



Rep. Constance A. Howard

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LRB093 18523 WGH 51015 a

1 AMENDMENT TO SENATE BILL 2665

2 AMENDMENT NO. _____. Amend Senate Bill 2665 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Illinois Worker Adjustment and Retraining Notification Act.

6 Section 5. Definitions. As used in this Act:

7 (a) "Affected employees" means employees who may
8 reasonably be expected to experience an employment loss as a
9 consequence of a proposed plant closing or mass layoff by their
10 employer.

11 (b) "Employment loss" means:

12 (1) an employment termination, other than a discharge
13 for cause, voluntary departure, or retirement;

14 (2) a layoff exceeding 6 months; or

15 (3) a reduction in hours of work of more than 50%
16 during each month of any 6-month period.

17 "Employment loss" does not include instances when the plant
18 closing or layoff is the result of the relocation or
19 consolidation of part or all of the employer's business and,
20 before the closing or layoff, the employer offers to transfer
21 the employee to a different site of employment within a
22 reasonable commuting distance with no more than a 6-month break
23 in employment, or the employer offers to transfer the employee
24 to any other site of employment, regardless of distance, with

1 no more than a 6-month break in employment, and the employee
2 accepts within 30 days of the offer or of the closing or
3 layoff, whichever is later.

4 (c) "Employer" means any business enterprise that employs:

5 (1) 75 or more employees, excluding part-time
6 employees; or

7 (2) 75 or more employees who in the aggregate work at
8 least 4,000 hours per week (exclusive of hours of
9 overtime).

10 (d) "Mass layoff" means a reduction in force which:

11 (1) is not the result of a plant closing; and

12 (2) results in an employment loss at the single site of
13 employment during any 30-day period for:

14 (A) at least 33% of the employees (excluding any
15 part-time employees) and at least 25 employees
16 (excluding any part-time employees); or

17 (B) at least 250 employees (excluding any
18 part-time employees).

19 (e) "Part-time employee" means an employee who is employed
20 for an average of fewer than 20 hours per week or who has been
21 employed for fewer than 6 of the 12 months preceding the date
22 on which notice is required.

23 (f) "Plant closing" means the permanent or temporary
24 shutdown of a single site of employment, or one or more
25 facilities or operating units within a single site of
26 employment, if the shutdown results in an employment loss at
27 the single site of employment during any 30-day period for 50
28 or more employees excluding any part-time employees.

29 (g) "Representative" means an exclusive representative of
30 employees within the meaning of Section 9(a) or 8(f) of the
31 National Labor Relations Act (29 U.S.C. 159(a), 158(f)) or
32 Section 2 of the Railway Labor Act (45 U.S.C. 152).

33 Section 10. Notice.

1 (a) An employer may not order a mass layoff, relocation, or
2 employment loss unless, 60 days before the order takes effect,
3 the employer gives written notice of the order to the
4 following:

5 (1) affected employees and representatives of affected
6 employees; and

7 (2) the Department of Commerce and Economic
8 Opportunity and the chief elected official of each
9 municipal and county government within which the
10 employment loss, relocation, or mass layoff occurs.

11 (b) An employer required to give notice of any mass layoff,
12 relocation, or employment loss under this Act shall include in
13 its notice the elements required by the federal Worker
14 Adjustment and Retraining Notification Act (29 U.S.C. 2101 et
15 seq.).

16 (c) Notwithstanding the requirements of subsection (a), an
17 employer is not required to provide notice if a mass layoff,
18 relocation, or employment loss is necessitated by a physical
19 calamity or an act of terrorism or war.

20 (d) The mailing of notice to an employee's last known
21 address or inclusion of notice in the employee's paycheck shall
22 be considered acceptable methods for fulfillment of the
23 employer's obligation to give notice to each affected employee
24 under this Act.

25 (e) In the case of a sale of part or all of an employer's
26 business, the seller shall be responsible for providing notice
27 for any plant closing or mass layoff in accordance with this
28 Section, up to and including the effective date of the sale.
29 After the effective date of the sale of part or all of an
30 employer's business, the purchaser shall be responsible for
31 providing notice for any plant closing or mass layoff in
32 accordance with this Section. Notwithstanding any other
33 provision of this Act, any person who is an employee of the
34 seller (other than a part-time employee) as of the effective

1 date of the sale shall be considered an employee of the
2 purchaser immediately after the effective date of the sale.

3 (f) An employer which is receiving State or local economic
4 development incentives for doing or continuing to do business
5 in this State may be required to provide additional notice
6 pursuant to Section 15 of the Business Economic Support Act.

7 (g) The rights and remedies provided to employees by this
8 Act are in addition to, and not in lieu of, any other
9 contractual or statutory rights and remedies of the employees,
10 and are not intended to alter or affect such rights and
11 remedies, except that the period of notification required by
12 this Act shall run concurrently with any period of notification
13 required by contract or by any other law.

14 (h) It is the sense of the General Assembly that an
15 employer who is not required to comply with the notice
16 requirements of this Section should, to the extent possible,
17 provide notice to its employees about a proposal to close a
18 plant or permanently reduce its workforce.

19 Section 15. Exceptions.

20 (a) In the case of a plant closing, an employer is not
21 required to comply with the notice requirement in subsection
22 (a) of Section 10 if:

23 (1) the Department of Labor determines:

24 (A) at the time that notice would have been
25 required, the employer was actively seeking capital or
26 business; and

27 (B) the capital or business sought, if obtained,
28 would have enabled the employer to avoid or postpone
29 the relocation or termination; and

30 (C) the employer reasonably and in good faith
31 believed that giving the notice required by subsection
32 (a) of Section 10 would have precluded the employer
33 from obtaining the needed capital or business; or

1 (2) the Department of Labor determines that the need
2 for a notice was not reasonably foreseeable at the time the
3 notice would have been required.

4 (b) To determine whether the employer was actively seeking
5 capital or business, or that the need for notice was not
6 reasonably foreseeable under subsection (a), the employer
7 shall provide to the Department of Labor:

8 (1) a written record consisting of those documents
9 relevant to the determination of whether the employer was
10 actively seeking capital or business, or that the need for
11 notice was not reasonably foreseeable; and

12 (2) an affidavit verifying the contents of the
13 documents contained in the record.

14 (c) An employer is not required to comply with the notice
15 requirement in subsection (a) of Section 10 if:

16 (1) the plant closing is of a temporary facility or the
17 plant closing or layoff is the result of the completion of
18 a particular project or undertaking, and the affected
19 employees were hired with the understanding that their
20 employment was limited to the duration of the facility or
21 the project or undertaking; or

22 (2) the closing or layoff constitutes a strike or
23 constitutes a lockout not intended to evade the
24 requirements of this Act. Nothing in this Act shall require
25 an employer to serve written notice when permanently
26 replacing a person who is deemed to be an economic striker
27 under the National Labor Relations Act (29 U.S.C. 151 et
28 seq.). Nothing in this Act shall be deemed to validate or
29 invalidate any judicial or administrative ruling relating
30 to the hiring of permanent replacements for economic
31 strikers under the National Labor Relations Act.

32 (d) An employer relying on this Section shall provide as
33 much notice as is practicable and at that time shall provide a
34 brief statement of the basis for reducing the notification

1 period.

2 Section 20. Extension of layoff period. A layoff of more
3 than 6 months which, at its outset, was announced to be a
4 layoff of 6 months or less shall be treated as an employment
5 loss under this Act unless:

6 (1) the extension beyond 6 months is caused by business
7 circumstances (including unforeseeable changes in price or
8 cost) not reasonably foreseeable at the time of the initial
9 layoff; and

10 (2) notice is given at the time it becomes reasonably
11 foreseeable that the extension beyond 6 months will be
12 required.

13 Section 25. Determinations with respect to employment
14 loss. In determining whether a plant closing or mass layoff has
15 occurred or will occur, employment losses for 2 or more groups
16 at a single site of employment, each of which is less than the
17 minimum number of employees specified in subsection (d) or (f)
18 of Section 5 of this Act but which in the aggregate exceed that
19 minimum number, and which occur within any 90-day period shall
20 be considered to be a plant closing or mass layoff unless the
21 employer demonstrates that the employment losses are the result
22 of separate and distinct actions and causes and are not an
23 attempt by the employer to evade the requirements of this Act.

24 Section 30. Powers of Director of Labor.

25 (a) Pursuant to the Illinois Administrative Procedure Act,
26 the Director of Labor shall prescribe such rules as may be
27 necessary to carry out this Act. The rules shall, at a minimum,
28 include provisions that allow the parties access to
29 administrative hearings for any actions of the Department under
30 this Act. The provisions of the Administrative Review Law, and
31 the rules adopted pursuant thereto, apply to and govern all

1 proceedings for the judicial review of decisions under this
2 Act.

3 (b) In any investigation or proceeding under this Act, the
4 Director of Labor has, in addition to all other powers granted
5 by law, the authority to examine the books and records of an
6 employer, but only to the extent to determine whether a
7 violation of this Act has occurred.

8 (c) Except as provided in this Section, information
9 obtained from any employer subject to this Act regarding the
10 books, records, or wages paid to workers during the
11 administration of this Act shall:

12 (1) be confidential;

13 (2) not be published or open to public inspection;

14 (3) not be used in any court in any pending action or
15 proceeding; and

16 (4) not be admissible in evidence in any action or
17 proceeding other than one arising out of this Act.

18 (d) No finding, determination, decision, ruling, or order
19 (including any finding of fact, statement, or conclusion made
20 therein) issued pursuant to this Act shall be admissible or
21 used in evidence in any action other than one arising out of
22 this Act, nor shall it be binding or conclusive except as
23 provided in the Act, nor shall it constitute res judicata,
24 regardless of whether the actions were between the same or
25 related parties or involved the same facts.

26 (e) Any officer or employer of this State, any officer or
27 employee of any entity authorized to obtain information
28 pursuant to this Section, and any agent of this State or of
29 such entity who, except with authority of the Director under
30 this Section, discloses information is guilty of a Class B
31 misdemeanor and is disqualified from holding any appointment or
32 employment by the State.

33 (f) The Director of Labor has the authority to determine
34 any liabilities or civil penalties under Section 35 and Section

1 40 of this Act.

2 Section 35. Violation; liability.

3 (a) An employer who fails to give notice as required by
4 paragraph (1) of subsection (a) of Section 10 before ordering a
5 mass layoff, relocation, or employment loss is liable to each
6 employee entitled to notice who lost his or her employment for:

7 (1) Back pay at the average regular rate of
8 compensation received by the employee during the last three
9 years of his or her employment, or the employee's final
10 rate of compensation, whichever is higher.

11 (2) The value of the cost of any benefits to which the
12 employee would have been entitled had his or her employment
13 not been lost, including the cost of any medical expenses
14 incurred by the employee that would have been covered under
15 an employee benefit plan.

16 (b) Liability under this Section is calculated for the
17 period of the employer's violation, up to a maximum of 60 days,
18 or one-half the number of days that the employee was employed
19 by the employer, whichever period is smaller.

20 (c) The amount of an employer's liability under subsection
21 (a) is reduced by the following:

22 (1) Any wages, except vacation moneys accrued before
23 the period of the employer's violation, paid by the
24 employer to the employee during the period of the
25 employer's violation.

26 (2) Any voluntary and unconditional payments made by
27 the employer to the employee that were not required to
28 satisfy any legal obligation.

29 (3) Any payments by the employer to a third party or
30 trustee, such as premiums for health benefits or payments
31 to a defined contribution pension plan, on behalf of and
32 attributable to the employee for the period of the
33 violation.

1 (4) Any liability paid by the employer under federal
2 law.

3 (d) Any liability incurred by an employer under subsection
4 (a) of this Section with respect to a defined benefit pension
5 plan may be reduced by crediting the employee with service for
6 all purposes under such a plan for the period of the violation.

7 (e) If an employer proves to the satisfaction of the
8 Director that the act or omission that violated this Act was in
9 good faith and that the employer had reasonable grounds for
10 believing that the act or omission was not a violation of this
11 Act, the Director may in his or her discretion reduce the
12 amount of liability provided for in this Section.

13 Section 40. Civil penalty.

14 (a) An employer who fails to give notice as required by
15 paragraph (2) of subsection (a) of Section 10 is subject to a
16 civil penalty of not more than \$500 for each day of the
17 employer's violation. The employer is not subject to a civil
18 penalty under this Section if the employer pays to all
19 applicable employees the amounts for which the employer is
20 liable under Section 35 within 3 weeks from the date the
21 employer orders the mass layoff, relocation, or employment
22 loss.

23 (b) The total amount of penalties for which an employer may
24 be liable under this Section shall not exceed the maximum
25 amount of penalties for which the employer may be liable under
26 federal law for the same violation.

27 (c) Any penalty amount paid by the employer under federal
28 law shall be considered a payment made under this Act.

29 (d) If an employer proves to the satisfaction of the
30 Director that the act or omission that violated this Act was in
31 good faith and that the employer had reasonable grounds for
32 believing that the act or omission was not a violation of this
33 Act, the Director may in his or her discretion reduce the

1 amount of the penalty provided for in this Section.

2 Section 45. Advisory notice from Department of Commerce and
3 Economic Opportunity. Before September 30 of each year, the
4 Department of Commerce and Economic Opportunity, with the
5 cooperation of the Department of Employment Security, must
6 issue a written notice to each employer that reported to the
7 Department of Employment Security that the employer paid wages
8 to 75 or more individuals with respect to any quarter in the
9 immediately preceding calendar year. The notice must indicate
10 that the employer may be subject to this Act and must generally
11 advise the employer about the requirements of this Act and the
12 remedies provided for violations of this Act.

13 Section 50. Applicability. This Act applies to plant
14 closings or relocations occurring on or after January 1, 2005.

15 Section 55. Interpretation. Whenever possible, this Act
16 shall be interpreted in a manner consistent with the federal
17 Worker Adjustment and Retraining Notification Act and the
18 federal regulations and court decisions interpreting that Act
19 to the extent that the provisions of federal and State law are
20 the same.

21 (20 ILCS 1005/1005-60 rep.)

22 Section 85. The Department of Employment Security Law of
23 the Civil Administrative Code of Illinois is amended by
24 repealing Section 1005-60.

25 Section 90. The Unemployment Insurance Act is amended by
26 adding Section 500.1 as follows:

27 (820 ILCS 405/500.1 new)

28 Sec. 500.1. Illinois Worker Adjustment and Retraining

1 Notification Act; federal Worker Adjustment and Retraining
2 Notification Act. Benefits payable under this Act may not be
3 denied or reduced because of the receipt of payments related to
4 an employer's violation of the Illinois Worker Adjustment and
5 Retraining Notification Act or the federal Worker Adjustment
6 and Retraining Notification Act (29 U.S.C. 2101 et seq.).

7 Section 97. Severability. The provisions of this Act are
8 severable under Section 1.31 of the Statute on Statutes.

9 Section 99. Effective date. This Act takes effect January
10 1, 2005."