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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1034 Session of  
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INTRODUCED BY ZABEL, SANCHEZ, HILL-EVANS, SCHLOSSBERG,  
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FREEMAN, WARREN, ISAACSON, O'MARA AND KINKEAD, MARCH 26, 2021

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, MARCH 26, 2021

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AN ACT

1 Requiring notification of employees, the Department of Labor and  
2 Industry and municipalities when mass layoffs and business  
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 Worker  
9 Adjustment and Retraining Notification Act.

10 Section 2. Declaration of policy.

11 The General Assembly finds and declares as follows:

12 (1) The impact of business 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 business closings and job  
16 loss due to mergers and downsizing, employees, unions, State  
17 and local government, business and community leaders can take  
18 action to prevent the job loss or to implement plans for new

1 employment 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 business closing or mass layoff by the employee's  
9 employer.

10 "Business closing." The permanent or temporary shutdown of a  
11 single site of employment, or one or more facilities or  
12 operating units within a single site of employment, if the  
13 shutdown results in an employment loss at the single site of  
14 employment during any 30-day period for 30 or more employees,  
15 excluding any part-time employees.

16 "Department." The Department of Labor and Industry of the  
17 Commonwealth.

18 "Employer." A business enterprise that employs:

19 (1) 50 or more employees, excluding part-time employees,  
20 whether at one or multiple sites; or

21 (2) 50 or more employees who in the aggregate work at  
22 least 2,000 hours per week, exclusive of hours of overtime.

23 "Employment loss." Any of the following:

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

26 (2) A mass layoff exceeding six months.

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

29 "Mass layoff." A reduction in force that meets both of the  
30 following criteria:

1 (1) Is not the result of a business closing.

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

4 (i) at least 33% of the employees and at least 25  
5 employees; or

6 (ii) at least 500 employees.

7 "Part-time employee." An employee who is employed for an  
8 average of fewer than 20 hours per week or who has been employed  
9 for fewer than six of the 12 months preceding the date on which  
10 notice is required.

11 "Plant closing." The permanent or temporary shutdown of a  
12 single site of employment, or one or more facilities or  
13 operating units within a single site of employment, if the  
14 shutdown results in an employment loss at the single site of  
15 employment during any 30-day period for 50 or more employees,  
16 other than part-time employees.

17 "Relocation." The removal of all or substantially all of the  
18 industrial or commercial operations of an employer to a  
19 different location 50 or more miles away.

20 "Representative." An exclusive representative of employees  
21 for collective bargaining purposes.

22 "Secretary." The Secretary of Labor and Industry of the  
23 Commonwealth.

24 Section 4. Notice required before business closing and mass  
25 layoffs.

26 (a) Parties to be notified.--An employer may not order a  
27 business closing, mass layoff or relocation until the end of a  
28 180-day period after the employer serves written notice of the  
29 business closing or mass layoff order:

30 (1) To each representative of the affected employees as

1 of the time of the notice or, if there is no representative  
2 at that time, to each affected employee.

3 (2) To the department and the chief elected official of  
4 the municipality within which the business closing or mass  
5 layoff is to occur. If there is more than one municipality,  
6 the municipality that the employer shall notify is the  
7 municipality to which the employer pays the taxes for the  
8 year preceding the year for which the determination is made.

9 (3) To the local workforce investment board established  
10 under the Workforce Investment Act of 1998 (Public Law 105-  
11 220, 112 Stat. 936) for the locality in which the business  
12 closing, relocation or mass layoffs will occur.

13 (b) Reduction of notification period.--The following shall  
14 apply:

15 (1) An employer may order a business closing or mass  
16 layoff before the conclusion of the 180-day period if the  
17 business closing or mass layoff is caused by business  
18 circumstances that were not reasonably foreseeable as of the  
19 time that notice would have been required.

20 (2) No notice under this act shall be required if the  
21 business closing or mass layoff is due to any form of natural  
22 disaster, including a flood, earthquake or drought.

23 (3) An employer relying on this subsection shall give as  
24 much notice as is practicable and at that time shall give a  
25 brief statement of the basis for reducing the notification  
26 period.

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

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

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

7           (d) Determinations regarding employment loss.--For purposes  
8 of this section, in determining whether a business closing or  
9 mass layoff has occurred or will occur, employment losses for  
10 two or more groups at a single site of employment, each of which  
11 is less than the minimum number of employees specified in the  
12 definition of "business closing" or "mass layoff" under section  
13 3, but which in the aggregate exceed that minimum number and  
14 occur within any 180-day period, shall be considered to be a  
15 business closing or mass layoff unless the employer demonstrates  
16 that the employment losses are the result of separate and  
17 distinct actions and causes and not an attempt by the employer  
18 to evade the requirements of this act.

19 Section 5. Special circumstances.

20           (a) Sale or merger of business.--The following shall apply:

21           (1) In the case of a sale or merger of part or all of an  
22 employer's business, the seller or original employer shall be  
23 responsible for providing notice for any business closing or  
24 mass layoff in accordance with section 4, up to and including  
25 the effective date of the sale or merger.

26           (2) After the effective date of the sale or merger of  
27 part or all of an employer's business, the purchaser or  
28 resulting merged entity shall be responsible for providing  
29 notice for any business closing or mass layoff in accordance  
30 with section 4.

1           (3) Notwithstanding any other provision of this act, a  
2 person who is an employee of the seller or original employer  
3 other than a part-time employee as of the effective date of  
4 the sale or merger shall be considered an employee of the  
5 purchaser or resulting merged entity immediately after the  
6 effective date of the sale or merger.

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

11           (1) the employer offers to transfer the employee to a  
12 different site of employment within a reasonable commuting  
13 distance with no more than a six-month break in employment;  
14 or

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

20 Section 6. Exemptions.

21           (a) General rule.--This act shall not apply to a business  
22 closing or mass layoff if:

23           (1) The closing is of a temporary facility or the  
24 closing or layoff is the result of the completion of a  
25 particular project or undertaking and the affected employees  
26 were hired with the understanding that their employment was  
27 limited to the duration of the facility or the project or  
28 undertaking.

29           (2) The closing or layoff constitutes a strike or  
30 constitutes a lockout not intended to evade the requirements

1 of this act.

2 (b) Plant closings.--In the case of a plant closing, an  
3 employer is not required to comply with the notice requirement  
4 in section 4 if:

5 (1) at the time the notice would have been required, the  
6 employer was actively seeking capital or business;

7 (2) the capital or business sought, if obtained, would  
8 have enabled the employer to avoid or postpone the relocation  
9 or termination; and

10 (3) the employer reasonably and in good faith believed  
11 that giving the notice required by section 4 of this act  
12 would have precluded the employer from obtaining the needed  
13 capital or business.

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

22 Section 7. Administration and enforcement requirements.

23 The following shall apply:

24 (1) The secretary shall prescribe rules and regulations  
25 as may be necessary to carry out this act. The rules and  
26 regulations shall, at a minimum, include provisions that  
27 allow the parties access to administrative hearings for any  
28 actions of the department under this section.

29 (2) In an investigation or proceeding under this act,  
30 the secretary has, in addition to all other powers granted by

1 law, the authority to examine any information of an employer  
2 necessary to determine whether a violation of this act has  
3 occurred, including to determine the validity of any defense.

4 (3) Except as provided in this section, information  
5 obtained through administration of this act from an employer  
6 subject to this act and that is not otherwise obtainable by  
7 the secretary under this section shall be confidential and  
8 shall not be published or open to public inspection. Prior to  
9 public disclosure of the information in connection with any  
10 court action or proceeding, the employer shall be given a  
11 reasonable opportunity to make application to protect the  
12 information's confidentiality.

13 (4) No decision or order issued under this act shall be  
14 admissible or used in evidence in any subsequent court  
15 proceeding except in an action by the secretary or the  
16 employer to implement, enforce or challenge a determination  
17 made by the secretary under this act.

18 (5) An officer or employer of the State, an officer or  
19 employee of an entity authorized to obtain information under  
20 this section and an agent to this State or of the entity who,  
21 except with authority of the secretary under this section,  
22 discloses information commits a misdemeanor.

23 (6) If, after an administrative hearing, the secretary  
24 determines that an employer has violated a requirement of  
25 this act or rules or regulations promulgated under this act,  
26 the secretary shall issue an order that shall include any  
27 penalties assessed by the secretary under this act. Upon the  
28 entry of the order, a party aggrieved thereby may commence a  
29 proceeding for review pursuant to the civil practice law and  
30 rules within 30 days from the notice of the filing of the



1 order in the office of the secretary. The proceeding shall be  
2 commenced in Commonwealth Court. If the order is not reviewed  
3 or if it is reviewed and the final decision is in favor of  
4 the secretary, the secretary may file with the clerk of the  
5 county where the employer resides or has a place of business  
6 the order of the secretary containing the amount found to be  
7 due. The filing of the order shall have the full force and  
8 effect of a judgment duly docketed in the office of the  
9 clerk. The order may be enforced by and in the name of the  
10 secretary in the same manner, and with like effect, as that  
11 prescribed by the civil practice law and rules for the  
12 enforcement of a money judgment.

13 (7) The secretary shall promptly distribute any back pay  
14 and the value of benefits recovered to employees subject to  
15 the violation.

16 Section 8. Civil actions and remedies.

17 (a) Liability of employer.--An employer who orders a  
18 business closing or mass layoff in violation of section 4 is  
19 liable to each affected employee who suffers an employment loss  
20 as a result of the business closing or mass layoff for:

21 (1) back pay for each day of violation at a rate of  
22 compensation not less than the higher of:

23 (i) the average regular rate received by the  
24 employee during the last three years of the employee's  
25 employment; or

26 (ii) the final regular rate received by the  
27 employee; and

28 (2) benefits under an employee benefit plan, including  
29 the cost of medical expenses incurred during the employment  
30 loss that would have been covered under an employee benefit

1 plan if the employment loss had not occurred.

2 (b) Calculation of liability.--Liability shall be calculated  
3 for the period of the violation up to a maximum of 60 days but  
4 in no event for more than one-half the number of days the  
5 employee was employed by the employer.

6 (c) Not considered remuneration.--Payments to an employee  
7 under this section by an employer who has failed to provide the  
8 advance notice of a facility closure required by this act or the  
9 Federal Worker Adjustment and Retraining Notification Act  
10 (Public Law 100-379, 29 U.S.C. Sec. 2101 et seq.) shall not be  
11 construed as remuneration under this act. Unemployment insurance  
12 benefits may not be denied or reduced because of the receipt of  
13 payments related to an employer's violation of this act or the  
14 Federal Worker Adjustment and Retraining Notification Act.

15 (d) Reduction of liability.--The amount for which an  
16 employer is liable under subsection (a) shall be reduced by any:

17 (1) wages paid by the employer to the employee for the  
18 period of the violation;

19 (2) voluntary and unconditional payment by the employer  
20 to the employee that is not required by any legal obligation;

21 (3) payment by the employer to a third party or trustee,  
22 such as premiums for health benefits or payments to a defined  
23 contribution pension plan on behalf of and attributable to  
24 the employee for the period of the violation;

25 (4) liability paid by the employer under any applicable  
26 Federal law governing notification of mass layoffs, plant  
27 closings or relocations;

28 (5) in an administrative proceeding by the secretary,  
29 liability paid by the employer prior to the secretary's  
30 determination as the result of a private action brought under

1 this act; and

2 (6) in a private action brought under this act,  
3 liability paid by the employer in an administrative  
4 proceeding by the secretary prior to the adjudication of the  
5 private action.

6 (e) Credit.--In addition, any liability incurred under  
7 subsection (d) (1) with respect to a defined benefit pension plan  
8 may be reduced by crediting the employee with service for all  
9 purposes under the plan for the period of the violation.

10 (f) Payment to aggrieved employees.--An employer who  
11 violates the provisions of section 4 with respect to a  
12 municipality shall be subject to a civil penalty of not more  
13 than \$500 for each day of the violation, except that this  
14 penalty shall not apply if the employer pays to each aggrieved  
15 employee the amount for which the employer is liable to that  
16 employee within three weeks from the date the employer orders  
17 the business closing or mass layoff.

18 Section 9. Civil penalty.

19 (a) Failure of notice.--An employer who fails to give notice  
20 as required by section 4 shall be subject to a civil penalty of  
21 not more than \$500 for each day of the violation. The employer  
22 shall not be subject to a civil penalty under this section if  
23 the employer pays to all applicable employees the amounts for  
24 which the employer is liable under section 4 within 21 days from  
25 the date the employer orders the mass layoff, relocation or  
26 employment loss.

27 (b) Maximum penalty.--The total amount of penalties for  
28 which an employer may be liable under this section shall not  
29 exceed the maximum amount of penalties for which the employer  
30 may be liable under Federal law for the same violation.

1 (c) Penalty payments.--Any penalty amount paid by the  
2 employer under Federal law shall be considered a payment made  
3 under this article.

4 (d) Reduction of liability or penalty.--If an employer that  
5 has violated this act proves to the satisfaction of the  
6 secretary or the court that the act or omission that violated  
7 this act was in good faith and that the employer had reasonable  
8 grounds for believing that the act or omission was not a  
9 violation of this act, the secretary and the court may, in their  
10 discretion, reduce the amount of the liability or penalty  
11 provided for in this section. In determining the amount of the  
12 reduction, the secretary and the court shall consider:

- 13 (1) the size of the employer;  
14 (2) hardships imposed on employees by the violation;  
15 (3) efforts by the employer to mitigate the violation;  
16 and  
17 (4) the grounds for the employer's belief.

18 (e) Jurisdiction.--A person seeking to enforce liability,  
19 including a representative of employees or a municipality  
20 aggrieved under subsection (d) (1) or (4), may sue on his or her  
21 own behalf or for other persons similarly situated, or both, in  
22 any court of common pleas in which the violation is alleged to  
23 have occurred, or in which the employer transacts business.

24 (f) No injunction.--The secretary shall not have the  
25 authority to enjoin a plant closing, relocation or mass layoff  
26 under this act.

27 (g) Attorney fees.--In an action under this subsection, the  
28 court, in its discretion, may allow the prevailing party  
29 reasonable attorney fees as part of the costs.

30 (h) Definition.--As used in this section, an "aggrieved

1 employee" shall mean an employee who:

2 (1) worked for an employer that ordered a business  
3 closing or mass layoff; and

4 (2) as a result of the employer's failure to comply with  
5 section 4, did not receive timely notice directly or through  
6 the employee's representative as required by this act.

7 Section 10. Procedures and other rights.

8 The following shall apply:

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

16 (2) Nothing in this act shall be read to abridge,  
17 abrogate or restrict the right of any State or local entity  
18 to require an employer that is receiving State or local  
19 economic development incentives for doing or continuing to do  
20 business in this State from being required to provide  
21 additional or earlier notice as a condition for the receipt  
22 of such incentives.

23 (3) Nothing in this act shall be read to prevent an  
24 employer who is not required to comply with the notice  
25 requirements of this section, to the extent possible, to  
26 provide notice to its employees about a proposal to close a  
27 plant or permanently reduce its workforce.

28 Section 11. Promulgation of regulations.

29 The department shall promulgate regulations as may be  
30 necessary to carry out the provisions of this act.

1 Section 12. Form of notice.

2 The mailing of notice to an employee's last known address or  
3 inclusion of notice in the employee's paycheck shall be deemed  
4 acceptable methods for fulfillment of the employer's obligation  
5 to give notice to each affected employee under this act.

6 Section 13. Effective date.

7 This act shall take effect in 60 days.