

HOUSE BILL No. 4854

June 20, 2013, Introduced by Reps. Tlaib, Hobbs, Roberts and Switalski and referred to the Committee on Commerce.

A bill to require employers to provide notice to certain employees in this state prior to a mass layoff, work-site closing, or transfer of operations; to provide the powers and duties of certain state and local governmental officers and entities; to provide for the administration and enforcement of this act; to prescribe civil sanctions for violations of this act; to provide remedies; and to authorize the promulgation of rules.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan workers adjustment and retraining notification act".

3 Sec. 2. As used in this act:

4 (a) "Affected employee" means any individual who may

1 reasonably be expected to experience an employment loss as a
2 consequence of a proposed mass layoff, work-site closing, or
3 transfer of operations undertaken by his or her employer.
4 Affected employee includes an individual who is a home-based
5 employee who may not work from the single site of employment but
6 who reports to that site or reports to home-based supervisory
7 personnel who report to that site, and includes an employee who
8 experiences employment loss as a foreseeable result of the
9 downsizing at a single site of the employer.

10 (b) "Department" means the department of licensing and
11 regulatory affairs.

12 (c) "Director" means the director of the department of
13 licensing and regulatory affairs.

14 (d) "Employer" means any business enterprise that employs 50
15 or more individuals, including part-time employees. A parent
16 corporation is the employer of the employees of its corporate
17 subsidiaries covered under this act. A successor corporation is
18 an employer to its corporate subsidiaries covered under this act
19 if factual circumstances indicate that it is the continuation of
20 operations of a predecessor corporation. Factors to consider in
21 determining whether a successor corporation is a continuation of
22 a predecessor corporation's operations include, but are not
23 limited to, common business purposes, product line or services
24 offered, common ownership, common directors or officers, common
25 management structure, common workforce, common facilities, plant
26 or equipment, and proximity in time between the discontinuation
27 of operations by the predecessor and start-up of the successor

1 corporation.

2 (e) "Employment loss" means, subject to subdivision (f),
3 either of the following:

4 (i) An employment termination, other than a discharge for
5 cause or voluntary departure. However, a voluntarily departure
6 from a company during the notice period in anticipation of a mass
7 layoff, work-site closing, or transfer of operations is an
8 employment loss.

9 (ii) A layoff exceeding 4 months.

10 (f) "Employment loss" does not include employment lost as a
11 result of a mass layoff, work-site closing, or transfer of
12 operations resulting from the relocation or consolidation of part
13 or all of the employer's business, if both of the following
14 occur:

15 (i) Prior to the layoff, closing, or transfer, the employer
16 offers to reassign the employee to a different site of employment
17 within a reasonable commuting distance with no more than a 1-
18 month break in employment or the employer offers to reassign the
19 employee to any other site of employment regardless of distance
20 with no more than a 2-month break in employment.

21 (ii) The employee accepts an offer of reassignment within 30
22 days after the offer or after the layoff, closing, or transfer,
23 whichever is later.

24 (g) "Mass layoff" means a reduction in workforce that is not
25 the result of a work-site closing or transfer of operations and
26 that results in an employment loss at a single site of employment
27 in this state of 25 or more employees, including part-time

1 employees, during any 30-day period.

2 (h) "Representative" means an exclusive representative of
3 employees as described in section 9(a) of the national labor
4 relations act, 29 USC 159, and a representative as that term is
5 defined in section 1 of the railway labor act, 45 USC 151.

6 (i) "Transfer of operations" means the removal of all or
7 substantially all of the operations of a single site of
8 employment in this state to a different location 50 miles or more
9 away that results in employment loss to 25 or more employees,
10 including part-time employees.

11 (j) "Work-site closing" means the permanent or temporary
12 shutdown of a single site of employment, or of 1 or more
13 facilities or operating units in this state that will result in
14 an employment loss for 25 or more employees, including part-time
15 employees.

16 Sec. 3. (1) An employer shall not order a mass layoff, work-
17 site closing, or transfer of operations, unless, 90 days before
18 the order takes effect, the employer gives written notice to all
19 of the following:

20 (a) Each affected employee.

21 (b) Each representative of the affected employees.

22 (c) The director.

23 (d) The agency or entity designated by this state to carry
24 out rapid response activities under 29 USC 2864(a)(2)(A).

25 (e) The local workforce investment boards established under
26 section 117 of title I of the workforce investment act of 1998,
27 29 USC 2832, for the locality in which the mass layoff, work-site

1 closing, or transfer of operations will occur.

2 (f) The chief elected official of the local unit of
3 government in which the mass layoff, work-site closing, or
4 transfer of operations will occur.

5 (2) An employer shall not order a mass layoff, work-site
6 closing, or transfer of operations that results in employment
7 loss to 250 or more employees, unless, 120 days before the order
8 takes effect, the employer gives written notice to all of the
9 following:

10 (a) Each affected employee.

11 (b) Each representative of the affected employees.

12 (c) The director.

13 (d) The agency or entity designated by this state to carry
14 out rapid response activities under 29 USC 2864(a)(2)(A).

15 (e) The local workforce investment boards established under
16 section 117 of title I of the workforce investment act of 1998,
17 29 USC 2832, for the locality in which the mass layoff, work-site
18 closing, or transfer of operations will occur.

19 (f) The chief elected official of the local unit of
20 government in which the mass layoff, work-site closing, or
21 transfer of operations will occur.

22 (3) If, within any 180-day period, individual employment
23 losses occur at a single site for 2 or more groups of employees
24 and any of the individual employment losses involve fewer
25 affected employees than are necessary to require notice under
26 this act, then all of the individual employment losses shall be
27 aggregated to determine whether the minimum employment loss

1 necessary to require notice under this act has been met. If the
2 aggregated employment loss requires notice, the employer shall
3 give notice unless it can demonstrate that the individual
4 employment losses arose from separate and distinct causes.

5 (4) If an employer sells part or all of the employer's
6 business, the seller is responsible for providing notice for any
7 mass layoff, work-site closing, or transfer of operations in
8 accordance with this section, up to and including the effective
9 date of the sale. After the effective date of the sale of part or
10 all of an employer's business, the purchaser is responsible for
11 providing notice for any mass layoff, work-site closing, or
12 transfer of operations in accordance with this section.

13 Notwithstanding any other provision of this act, any employee of
14 the seller on the effective date of the sale is considered an
15 employee of the purchaser immediately after the effective date of
16 the sale.

17 (5) Mailing the notice to an employee's last known address
18 by either first-class or certified mail or including the notice
19 in an employee's paycheck is an acceptable method to fulfill the
20 employer's obligation to give notice to each affected employee
21 under this section.

22 Sec. 4. The notification provided pursuant to section 3
23 shall include the notice elements required by the worker
24 adjustment and retraining notification act, 29 USC 2101 to 2109,
25 and statements setting forth all of the following:

26 (a) The number of employees whose employment will be
27 terminated in connection with the mass layoff, work-site closing,

1 or transfer of operations and the date or dates on which the mass
2 layoff, work-site closing, or transfer of operations and each
3 termination of employment will occur.

4 (b) The reasons for the work-site closing, mass layoff, or
5 transfer of operations.

6 (c) Any employment available to employees at any other
7 establishment operated by the employer, and information regarding
8 the benefits, pay, and other terms and conditions of that
9 employment and the location of the other establishment.

10 (d) Employee rights with respect to wages, severance pay,
11 benefits, pension, or other terms of employment as they relate to
12 the termination, including, but not limited to, any rights based
13 on a collective bargaining agreement or other existing employer
14 policy.

15 (e) Employees' rights to receive information, referral, and
16 counseling from the rapid response team established under section
17 5 regarding public programs that may make it possible to delay or
18 prevent the mass layoff, work-site closing, or transfer of
19 operations, public programs and benefits to assist the employees,
20 and employee rights based on law.

21 Sec. 5. (1) A rapid response team is established in the
22 department to organize meetings to provide employers and employee
23 representatives an opportunity to obtain information about
24 dislocated worker services that are available locally to eligible
25 applicants.

26 (2) If 25 or more workers will suffer an employment loss as
27 the result of a mass layoff, work-site closing, or transfer of

1 operations, the rapid response team shall do all of the
2 following:

3 (a) Offer to meet with the management or agents of the
4 employer to discuss available public programs that may make it
5 possible to delay or prevent the mass layoff, work-site closing,
6 or transfer of operations, including economic development
7 incentives and workforce development programs.

8 (b) Facilitate cooperation between the management or agents
9 of the employer and affected employees to most effectively
10 utilize public programs that may make it possible to delay or
11 prevent the mass layoff, work-site closing, or transfer of
12 operations or to assist employees if it is not possible to
13 prevent the mass layoff, work-site closing, or transfer of
14 operations.

15 (c) Meet on-site with employees, including as much on-site
16 work-time access as necessary to carry out its responsibilities
17 under this act, to provide information, educational materials,
18 referrals, and counseling regarding both of the following:

19 (i) Available public programs that may make it possible to
20 delay or prevent the mass layoff, work-site closing, or transfer
21 of operations, including economic development and workforce
22 development programs, retraining programs, job search assistance,
23 and unemployment compensation benefits.

24 (ii) Employees' rights with respect to wages, severance pay,
25 benefits, pensions, and other terms of employment.

26 Sec. 6. (1) This act does not apply to a mass layoff, work-
27 site closing, or transfer of operations if the action involves a

1 temporary facility or is the result of the completion of a
2 particular project or undertaking, and the affected employees
3 were hired with the understanding that their employment was
4 limited to the duration of the facility, project, or undertaking.

5 (2) An employer may order a mass layoff, work-site closing,
6 or transfer of operations of a single site of employment before
7 the conclusion of the 90-day period provided in section 3(1) if
8 any of the following apply:

9 (a) At the time that notice would have been required, the
10 employer was actively seeking capital or business that, if
11 obtained, would have enabled the employer to avoid or postpone
12 the shutdown and the employer reasonably and in good faith
13 believed that giving the required notice would have precluded the
14 employer from obtaining the needed capital or business.

15 (b) The mass layoff, work-site closing, or transfer of
16 operations is caused by business circumstances that were not
17 reasonably foreseeable at the time the notice would have been
18 required.

19 (c) The mass layoff, work-site closing, or transfer of
20 operations is caused by any form of physical calamity, natural
21 disaster, or act of war.

22 (3) An employer utilizing a shortened notification period
23 under subsection (2) shall give as much notice as is practicable
24 and, at that time, shall give a brief statement of the basis for
25 reducing the notification period.

26 Sec. 7. (1) The department may promulgate rules and
27 administrative procedures pursuant to the administrative

1 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for
2 the review of complaints from employees who allege violation of
3 their rights under this act. Pursuant to this subsection, a
4 complaint shall be filed with the department within 180 days of
5 the alleged violation. The director and department may
6 investigate complaints, issue subpoenas, and determine
7 liabilities and civil penalties established under this act. The
8 department's authority includes, but is not limited to, all of
9 the following:

10 (a) Examining the books and records of an employer.

11 (b) Holding in trust any proceeds from a lien filed under
12 subsection (5) pending adjudication of any claims to the proceeds
13 by an employer. Following the final adjudication of those claims,
14 the director shall distribute any proceeds from the lien on a pro
15 rata basis to the employees of the employer against whose
16 business revenues and real and personal property the lien was
17 filed. While the department's investigation of an employee's
18 complaint is pending, the employee shall not file a civil action
19 in the courts of this state, unless more than 180 days have
20 passed since the filing of the complaint and the employee files
21 with the department a request to withdraw the complaint before
22 filing the civil action.

23 (2) Except as provided in subsection (1), an affected
24 employee of an employer that fails to provide the notice required
25 under this act, or the employee's representative, may proceed
26 with a civil action in the courts of this state.

27 (3) An employer who orders a mass layoff, work-site closing,

1 or transfer of operations in violation of this act is liable to
2 each employee who suffers an employment loss as a result of that
3 layoff, closing, or transfer for all of the following:

4 (a) Double back pay for each calendar day of the violation
5 at the employee's compensation rate that is the higher of the
6 average regular rate the employee received during the last 3
7 years of employment or the final regular rate the employee
8 received.

9 (b) The value of benefits from the employer's employee
10 benefit plan throughout the entire notice period, including the
11 cost of medical expenses incurred during the period of employment
12 loss that would have been covered under an employee benefit plan
13 if the employment loss had not occurred.

14 (c) Other economic damages and exemplary damages suffered by
15 the employee and shown by a preponderance of the evidence to have
16 been caused by the employer's violation of this act.

17 (d) Reasonable attorney fees and costs of the prevailing
18 employee.

19 (4) The attorney general, director, department, or affected
20 local unit of government may file a civil action in the courts of
21 this state. The attorney general, the director, or the department
22 may file a civil action on behalf of this state, a local unit of
23 government, or any affected employees for violations of this act.
24 The local unit of government may file an action on its own behalf
25 or on behalf of any affected employees. In an action under this
26 section, an employer who orders a mass layoff, work-site closing,
27 or transfer of operations in violation of this act is liable for

1 all of the following:

2 (a) For failure to timely notify any state officials or
3 agents of state government, a civil penalty in the amount of
4 \$500.00 for each calendar day of the violation multiplied by the
5 number of employees who suffered an employment loss as a result
6 of the mass layoff, work-site closing, or transfer of operations.

7 (b) For failure to timely notify any designated local unit
8 of government official, a civil penalty of \$500.00 for each
9 calendar day of the violation multiplied by the number of
10 employees who suffered an employment loss as a result of the mass
11 layoff, work-site closing, or transfer of operations.

12 (c) If the employer is found to have acted in bad faith
13 through intentional, willful, or reckless conduct in violation of
14 this act's requirements or to avoid application of this act, a
15 civil penalty of \$1,000.00 for each calendar day of the violation
16 multiplied by the number of employees who suffered an employment
17 loss as a result of the mass layoff, work-site closing, or
18 transfer of operations.

19 (d) To each aggrieved employee who suffers an employment
20 loss as a result of a layoff, closing, or transfer, all of the
21 following:

22 (i) Double back pay for each calendar day of the violation at
23 the employee's compensation rate that is the higher of the
24 average regular rate the employee received during the last 3
25 years of employment or the final regular rate the employee
26 received.

27 (ii) The value of benefits from the employer's employee

1 benefit plan through the entire 90-day notice period, including
2 the cost of medical expenses incurred during the period of
3 employment loss that would have been covered under an employee
4 benefit plan if the employment loss had not occurred.

5 (iii) Other economic damages and exemplary damages suffered by
6 the employee and shown by a preponderance of the evidence to have
7 been caused by the employer's violation of this act.

8 (5) The department may file a lien against the employer's
9 business revenues and all real and personal property for the
10 employer's liability under subsection (4). For a lien under this
11 subsection to be effective against the employer's interest in
12 real property, the department shall record a notice of lien in
13 each county in which the employer holds an interest in real
14 property. For the lien to be perfected and valid against business
15 revenues and personal property of the employer, the department
16 shall record a notice of lien in the office designated in article
17 9 of the uniform commercial code, 1962 PA 174, MCL 440.9101 to
18 440.9994. The notice of lien is a security interest of the
19 department that is effective and attaches on the date and time of
20 recording or filing. The department shall send a copy of the
21 notice of lien to the employer by certified mail, return receipt
22 requested, postage prepaid. The notice of lien shall be in the
23 following form:

24 NOTICE OF LIEN PURSUANT TO THE MICHIGAN WORKERS ADJUSTMENT

25 AND RETRAINING NOTIFICATION ACT

26 NOTICE is hereby given that the Michigan department of

1 licensing and regulatory affairs claims a lien against [name
2 and address of employer] pursuant to the Michigan workers
3 adjustment and retraining notification act for liabilities
4 arising under the Michigan workers adjustment and retraining
5 notification act in the aggregate amount of \$_____.
6 In accordance with the Michigan workers adjustment and
7 retraining notification act, this notice shall be recorded
8 as required by law and constitutes a lien against property of
9 the employer identified above.

10 Dated this ____day of _____, 20__.

11 STATE OF MICHIGAN

12 DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

13 By:_____.

14 (6) If the attorney general has reason to believe that an
15 employer is violating or has violated this act, the attorney
16 general may file a civil action requesting an order of
17 restitution of money or property to any person or class of
18 persons injured by the violation. The action may be brought in
19 the circuit court of the county in which the employer resides or
20 in which the employer's principal place of business is located,
21 or in the circuit court of Ingham county.

22 Sec. 8. (1) An agreement to waive employee rights under this
23 act is voidable before, during, and within 30 days after the
24 advance notification period required under section 3 unless the
25 employee received payment of an amount that meets or exceeds the
26 value of the wages and benefits to which the employee would have
27 been entitled during the advance notification period. If an

1 employee elects to void any such agreement, the employee shall
2 return within 14 days after that election any money received from
3 the employer.

4 (2) A severance payment accepted by an employee does not
5 reduce or offset an award of damages under this act if the
6 payment is voluntarily and unconditionally paid in an amount that
7 is less than the value of the wages and benefits to which the
8 employee is entitled during the advance notification period or if
9 paid pursuant to contractual obligations that the employer owed
10 to the employee.

11 (3) An employee's waiver of claims or acceptance of any
12 severance payment does not absolve or mitigate an employer's
13 obligation to provide notice to other persons or entities
14 entitled to notice under this act.

15 Sec. 9. A person shall not bring an action under this act
16 later than 3 years after the date on which the violation of this
17 act occurred.