

Senate Study Bill 3260

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
WORKFORCE DEVELOPMENT BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act requiring employers to provide notice of plant closings
2 and layoffs, and providing remedies and penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 5488DP 82
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1 1 Section 1. NEW SECTION. 86C.1 TITLE.
1 2 This chapter shall be known as the "Iowa Worker Adjustment
1 3 and Retraining Notification Act".
1 4 Sec. 2. NEW SECTION. 86C.2 DEFINITIONS.
1 5 For the purposes of this chapter:
1 6 1. "Aggrieved employee" means an employee who has worked
1 7 for the employer ordering the plant closing or mass layoff and
1 8 who, as a result of the failure by the employer to comply with
1 9 section 86C.3, did not receive timely notice either directly
1 10 or through the employee's representative.
1 11 2. "Department" means the department of workforce
1 12 development.
1 13 3. "Employee" means a worker who may reasonably expect to
1 14 experience an employment loss as a consequence of a proposed
1 15 plant closing or mass layoff by an employer.
1 16 4. "Employer" means a person who employs twenty-five or
1 17 more employees, excluding part-time employees.
1 18 5. "Employment loss" means an employment termination,
1 19 other than a discharge for cause, voluntary separation, or
1 20 retirement; a layoff exceeding six months; or a reduction in
1 21 hours of more than fifty percent of work of individual
1 22 employees during each month of a six-month period.
1 23 6. "Mass layoff" means a reduction in employment force
1 24 that is not the result of a plant closing and results in an
1 25 employment loss at a single site of employment during any
1 26 thirty-day period of twenty-five or more employees, other than
1 27 part-time employees.
1 28 7. "Part-time employee" means an employee who is employed
1 29 for an average of fewer than twenty hours per week or an
1 30 employee, including a full-time employee, who has been
1 31 employed for fewer than six of the twelve months preceding the
1 32 date on which notice is required.
1 33 8. "Plant closing" means the permanent or temporary
1 34 shutdown of a single site of employment of one or more
1 35 facilities or operating units that will result in an
2 1 employment loss for twenty-five or more employees, other than
2 2 part-time employees.
2 3 9. "Representative" means an exclusive representative of
2 4 employees within the meaning of section 9(a) of the federal
2 5 National Labor Relations Act, 29 U.S.C. } 151 et seq., and the
2 6 federal Railway Labor Act, 45 U.S.C. } 151 et seq.
2 7 10. "Single site of employment" refers to a single
2 8 location or a group of contiguous locations, such as a group
2 9 of structures that form a campus or business park or separate
2 10 facilities across the street from each other.
2 11 Sec. 3. NEW SECTION. 86C.3 NOTICE == REQUIREMENTS.
2 12 1. a. An employer who plans a plant closing or a mass
2 13 layoff shall not order such action until the end of a
2 14 sixty-day period which begins after the employer serves
2 15 written notice of such action to the affected employees or
2 16 their representatives and to the department.
2 17 b. An employer who has previously announced and carried
2 18 out a short-term mass layoff of six months or less which is
2 19 extended beyond six months due to business circumstances not

2 20 reasonably foreseeable at the time of the initial mass layoff
2 21 is required to give notice when it becomes reasonably
2 22 foreseeable that the extension is required. A mass layoff
2 23 extending beyond six months from the date the mass layoff
2 24 commenced for any other reason shall be treated as an
2 25 employment loss from the date of commencement of the mass
2 26 layoff.

2 27 c. In the case of the sale of part or all of a business,
2 28 the seller is responsible for providing notice of any plant
2 29 closing or mass layoff which will take place up to and on the
2 30 effective date of the sale. The buyer is responsible for
2 31 providing notice of any plant closing or mass layoff that will
2 32 take place thereafter.

2 33 2. a. Notice from the employer to the affected employees
2 34 or their representatives and to the department shall be in
2 35 written form and shall contain the following:

3 1 (1) The name and address of the employment site where the
3 2 plant closing or mass layoff will occur, and the name and
3 3 telephone number of a company official to contact for further
3 4 information.

3 5 (2) A statement as to whether the planned action is
3 6 expected to be permanent or temporary and, if the entire plant
3 7 is to be closed, a statement to that effect.

3 8 (3) The expected date of the first employment loss and the
3 9 anticipated schedule for employment losses.

3 10 (4) The job titles of positions to be affected and the
3 11 names of the employees currently holding the affected jobs.

3 12 b. The notice may include additional information useful to
3 13 the employees, such as information about available dislocated
3 14 worker assistance, and, if the planned action is expected to
3 15 be temporary, the estimated duration, if known.

3 16 3. Any reasonable method of delivery to the affected
3 17 employees or their representatives, and the department which
3 18 is designed to ensure receipt of notice of at least sixty days
3 19 before the planned action is acceptable. In the case of
3 20 notification directly to affected employees, insertion of
3 21 notice into pay envelopes is a viable option.

3 22 Sec. 4. NEW SECTION. 86C.4 NOTICE == EXEMPTIONS, SPECIAL
3 23 CIRCUMSTANCES.

3 24 1. ROLLING LAYOFFS.

3 25 a. When affected employees will not be terminated on the
3 26 same date, the date of the first individual employment loss
3 27 within the sixty-day notice period triggers the notice
3 28 requirement. An employee's last day of employment is
3 29 considered the date of that employee's layoff. The first and
3 30 subsequent groups of terminated employees are entitled to a
3 31 full sixty days' notice.

3 32 b. An employer shall give notice if the number of
3 33 employment losses of two or more actions in any ninety-day
3 34 period triggers the notice requirements in section 86C.3 for a
3 35 plant closing or a mass layoff. An employer is not required
4 1 to give notice if the number of employment losses from one
4 2 action in a thirty-day period does not meet the requirements
4 3 of section 86C.3. All employment losses in any ninety-day
4 4 period shall be aggregated to trigger the notice requirement
4 5 unless the employer demonstrates to the department that the
4 6 employment losses during the ninety-day period are the result
4 7 of separate and distinct actions and causes.

4 8 2. EXTENDED NOTICE. Additional notice is required if the
4 9 date or schedule of dates of a planned plant closing or mass
4 10 layoff is extended beyond the date or the ending date of any
4 11 period announced in the original notice.

4 12 a. If the postponement is for less than sixty days, the
4 13 additional notice shall be given as soon as possible to the
4 14 affected employees or their representatives and the department
4 15 and shall include reference to the earlier notice, the date to
4 16 which the planned action is postponed, and the reasons for the
4 17 postponement. The notice shall be given in a manner which
4 18 will provide the information to all affected employees.

4 19 b. If the postponement is for more than sixty days, the
4 20 additional notice shall be treated as new notice subject to
4 21 the provisions of section 86C.3.

4 22 3. FALTERING COMPANY. An exception to the sixty-day
4 23 notice applies to plant closings but not to mass layoffs if
4 24 the requirements of this subsection are met and the exception
4 25 shall be narrowly construed.

4 26 a. An employer must have been actively seeking capital or
4 27 business at the time that the sixty-day notice would have been
4 28 required by seeking financing or refinancing through the
4 29 arrangement of loans or the issuance of stocks, bonds, or
4 30 other methods of internally generated financing, or by seeking

4 31 additional money, credit, or business through any other
4 32 commercially reasonable method. The employer must identify
4 33 specific actions taken to obtain capital or business.
4 34 b. The employer must, at the time notice is actually
4 35 given, provide a statement of explanation for reducing the
5 1 notice period in addition to the other notice requirements in
5 2 section 86C.3.
5 3 c. There must have been a realistic opportunity to obtain
5 4 the financing or business sought.
5 5 d. The financing or business sought must have been
5 6 sufficient, if obtained, to have enabled the employer to avoid
5 7 or postpone the shutdown. The employer must be able to
5 8 objectively demonstrate that the amount of capital or the
5 9 volume of new business sought would have enabled the company
5 10 to keep the facility, operating unit, or site open for a
5 11 reasonable period of time.
5 12 e. The employer reasonably and in good faith must have
5 13 believed that giving the required notice would have precluded
5 14 the employer from obtaining the needed capital or business.
5 15 The employer must be able to objectively demonstrate that the
5 16 employer reasonably thought that a potential customer or
5 17 source of financing would have been unwilling to provide the
5 18 new business or capital if notice had been given. This
5 19 condition may be satisfied if the employer can show that the
5 20 financing or business source would not choose to do business
5 21 with a troubled company or with a company whose workforce
5 22 would be looking for other jobs.

5 23 4. UNFORESEEABLE BUSINESS CIRCUMSTANCE. An exception to
5 24 the sixty-day notice applies to plant closings and to mass
5 25 layoffs if the requirements of this subsection are met.
5 26 a. Business circumstances occurred that were not
5 27 reasonably foreseeable at the time that the sixty-day notice
5 28 would have been required.
5 29 b. The employer must, at the time notice is actually
5 30 given, provide a statement of explanation for reducing the
5 31 notice period in addition to the other notice requirements in
5 32 section 86C.3.
5 33 c. An important indicator of a reasonably unforeseeable
5 34 business circumstance is that the circumstance is caused by
5 35 some sudden, dramatic, and unexpected action or condition
6 1 outside the employer's control.
6 2 d. The employer must exercise commercially reasonable
6 3 business judgment as would a similarly situated employer in
6 4 predicting the demands of the employer's particular market.
6 5 The employer is not required to accurately predict general
6 6 economic conditions that also may affect demand for products
6 7 or services.

6 8 5. NATURAL DISASTER. An exception to the sixty-day notice
6 9 applies to plant closings and to mass layoffs if the
6 10 requirements of this subsection are met.
6 11 a. A natural disaster occurred at the time notice would
6 12 have been required.
6 13 b. The employer must, at the time notice is actually
6 14 given, provide a statement of explanation for reducing the
6 15 notice period in addition to the other requirements to notice
6 16 in section 86C.3.
6 17 c. Floods, earthquakes, droughts, storms, tornadoes, and
6 18 similar effects of nature are natural disasters under this
6 19 subsection.
6 20 d. An employer must be able to demonstrate that the plant
6 21 closing or mass layoff is a direct result of the natural
6 22 disaster.
6 23 e. If a plant closing or mass layoff occurs as an indirect
6 24 result of a natural disaster, this exception does not apply
6 25 but the exception in subsection 3 may be applicable.

6 26 Sec. 5. NEW SECTION. 86C.5 ENFORCEMENT AND PENALTIES.
6 27 1. The department shall adopt rules pursuant to and
6 28 consistent with chapter 17A regarding investigations to
6 29 determine whether an employer has violated any provisions of
6 30 this chapter. A determination by the department that a
6 31 violation has occurred shall be considered final agency action
6 32 under chapter 17A.
6 33 2. a. An aggrieved employee or a representative of an
6 34 aggrieved employee, seeking to enforce liability pursuant to a
6 35 violation of this chapter may sue either for an aggrieved
7 1 employee or aggrieved employees similarly situated, or both,
7 2 in any district court for the county in which the violation is
7 3 alleged to have occurred or in which the employer transacts
7 4 business.
7 5 b. If an employer who has violated this chapter proves to
7 6 the satisfaction of the court that the act or omission that

7 7 violated this chapter was pursuant to section 86C.4,
7 8 subsection 3, 4, or 5, or that the employer had reasonable
7 9 grounds for believing that the act or omission was not a
7 10 violation of this chapter, the court may, in its discretion,
7 11 reduce the amount of the liability or penalty provided for in
7 12 this section.

7 13 c. In any such suit, the court in its discretion, may
7 14 allow the prevailing party reasonable attorney fees as part of
7 15 the costs.

7 16 3. a. An employer who orders a plant closing or mass
7 17 layoff in violation of section 86C.3 shall be liable to each
7 18 aggrieved employee who suffers an employment loss as a result
7 19 of such closing or layoff for each of the following damages:

7 20 (1) Back pay for each day of the violation at a rate of
7 21 compensation not less than the higher of the average regular
7 22 rate received by the aggrieved employee during the last three
7 23 years of the employee's employment or the final regular rate
7 24 of compensation received by the employee.

7 25 (2) Benefits under an employee benefit plan, as described
7 26 under an employee benefit plan as defined in the federal
7 27 Employee Retirement Income Security Act, 29 U.S.C. } 1001 et
7 28 seq., including the cost of medical expenses incurred during
7 29 the employment loss which would have been covered under an
7 30 employment benefit plan if the employment loss had not
7 31 occurred.

7 32 b. Liability shall be calculated for the period of the
7 33 violation, up to a maximum of sixty days, but in no event for
7 34 more than one-half the number of days the employee was
7 35 employed by the employer.

8 1 4. a. The amount for which the employer is liable under
8 2 subsection 3 shall be reduced by the following criteria:

8 3 (1) Any wages paid by the employer to the employee for the
8 4 period of the violation.

8 5 (2) Any voluntary and unconditional payment by the
8 6 employer to the employee that is not required by any legal
8 7 obligation.

8 8 (3) Any payment by the employer to a third party or
8 9 trustee, such as premiums for health benefits or payments to a
8 10 defined contribution pension plan, on behalf of and
8 11 attributable to the employee for the period of the violation.

8 12 b. Any liability incurred under this subsection with
8 13 respect to a defined benefit pension plan may be reduced by
8 14 crediting the employee with service for all purposes under
8 15 such a plan for the period of the violation.

8 16 5. An employer who violates the provisions of section
8 17 86C.3 with respect to the department shall be subject to a
8 18 civil penalty of not more than five hundred dollars for each
8 19 day of the violation, except that such penalty shall not apply
8 20 if the employer pays to each aggrieved employee the amount for
8 21 which the employer is liable to that employee within three
8 22 weeks from the date the employer ordered the plant closing or
8 23 mass layoff.

8 24 6. The remedies provided for in this section shall be the
8 25 exclusive remedies for any violation of this chapter. Under
8 26 this chapter, a court shall not have authority to enjoin a
8 27 plant closing or mass layoff.

8 28 EXPLANATION

8 29 This bill creates the Iowa worker adjustment and retraining
8 30 notification Act.

8 31 The bill requires employers to notify employees and the
8 32 department of workforce development of plant closings that
8 33 result in the layoff of 25 or more full-time employees and
8 34 mass layoffs that are reductions in the workforce of at least
8 35 25 employees in a 30-day period.

9 1 An employer is required to give notice to employees who
9 2 will be affected by a plant closing or mass layoff and the
9 3 department in writing 60 days before ordering such actions.
9 4 An employer who announces a short-term mass layoff of less
9 5 than six months but which is extended more than six months,
9 6 must also give proper written notice when it becomes
9 7 reasonably foreseeable that the mass layoff will be extended
9 8 beyond six months.

9 9 If a business is sold as a whole or in part, the seller is
9 10 responsible for providing written notice of any plant closings
9 11 or mass layoffs which will take place up to and on the date of
9 12 sale. The buyer is responsible for proper notification of
9 13 such actions thereafter.

9 14 The requirements for proper notice include the name and
9 15 address of the employment site where the plant closing or mass
9 16 layoff will occur; the name and telephone number of a company
9 17 official to contact for further information; a statement about

9 18 whether the planned action is expected to be permanent or
9 19 temporary; the expected date of the first separation and the
9 20 anticipated schedule for making separations; and the job
9 21 titles of positions to be affected and the names of the
9 22 employees currently holding the affected jobs. Notice may
9 23 also include additional information about available dislocated
9 24 worker assistance and, if the planned action is temporary, the
9 25 estimated duration of the planned action.

9 26 Any reasonable method of delivery to affected employees or
9 27 their representatives and the department that will ensure
9 28 receipt of the notice at least 60 days before the planned
9 29 action is allowed.

9 30 If an employer will not be laying off all employees on the
9 31 same date, the date of the first employee to be laid off
9 32 triggers the 60-day notice requirement. An employer shall
9 33 give notice if the number of employment losses of two or more
9 34 actions in any 90-day period triggers the notice requirements
9 35 in Code section 86C.3 for a plant closing or a mass layoff.

10 1 All employment losses in any 90-day period count together
10 2 toward the notice requirement levels unless the employer
10 3 demonstrates to the department that the employment losses
10 4 during the 90-day period are the result of separate and
10 5 distinct actions and causes.

10 6 Additional notice is required when the date or dates of a
10 7 plant closing or mass layoffs are extended beyond the end date
10 8 of any period announced in the original notice. If the
10 9 postponement is for less than 60 days, additional notice must
10 10 be given to the affected employees and the department as soon
10 11 as possible and must include the new date of the proposed
10 12 action and the reasons for the postponement. If the
10 13 postponement is for more than 60 days, the additional notice
10 14 must be treated as a new notice, subject to the provisions of
10 15 Code section 86C.3.

10 16 An employer with a faltering company may be exempted from
10 17 the 60-day notice requirement for a plant closing but not a
10 18 mass layoff, but is still required to provide proper notice,
10 19 if the employer was actively seeking capital or business at
10 20 the time the 60-day notice was required. The employer must,
10 21 at the time notice is actually given, provide an explanation
10 22 for reducing the notice period. The employer must show that
10 23 the capital or business sought would have been sufficient if
10 24 obtained to have enabled the employer to avoid or postpone the
10 25 shutdown of the plant. The employer must also demonstrate
10 26 that the employer reasonably and in good faith believed that
10 27 giving notice would have prevented the employer from obtaining
10 28 the capital or business.

10 29 An employer that experiences unforeseeable business
10 30 circumstances may be exempted from the 60-day notice
10 31 requirement, but is still required to provide proper notice,
10 32 for a plant closing or a mass layoff. The employer, at the
10 33 time notice is actually given, must provide an explanation for
10 34 reducing the notice period. An unforeseeable business
10 35 circumstance is caused by a sudden, dramatic, and unexpected

11 1 action or condition outside the employer's control.
11 2 An employer that experiences a natural disaster may be
11 3 exempted from the 60-day notice requirement, but is still
11 4 required to provide proper notice, for a plant closing or a
11 5 mass layoff. The employer, at the time notice is actually
11 6 given, must provide an explanation for reducing the notice
11 7 period. Natural disasters include floods, earthquakes,
11 8 droughts, storms, tornadoes, and similar effects of nature.
11 9 An employer must demonstrate that the plant closing or mass
11 10 layoff is a direct result of a natural disaster. If the plant
11 11 closing or mass layoff occurs as an indirect result of a
11 12 natural disaster, this exemption does not apply, but the
11 13 unforeseeable business circumstance exemption may apply.

11 14 The department shall establish rules consistent with Code
11 15 chapter 17A relating to investigations to determine whether an
11 16 employer has violated Code section 86C.3. A determination
11 17 about whether a violation has occurred by the department is a
11 18 final agency action. An aggrieved employee or a
11 19 representative of employees may sue to enforce liability
11 20 pursuant to a violation of Code section 86C.3 in any district
11 21 court for the county where the violation is alleged to have
11 22 occurred or in which the employer has business. An employer's
11 23 liability may be reduced at the court's discretion if the
11 24 employer proves that the violation was pursuant to an
11 25 exemption under Code section 86C.4 or due to reasonable
11 26 grounds for not believing Code section 86C.3 applied.

11 27 An employer in violation of Code section 86C.3 may be
11 28 liable to each aggrieved employee who suffers an employment

11 29 loss for back pay for each day of the violation and benefits
11 30 due under an employee benefit plan. Liability is calculated
11 31 for each day of the violation, up to 60 days but not more than
11 32 half of the days the employee was employed. The employer's
11 33 liability may be reduced if the employer pays wages to an
11 34 employee for the period of the violation; if the employer
11 35 makes any voluntary and unconditional payment to an employee;
12 1 or if the employer makes a payment to a third party or trustee
12 2 for health benefits or a pension plan.
12 3 An employer who violates Code section 86C.3 with respect to
12 4 the department is subject to a civil penalty of not more than
12 5 \$500 for each day of the violation, unless the employer pays
12 6 to the employees any amount the employer is liable to the
12 7 employees within three weeks from the date the shutdown or
12 8 layoff was ordered. The remedies of Code section 86C.5 are
12 9 the only remedies for Code chapter 86C. A court shall have no
12 10 authority to enjoin a plant closing or mass layoff.
12 11 LSB 5488DP 82
12 12 ak/rj/5.1