

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Engrossed House Bill 1450 be amended to read as follows:

- 1           Page 21, between lines 34 and 35, begin a new paragraph and insert:  
2           "SECTION 16. IC 22-6-5 IS ADDED TO THE INDIANA CODE  
3           AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
4           JULY 1, 2011]:  
5           **Chapter 5. Employer Notification Before Plant Closings and**  
6           **Mass Layoffs**  
7           **Sec. 1. This chapter applies to plant closings and mass layoffs**  
8           **that occur after August 31, 2011.**  
9           **Sec. 2. As used in this chapter, "affected employee" means an**  
10          **employee who may reasonably be expected to experience an**  
11          **employment loss as a result of a proposed plant closing or mass**  
12          **layoff.**  
13          **Sec. 3. As used in this chapter, "aggrieved employee" means an**  
14          **employee who:**  
15                **(1) experienced employment loss as a result of a plant closing**  
16                **or mass layoff conducted by the employee's employer; and**  
17                **(2) as a result of the employer's failure to give the written**  
18                **notice required by section 13 of this chapter, did not receive**  
19                **the required notice, either directly or through the employee's**  
20                **representative.**  
21          **Sec. 4. (a) As used in this chapter, "employer" means:**  
22                **(1) an individual, a partnership, an association, a limited**  
23                **liability company, a corporation, or a business trust or an**  
24                **officer of any of these entities employing at least fifty (50) but**  
25                **less than one hundred (100) individuals in Indiana;**  
26                **(2) the state;**  
27                **(3) an agency, an officer, or a commission of the state**  
28                **employing at least fifty (50) individuals;**  
29                **(4) a political subdivision; or**

- 1           **(5) an agency, a department, an officer, or a commission of a**  
 2           **political subdivision employing at least fifty (50) individuals.**
- 3           **(b) The term does not include:**
- 4           **(1) the federal government;**  
 5           **(2) a corporation wholly owned by the federal government; or**  
 6           **(3) an Indian tribe.**
- 7           **Sec. 5. (a) As used in this chapter, "employment loss" means:**
- 8           **(1) an employment termination, other than:**
- 9           **(A) a discharge for cause;**  
 10           **(B) voluntary departure; or**  
 11           **(C) retirement;**
- 12           **(2) a layoff exceeding six (6) months; or**  
 13           **(3) a reduction in hours of work of more than fifty percent**  
 14           **(50%) during each month of a six (6) month period.**
- 15           **(b) The term does not include a closing or layoff that is the**  
 16           **result of the relocation or consolidation of part or all of an**  
 17           **employer's business if, before the closing or layoff:**
- 18           **(1) the employer offers to transfer the affected employee to a**  
 19           **different site of employment within a reasonable commuting**  
 20           **distance with a break in employment of not more than six (6)**  
 21           **months; or**
- 22           **(2) the employer offers to transfer the affected employee to**  
 23           **any other site of employment regardless of distance with a**  
 24           **break in employment of not more than six (6) months, and the**  
 25           **affected employee accepts the transfer within thirty (30) days**  
 26           **after the later of:**
- 27           **(A) the offer; or**  
 28           **(B) the closing or layoff.**
- 29           **Sec. 6. As used in this chapter, "mass layoff" means a reduction**  
 30           **of force that:**
- 31           **(1) is not the result of a plant closing; and**  
 32           **(2) results in an employment loss at a single site of**  
 33           **employment during any thirty (30) day period of at least**  
 34           **twenty (20) affected employees.**
- 35           **Sec. 7. As used in this chapter, "municipality" has the meaning**  
 36           **set forth in IC 36-1-2-11.**
- 37           **Sec. 8. As used in this chapter, "plant closing" means the**  
 38           **permanent or temporary shutdown of:**
- 39           **(1) a single site of employment; or**  
 40           **(2) one (1) or more facilities or operating units within a single**  
 41           **site of employment;**
- 42           **if the shutdown results in an employment loss at the single site of**  
 43           **employment during any thirty (30) day period of at least twenty**  
 44           **(20) affected employees.**
- 45           **Sec. 9. As used in this chapter, "political subdivision" has the**  
 46           **meaning set forth in IC 36-1-2-13.**
- 47           **Sec. 10. As used in this chapter, "regular rate" has the meaning**

1 set forth in IC 22-2-2-4(l)(3).

2 **Sec. 11. As used in this chapter, "representative" means an**  
 3 **exclusive representative of employees:**

4 (1) within the meaning of Section 152(4) or 159(a) of the  
 5 National Labor Relations Act (29 U.S.C. 151 et seq.);

6 (2) within the meaning of Section 151 of the Railway Labor  
 7 Act (45 U.S.C. 151 et seq.); or

8 (3) of any labor organization formally or effectively  
 9 recognized by a state or local government or agency as a  
 10 representative of any unit of employees for purposes of:

11 (A) bargaining; or

12 (B) grievance representation.

13 **Sec. 12. (a) This chapter does not apply to a plant closing or**  
 14 **mass layoff in the following cases:**

15 (1) The plant closing is:

16 (A) of a temporary facility; or

17 (B) the result of the completion of a particular project or  
 18 undertaking;

19 and the affected employee was hired with the understanding  
 20 that the employment was limited to the duration of the  
 21 facility, project, or undertaking.

22 (2) The plant closing or mass layoff constitutes a strike or  
 23 lockout not intended to evade the requirements of this  
 24 chapter.

25 (b) An employer is not required to provide the written notice  
 26 required by section 13 of this chapter when permanently replacing  
 27 a person who is considered an economic striker under the National  
 28 Labor Relations Act (29 U.S.C. 151 et seq.).

29 **Sec. 13. (a) An employer shall serve written notice of a plant**  
 30 **closing or mass layoff not later than sixty (60) days before the date**  
 31 **of the plant closing or mass layoff to:**

32 (1) a representative of an affected employee or, if there is no  
 33 representative at the time of the notice, each affected  
 34 employee;

35 (2) the department of workforce development created by  
 36 IC 22-4.1-2-1; and

37 (3) the executive of:

38 (A) each municipality; or

39 (B) in an unincorporated area, the county;

40 in which the plant closing or mass layoff is to occur.

41 (b) The:

42 (1) mailing of notice to an affected employee's last known  
 43 address; or

44 (2) inclusion of the notice with the affected employee's  
 45 paycheck;

46 is an acceptable method for fulfilling the employer's obligation to  
 47 give notice to each affected employee.

1 (c) A notice given by an employer that meets the requirements  
2 of the federal Worker Adjustment and Retraining Notification Act  
3 (29 U.S.C. 2101 et seq.) meets the requirements of this section.

4 Sec. 14. (a) An employer is not required to provide the written  
5 notice required by section 13 of this chapter if:

6 (1) at the time that the notice would have been required:

7 (A) the employer was actively seeking capital or business  
8 that, if obtained, would enable the employer to avoid or  
9 postpone the plant closing or mass layoff; and

10 (B) the employer:

11 (i) reasonably; and

12 (ii) in good faith;

13 believed that giving the notice would have precluded the  
14 employer from obtaining the needed capital or business;

15 (2) the plant closing or mass layoff is caused by business  
16 circumstances that were not reasonably foreseeable as of the  
17 time that the notice would have been required; or

18 (3) the plant closing or mass layoff is the result of a natural  
19 disaster.

20 (b) An employer shall give as much notice as is practicable  
21 under the circumstances described in subsection (a) to an affected  
22 employee, including a brief statement of the basis for reducing the  
23 notice period.

24 Sec. 15. A layoff of more than six (6) months that at its outset  
25 was announced as a layoff of six (6) months or less shall be treated  
26 as an employment loss under this chapter, unless:

27 (1) the extension of the layoff beyond six (6) months is the  
28 result of business circumstances, including unforeseeable  
29 changes in price or cost, not reasonably foreseeable at the  
30 time of the initial layoff; and

31 (2) notice is given to an affected employee at the time that an  
32 extension of the layoff beyond six (6) months becomes  
33 reasonably foreseeable to the employer.

34 Sec. 16. Employment losses of more than one (1) group of  
35 employees at a single site of employment, each of which is less than  
36 the minimum number of affected employees specified in section 6  
37 or 8 of this chapter for a plant closing or mass layoff but that  
38 together exceed that minimum number and occur within any  
39 ninety (90) day period, are considered to be a plant closing or mass  
40 layoff for purposes of this chapter, unless the employer  
41 demonstrates that the employment losses are:

42 (1) the result of separate and distinct actions and causes; and

43 (2) not an attempt by the employer to evade the requirements  
44 of this chapter.

45 Sec. 17. (a) In the case of a sale of part or all of an employer's  
46 business:

47 (1) up to and including the effective date of the sale, the seller;

1           **or**  
 2           **(2) after the effective date of the sale, the purchaser;**  
 3 **is responsible for providing the written notice required by section**  
 4 **13 of this chapter.**

5           **(b) Notwithstanding any other provision of this chapter, an**  
 6 **individual who is an employee of the seller as of the effective date**  
 7 **of the sale is considered an employee of the purchaser immediately**  
 8 **after the effective date of the sale for the purpose of receiving the**  
 9 **written notice required by section 13 of this chapter.**

10          **Sec. 18. (a) If an employer violates this chapter, an aggrieved**  
 11 **employee may commence an action:**

- 12           **(1) for the aggrieved employee;**  
 13           **(2) on behalf of other employees similarly situated; or**  
 14           **(3) both for the aggrieved employee and on behalf of other**  
 15 **employees similarly situated;**

16 **in a court of the county in which the violation is alleged to have**  
 17 **occurred or in which the employer transacts business.**

18          **(b) The court shall award the following to each aggrieved**  
 19 **employee who suffers an employment loss as a result of the**  
 20 **employer's violation of this chapter:**

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

23           **(A) the average regular rate received by the employee**  
 24 **during the three (3) years before the date of the plant**  
 25 **closing or mass layoff; or**

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

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

32           **(3) Costs and reasonable attorney's fees.**

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

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

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

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

43           **(3) A payment by the employer to a third party or trustee,**  
 44 **including, but not limited to:**

45           **(A) premiums for health benefits; or**

46           **(B) payments to a defined contribution pension plan;**  
 47 **on behalf of and attributable to the employee for the period of**

1           the violation.

2           (4) A monetary amount equal to the amount of service

3           credited to the employee for all purposes under a defined

4           benefit pension plan for the period of the violation.

5           (e) An employer that violates this chapter with respect to the

6           notice required to be given to:

7           (1) the department of workforce development;

8           (2) a municipality; or

9           (3) in an unincorporated area, a county;

10          under section 13 of this chapter commits a Class C infraction for

11          each day that the violation occurs, up to a maximum of sixty (60)

12          days.

13          (f) Except as provided in section 21 of this chapter, the remedies

14          provided for in this section are the exclusive remedies for any

15          violation of this chapter.

16          Sec. 19. It is a defense to a violation of this chapter that:

17               (1) the act or omission that constituted a violation of this

18               chapter was in good faith; and

19               (2) the employer had reasonable grounds for believing that

20               the act or omission was not a violation of this chapter.

21          Sec. 20. A court does not have authority to enjoin a plant closing

22          or mass layoff for a violation of this chapter.

23          Sec. 21. The rights and remedies provided to employees by this

24          chapter are:

25               (1) in addition to, and not instead of, any other contractual or

26               statutory rights and remedies of the employees; and

27               (2) not intended to alter or affect those other rights and

28               remedies;

29          except that the period of notification required by this chapter runs

30          concurrently with any period of notification required by contract

31          or any other statute.

1       **Sec. 22. The commissioner of the department of workforce**  
2       **development may adopt rules under IC 4-22-2 to implement this**  
3       **chapter, including uniform standards by which employers may**  
4       **provide for appropriate service of notice required by this**  
5       **chapter."**

6       Renumber all SECTIONS consecutively.  
      (Reference is to EHB 1450 as printed February 15, 2011.)

---

Senator BRODEN