

# SENATE BILL No. 1236

May 2, 2006, Introduced by Senators SWITALSKI, PRUSI, JACOBS, BASHAM, OLSHOVE, LELAND, WHITMER, CLARKE, SCOTT, THOMAS, BRATER, BARCIA, CHERRY, SCHAUER and EMERSON and referred to the Committee on Economic Development, Small Business and Regulatory Reform.

A bill to require employers to give notice to certain persons of actions affecting employees; to create rights and responsibilities for employers and employees; to provide powers and duties to certain state agencies and officials; and to provide for sanctions and remedies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "workforce adjustment and reduction notification act".

3           Sec. 3. As used in this act:

4           (a) "Covered establishment" means an industrial or commercial  
5 facility or part of an industrial or commercial facility that  
6 employs, or has employed within the preceding 12 months, 75 or more  
7 individuals.

8           (b) "Department" means the department of labor and economic

1 growth.

2 (c) "Employee" means an individual employed by an employer for  
3 at least 6 months of the 12 months immediately preceding the date  
4 on which notice under this act is required.

5 (d) "Employer" means a person that owns and operates, either  
6 directly or indirectly, a covered establishment. A parent  
7 corporation is an employer as to any covered establishment directly  
8 owned and operated by its corporate subsidiary.

9 (e) "Layoff" means a separation from a position for lack of  
10 funds or lack of work if the separation does not include an offer  
11 of reinstatement within 6 months.

12 (f) "Mass layoff" means a layoff during any 30-day period of  
13 50 or more employees at a covered establishment.

14 (g) "Person" means an individual, firm, partnership,  
15 association, corporation, or any other business entity.

16 (h) "Relocation" means the removal in any 30-day period of 50  
17 or more employees of the industrial or commercial operations in a  
18 covered establishment to a location that is 100 miles or more away.

19 (i) "Termination" means ceasing or substantially ceasing the  
20 industrial or commercial operations of a covered establishment.

21 Sec. 5. Except as provided in section 11, an employer shall  
22 not order a mass layoff, relocation, or termination at a covered  
23 establishment unless, at least 60 days before the order takes  
24 effect, the employer gives written notice that includes all of the  
25 elements required by the federal worker adjustment and retraining  
26 notification act, 29 USC 2101 to 2109, to all of the following:

27 (a) The employees of the covered establishment who are

1 affected by the order.

2 (b) The chief elected official of each unit of local  
3 government in which the termination, relocation, or mass layoff  
4 will occur.

5 Sec. 7. (1) Except as provided in section 9, an employer who  
6 fails to give notice as required by this act is responsible to each  
7 affected employee for all of the following:

8 (a) Back pay for 60 days at the higher of the employee's  
9 average regular rate of compensation for the past 3 years or the  
10 employee's compensation rate on the last day of employment before  
11 the mass layoff, relocation, or termination.

12 (b) The monetary value of 60 days of benefits, including  
13 medical benefits, that the employee would have received from the  
14 employer as part of an employment benefit plan.

15 (2) Except as provided in section 17(3), an employer who fails  
16 to give notice as required by this act is responsible for a civil  
17 fine of \$1,500.00 for each affected worker for each day of the  
18 violation, up to a maximum of 60 days. The civil fine shall be  
19 forwarded to the state treasurer for deposit into the worker  
20 emergency fund created in the department of treasury.

21 Sec. 9. An employer's responsibility under section 7(1) is  
22 reduced by all of the following:

23 (a) Wages, excluding accrued vacation pay, that the employer  
24 pays to the affected employee during the period after the earlier  
25 of the date that the mass layoff, relocation, or termination begins  
26 or the date that the employer provides notice as required under  
27 section 5.

1 (b) Voluntary and unconditional payments that the employer  
2 makes to the employee that are not made to satisfy any other legal  
3 obligation.

4 (c) Payments that the employer makes to a third party or  
5 trustee on behalf of the employee, such as premiums for health  
6 benefits or payments to a defined contribution pension plan, for  
7 the period after the date that the mass layoff, relocation, or  
8 termination begins.

9 Sec. 11. This act does not apply to the following:

10 (a) Employees who are employed in seasonal employment or for a  
11 project of definite duration, if the employees were hired with the  
12 understanding that their employment was seasonal or temporary.

13 (b) A mass layoff, relocation, or termination that results  
14 from a natural or man-made disaster or act of war.

15 (c) An employer who was actively seeking capital or business  
16 that, if obtained, would have enabled the employer to avoid or  
17 postpone the relocation or termination, if the employer had a  
18 reasonable, good faith belief that giving the notice required under  
19 section 5 would have prevented the employer from obtaining the  
20 necessary capital or business. The exception under this subdivision  
21 does not apply to a mass layoff.

22 Sec. 13. An employer claiming exemption under section 11(c)  
23 shall provide the department with the following documents:

24 (a) A record of all the documents relevant to the employer's  
25 efforts to obtain capital or business.

26 (b) An affidavit attesting to the truth and accuracy of the  
27 documents provided and that is signed under penalty of perjury.

1           Sec. 15. (1) The department may conduct an investigation or  
2 proceeding to enforce this act. The department may request a  
3 subpoena to examine books and records of an employer if necessary  
4 to perform its duties under this act.

5           (2) The department may refer a matter to the attorney general  
6 to enforce the provisions of this act.

7           Sec. 17. (1) In addition to the attorney general, any person  
8 may bring a civil action in a court of competent jurisdiction to  
9 enforce this act.

10          (2) In addition to the remedies provided in this act, the  
11 court may award a prevailing plaintiff reasonable attorney fees and  
12 costs.

13          (3) The court may reduce the amount of any fine imposed  
14 against the employer under this act if the court determines that an  
15 employer conducted a reasonable investigation in good faith and had  
16 reasonable grounds to believe that its conduct was not in violation  
17 of this act.