1       aggrieved employee who suffers an employment loss as a result  
2       of the closing or layoff for:

3               (i)   back pay for each day of violation at a rate of  
4       compensation not less than the higher of:

5                       (A)   the average regular rate received by the  
6       employee during the last three years of the  
7       employee's employment; or

8                       (B)   the final regular rate received by the  
9       employee; and

10               (ii)   benefits under an employee benefit plan,  
11       including the cost of medical expenses incurred during  
12       the employment loss which would have been covered under  
13       an employee benefit plan if the employment loss had not  
14       occurred.

15       Liability shall be calculated for the period of the violation  
16       up to a maximum of 60 days but in no event for more than one-  
17       half the number of days the employee was employed by the  
18       employer.

19               (2)   The amount for which an employer is liable under  
20       paragraph (1) shall be reduced by:

21                       (i)   any wages paid by the employer to the employee  
22       for the period of the violation;

23                       (ii)   any voluntary and unconditional payment by the  
24       employer to the employee that is not required by any  
25       legal obligation; and

26                       (iii)   any payment by the employer to a third party  
27       or trustee, such as premiums for health benefits or  
28       payments to a defined contribution pension plan on behalf  
29       of and attributable to the employee for the period of the  
30       violation.

1           (3) In addition, any liability incurred under paragraph  
2           (1) with respect to a defined benefit pension plan may be  
3           reduced by crediting the employee with service for all  
4           purposes under the plan for the period of the violation.

5           (4) Any employer who violates the provisions of section  
6           4 with respect to a municipality shall be subject to a civil  
7           penalty of not more than \$500 for each day of the violation,  
8           except that this penalty shall not apply if the employer pays  
9           to each aggrieved employee the amount for which the employer  
10          is liable to that employee within three weeks from the date  
11          the employer orders the closing or layoff.

12          (5) If an employer which has violated this act proves to  
13          the satisfaction of the court that the act or omission that  
14          violated this act was in good faith and that the employer had  
15          reasonable grounds for believing that the act or omission was  
16          not a violation of this act, the court may, in its  
17          discretion, reduce the amount of the liability or penalty  
18          provided for in this section.

19          (6) A person seeking to enforce liability, including a  
20          representative of employees or a municipality aggrieved under  
21          paragraph (1) or (4), may sue either for the person or for  
22          other persons similarly situated, or both, in any court of  
23          common pleas in which the violation is alleged to have  
24          occurred, or in which the employer transacts business.

25          (7) In an action under this subsection, the court, in  
26          its discretion, may allow the prevailing party reasonable  
27          attorney fees as part of the costs.

28          (b) Exclusivity of remedies.--The remedies provided for in  
29          this section shall be the exclusive remedies for any violation  
30          of this act.



1 (c) Definition.--As used in this section, the term  
2 "aggrieved employee" means an employee who has worked for the  
3 employer ordering the plant closing or mass layoff and who, as a  
4 result of the failure by the employer to comply with section 4,  
5 did not receive timely notice either directly or through the  
6 employee's representative as required by section 4.

7 Section 8. Procedures in addition to other rights of employees.

8 The rights and remedies provided to employees by this act are  
9 in addition to and not in lieu of any other contractual or  
10 statutory rights and remedies of the employees and are not  
11 intended to alter or affect those rights and remedies, except  
12 that the period of notification required by this act shall run  
13 concurrently with any period of notification required by  
14 contract or by any other statute.

15 Section 9. Authority to prescribe regulations.

16 (a) General rule.--The Department of Labor and Industry  
17 shall prescribe regulations as may be necessary to carry out  
18 this act. Regulations shall include, at a minimum,  
19 interpretative regulations describing the methods by which  
20 employers may provide for appropriate service of notice as  
21 required by this act.

22 (b) Form of notice.--The mailing of notice to an employee's  
23 last known address or inclusion of notice in the employee's  
24 paycheck shall be deemed acceptable methods for fulfillment of  
25 the employer's obligation to give notice to each affected  
26 employee under this act.

27 Section 10. Effective date.

28 This act shall take effect in 60 days.