

# HOUSE BILL No. 4548

March 23, 2005, Introduced by Reps. Lemmons, Jr., Lemmons, III, Cushingberry and Cheeks  
and referred to the Committee on Employment Relations, Training, and Safety.

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

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

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

15 (h) "Relocation" means the removal of all or substantially all  
16 of the industrial or commercial operations in a covered  
17 establishment to a location that is 100 miles or more away.

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

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

26 (a) The employees of the covered establishment who are  
27 affected by the order.

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

4 Sec. 7. (1) Except as provided in sections 9 and 11, an  
5 employer who fails to give notice as required by this act is  
6 responsible to each affected employee for all of the following:

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

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

14 (2) An employer who fails to pay the amounts due under  
15 subsection (1), in full, within 3 weeks after the employer orders  
16 the mass layoff, relocation, or termination is responsible for a  
17 civil fine of \$500.00 for each day of the violation, up to a  
18 maximum of 60 days.

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

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

26 (b) Voluntary and unconditional payments that the employer  
27 makes to the employee, which payments are not made to satisfy any

1 other legal obligation.

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

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

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

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

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

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

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

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

26 Sec. 15. The department may conduct an investigation or  
27 proceeding to enforce this act. The department may request a

1 subpoena to examine books and records of an employer if necessary  
2 to perform its duties under this act.

3       Sec. 17. (1) A person may bring a civil action in a court of  
4 competent jurisdiction to enforce this act on the person's own  
5 behalf or on behalf of another similarly situated person.

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

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