

SENATE BILL No. 130

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-6-5.

Synopsis: Notice of plant closings and mass layoffs. Requires certain employers to give written notice before plant closings and mass layoffs.

Effective: Upon passage; July 1, 2007.

Mrvan

January 8, 2007, read first time and referred to Committee on Pensions and Labor.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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SENATE BILL No. 130



A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-6-5 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2007]:

4 **Chapter 5. Employer Notification Before Plant Closings and**
5 **Mass Layoffs**

6 **Sec. 1. As used in this chapter, "affected employees" means**
7 **employees who may reasonably be expected to experience an**
8 **employment loss as a result of a proposed plant closing or mass**
9 **layoff.**

10 **Sec. 2. (a) As used in this chapter, subject to subsection (b),**
11 **"employer" means an individual, a partnership, an association, a**
12 **limited liability company, a corporation, a business trust, a state or**
13 **local government or agency, or an agent or officer of any of those**
14 **entities, employing at least fifty (50) individuals in Indiana.**

15 **(b) The term does not include the federal government, a**
16 **corporation wholly owned by the federal government, or an Indian**
17 **tribe.**



1 **Sec. 3. (a) As used in this chapter, subject to subsection (b),**
 2 **"employment loss" means:**

3 **(1) an employment termination, other than:**

4 **(A) a discharge for cause;**

5 **(B) voluntary departure; or**

6 **(C) retirement;**

7 **(2) a layoff exceeding six (6) months; or**

8 **(3) a reduction in hours of work of more than fifty percent**
 9 **(50%) during each month of a six (6) month period.**

10 **(b) The term does not include a closing or layoff that is the**
 11 **result of the relocation or consolidation of part or all of an**
 12 **employer's business if, before the closing or layoff:**

13 **(1) the employer offers to transfer the employee to a different**
 14 **site of employment within a reasonable commuting distance**
 15 **with a break in employment of not more than six (6) months;**
 16 **or**

17 **(2) the employer offers to transfer the employee to any other**
 18 **site of employment, regardless of distance, with a break in**
 19 **employment of not more than six (6) months, and the**
 20 **employee accepts the transfer within thirty (30) days after the**
 21 **later of:**

22 **(A) the offer; or**

23 **(B) the closing or layoff.**

24 **Sec. 4. As used in this chapter, "mass layoff" means a reduction**
 25 **of force that:**

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

27 **(2) results in employment loss at a single site of employment**
 28 **during any thirty (30) day period for at least thirty-three**
 29 **percent (33%) of the employees.**

30 **Sec. 5. As used in this chapter, "plant closing" means the**
 31 **permanent or temporary shutdown of a single site of employment,**
 32 **or one (1) or more facilities or operating units within a single site**
 33 **of employment, if the shutdown results in employment loss at the**
 34 **single site of employment during any thirty (30) day period for at**
 35 **least twenty (20) employees.**

36 **Sec. 6. As used in this chapter, "political subdivision" has the**
 37 **meaning set forth in IC 36-1-2-13.**

38 **Sec. 7. As used in this chapter, "regular rate" has the meaning**
 39 **set forth in IC 22-2-2-4(k)(3).**

40 **Sec. 8. As used in this chapter, "representative" means an**
 41 **exclusive representative of employees within the meaning of:**

42 **(1) Section 158(f) or 159(a) of the National Labor Relations**

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1 Act (29 U.S.C. 151 et seq.); or
 2 (2) Section 152 of the Railway Labor Act (45 U.S.C. 151 et
 3 seq.).
 4 **Sec. 9. (a) This chapter does not apply to a plant closing or mass**
 5 **layoff in the following cases:**
 6 (1) The closing is:
 7 (A) of a temporary facility; or
 8 (B) the result of the completion of a particular project or
 9 undertaking; and
 10 the affected employees were hired with the understanding
 11 that their employment was limited to the duration of the
 12 facility, project, or undertaking.
 13 (2) The closing or layoff constitutes a strike or lockout not
 14 intended to evade the requirements of this chapter.
 15 (b) An employer is not required to provide the written notice
 16 under section 10 of this chapter when permanently replacing a
 17 person who is considered to be an economic striker under the
 18 National Labor Relations Act (29 U.S.C. 151 et seq.).
 19 **Sec. 10. (a) Except as provided in section 9(b) or 11 of this**
 20 **chapter, an employer shall serve written notice of a plant closing**
 21 **or mass layoff not later than sixty (60) days before the date of the**
 22 **closing or layoff to:**
 23 (1) each representative of the affected employees or, if there
 24 is no representative at the time of the notice, each affected
 25 employee;
 26 (2) the department of workforce development; and
 27 (3) the chief elected official of each political subdivision within
 28 which a plant closing or mass layoff is to occur.
 29 (b) The mailing of notice to an employee's last known address
 30 and the inclusion of the notice with the employee's paycheck are
 31 both acceptable methods for fulfilling the employer's obligation to
 32 give notice to each affected employee.
 33 **Sec. 11. (a) An employer is not required to provide the notice**
 34 **required by section 10 of this chapter if:**
 35 (1) at the time that the notice would have been required:
 36 (A) the employer was actively seeking capital or business
 37 that, if obtained, would enable the employer to avoid or
 38 postpone the plant closing or mass layoff; and
 39 (B) the employer reasonably and in good faith believed
 40 that giving the notice would have precluded the employer
 41 from obtaining the needed capital or business;
 42 (2) the closing or mass layoff is caused by business

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1 circumstances that were not reasonably foreseeable as of the
2 time that the notice would have been required; or
3 (3) the closing or mass layoff is the result of a natural disaster.
4 (b) An employer shall give as much notice as is practicable
5 under the circumstances described in subsection (a), including a
6 brief statement of the basis for reducing the notice period.
7 Sec. 12. A layoff of more than six (6) months that at its outset
8 was announced as a layoff of six (6) months or less shall be treated
9 as an employment loss under this chapter, unless:
10 (1) the extension beyond six (6) months is the result of
11 business circumstances (including unforeseeable changes in
12 price or cost) not reasonably foreseeable at the time of the
13 initial layoff; and
14 (2) notice is given at the time that an extension beyond six (6)
15 months becomes reasonably foreseeable to the employer.
16 Sec. 13. Employment losses for more than one (1) group of
17 employees at a single site of employment, each of which is less than
18 the minimum number of employees specified in section 4 or 5 of
19 this chapter for a plant closing or a mass layoff, but that together
20 exceed that minimum number and occur within any ninety (90) day
21 period, are considered to be a plant closing or a mass layoff for
22 purposes of this chapter, unless the employer demonstrates that the
23 employment losses are:
24 (1) the result of separate and distinct actions and causes; and
25 (2) not an attempt by the employer to evade the requirements
26 of this chapter.
27 Sec. 14. (a) In the case of a sale of part or all of an employer's
28 business:
29 (1) up to and including the effective date of the sale, the seller;
30 and
31 (2) after the effective date of the sale, the purchaser;
32 are responsible for providing the notice required by section 10 of
33 this chapter.
34 (b) Notwithstanding any other provision of this chapter, an
35 individual who is an employee of the seller as of the effective date
36 of a sale is considered an employee of the purchaser immediately
37 after the effective date of the sale for the purpose of receiving the
38 notice required by section 10 of this chapter.
39 Sec. 15. (a) As used in this section, "aggrieved employee" means
40 an employee who:
41 (1) experienced employment loss as a result of a plant closing
42 or mass layoff conducted by the employee's employer; and

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(2) as a result of the employer's failure to give the notice required by section 10 of this chapter, did not receive the required notice, either directly or through the employee's representative.

(b) If an employer violates this chapter, an aggrieved employee may commence an action for the employee or on behalf of other employees similarly situated, or both, in the circuit or superior court of the county in which the violation is alleged to have occurred or in which the employer transacts business.

(c) The court shall award the following to each aggrieved employee who suffers an employment loss as a result of the plant closing or mass layoff for which the employer failed to give notice in violation of this chapter:

(1) Back pay for each day of violation at a rate of compensation not less than the greater of:

(A) the average regular rate received by the employee during the three (3) years before the date of the closing or layoff; or

(B) the final regular rate received by the employee.

(2) Benefits under an employee benefit plan described in 29 U.S.C. 1002, including the cost of medical expenses incurred during the employment loss that would have been covered under an employee benefit plan if the employment loss had not occurred.

(3) Costs and reasonable attorney's fees.

(d) The employer's liability under subsection (c) is calculated for the period of the violation, up to a maximum of sixty (60) days, but not more than fifty percent (50%) of the number of days that the employee was employed by the employer.

(e) The amount for which an employer is liable under this section to an aggrieved employee is reduced by the following:

(1) Wages paid by the employer to the employee for the period of the violation.

(2) A voluntary and unconditional payment by the employer to the employee that is not required by a legal obligation.

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

(4) A monetary equivalent of the amount of service credited to the employee for all purposes under a defined benefit pension plan for the period of violation.

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1 (f) An employer that violates this chapter with respect to the
2 notice required to be given to a political subdivision under section
3 10(a)(3) of this chapter commits a Class C infraction for each day
4 that the violation occurs, up to a maximum of sixty (60) days.

5 (g) It is a defense to a violation of this chapter that:
6 (1) the act or omission that was a violation of this chapter was
7 in good faith; and
8 (2) the employer had reasonable grounds for believing that
9 the act or omission was not a violation of this chapter.

10 (h) A court does not have the authority to enjoin a plant closing
11 or mass layoff for a violation of this chapter.

12 (i) The remedies provided for in this section are the exclusive
13 remedies for any violation of this chapter.

14 Sec. 16. (a) The rights and remedies provided to employees by
15 this chapter are in addition to, and not instead of, any other
16 contractual or statutory rights and remedies of the employees, and
17 are not intended to alter or affect those rights and remedies, except
18 that the period of notification required by this chapter runs
19 concurrently with any period of notification required by contract
20 or any other statute.

21 (b) A notice given by an employer that meets the requirements
22 of the federal Worker Adjustment and Retraining Notification Act
23 (29 U.S.C. 2101 et seq.) meets the requirements of this chapter.

24 Sec. 17. The commissioner of the department of workforce
25 development may adopt rules under IC 4-22-2 to implement this
26 chapter, including uniform standards by which employers may
27 provide for appropriate service of notice required by this chapter.

28 SECTION 2. [EFFECTIVE UPON PASSAGE] (a)
29 Notwithstanding IC 22-6-5-17, as added by this act, the
30 commissioner of the department of workforce development shall
31 adopt any rules to implement IC 22-6-5, as added by this act, in the
32 same manner as emergency rules are adopted under
33 IC 4-22-2-37.1. Any rules adopted under this SECTION must be
34 adopted not later than June 1, 2007. A rule adopted under this
35 SECTION expires on the earlier of:

36 (1) the date the rule is adopted by the commissioner under
37 IC 4-22-2-24 through IC 4-22-2-36 to implement IC 22-6-5, as
38 added by this act; or

39 (2) July 1, 2008.

40 (b) This SECTION expires July 2, 2008.

41 SECTION 3. [EFFECTIVE JULY 1, 2007] IC 22-6-5, as added by
42 this act, applies to plant closings and mass layoffs that are

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1 **scheduled to occur after August 31, 2007.**
2 **SECTION 4. An emergency is declared for this act.**

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