

HOUSE BILL No. 1374

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-28-6-6; IC 22-6-7.

Synopsis: Economic development incentives. Requires the Indiana economic development corporation (IEDC) to recapture incentives from a recipient that: (1) makes a lower level of capital investment; (2) employs fewer individuals; or (3) pays less in wages; than specified in an incentive agreement. Requires employers with at least 100 employees to give 90 days written notice to affected employees before plant closings and mass layoffs that occur after June 30, 2017.

Effective: July 1, 2017.

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January 17, 2017, read first time and referred to Committee on Commerce, Small Business and Economic Development.



First Regular Session of the 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1374

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-28-6-6, AS AMENDED BY P.L.175-2013,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 6. The corporation shall require an applicant for
4 a job creation incentive to be granted by the corporation after March
5 31, 2010, to enter into an agreement with the corporation as a condition
6 of receiving the incentive. Subject to IC 5-28-28-8, the agreement must
7 include the following:

8 (1) The applicant's agreement regarding the following:

9 (A) The number of individuals that are expected to be
10 employed by the applicant, including the number of employees
11 who will be hired, retained, or trained during the duration of
12 the agreement.

13 (B) If a financial investment by an applicant is a condition for
14 providing an incentive, the amount of the financial investment
15 that the applicant expects to make in Indiana as a result of the
16 project for which the incentive is granted.

17 (2) A requirement that the applicant shall file with the compliance



1 officer an annual compliance report detailing the applicant's
2 compliance, or progress toward compliance, with subdivision (1).

3 (3) A provision that notifies the applicant that the applicant is
4 subject to a determination of the corporation under this
5 subdivision. The corporation, after a finding that the applicant is
6 employing fewer individuals than the applicant agreed to employ
7 or that the applicant has not made the financial investment agreed
8 to under subdivision (1), subject to any confidentiality laws, shall
9 hold a hearing to determine if the applicant shall be required to
10 pay back to the state a part of the incentive granted to the
11 applicant under the agreement. The penalty imposed must be a
12 matter of public record and must reflect in a fair and balanced
13 way the amount of incentive received.

14 (4) A requirement that the applicant will pay back to the state the
15 incentive that has been received by the applicant if the applicant:

16 (A) moves or closes;

17 (B) **does not make the level of capital investment specified**
18 **by the applicant in the application for the job creation**
19 **incentive;**

20 (C) **employs fewer individuals than specified by the**
21 **applicant in the application for the job creation incentive;**
22 **or**

23 (D) **pays less in wages than specified by the applicant in the**
24 **application for the job creation incentive.**

25 SECTION 2. IC 22-6-7 IS ADDED TO THE INDIANA CODE AS
26 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
27 1, 2017]:

28 **Chapter 7. Employer Notification Before Plant Closings and**
29 **Mass Layoffs**

30 **Sec. 1. (a) Except as provided in subsection (b), this chapter**
31 **applies to plant closings and mass layoffs that occur after June 30,**
32 **2017.**

33 **(b) This chapter does not apply to a plant closing or mass layoff**
34 **in the following cases:**

35 **(1) The plant closing is:**

36 **(A) of a temporary facility; or**

37 **(B) the result of the completion of a particular project or**
38 **undertaking;**

39 **and the affected employees were hired with the understanding**
40 **that the employment was limited to the duration of the**
41 **facility, project, or undertaking.**

42 **(2) The plant closing or mass layoff constitutes a strike or**



- 1 lockout not intended to evade the requirements of this
2 chapter.
- 3 **Sec. 2.** As used in this chapter, "affected employee" means an
4 employee who may reasonably be expected to experience an
5 employment loss as a result of a proposed plant closing or mass
6 layoff.
- 7 **Sec. 3. (a)** As used in this chapter, "employer" means:
8 (1) an individual, a partnership, an association, a limited
9 liability company, a corporation, or a business trust or an
10 officer of any of these entities employing at least one hundred
11 (100) individuals in Indiana;
12 (2) the state;
13 (3) an agency, an officer, or a commission of the state
14 employing at least one hundred (100) individuals;
15 (4) a political subdivision; or
16 (5) an agency, a department, an officer, or a commission of a
17 political subdivision employing at least one hundred (100)
18 individuals.
- 19 **(b)** The term does not include:
20 (1) the federal government;
21 (2) a corporation wholly owned by the federal government; or
22 (3) an Indian tribe.
- 23 **Sec. 4. (a)** As used in this chapter, "employment loss" means:
24 (1) an employment termination, other than:
25 (A) a discharge for cause;
26 (B) a voluntary departure; or
27 (C) a retirement;
28 (2) a layoff exceeding six (6) months; or
29 (3) a reduction in hours of work of more than fifty percent
30 (50%) during each month of a six (6) month period.
- 31 **(b)** The term does not include a closing or layoff that is the
32 result of the relocation or consolidation of part or all of an
33 employer's business if, before the closing or layoff:
34 (1) the employer offers to transfer the affected employee to a
35 different site of employment within a reasonable commuting
36 distance with a break in employment of not more than six (6)
37 months; or
38 (2) the employer offers to transfer the affected employee to
39 any other site of employment regardless of distance with a
40 break in employment of not more than six (6) months, and the
41 affected employee accepts the transfer within thirty (30) days
42 after the later of:



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- (A) the offer; or
- (B) the closing or layoff.

Sec. 5. As used in this chapter, "mass layoff" means a reduction of force that:

- (1) is not the result of a plant closing; and
- (2) results in an employment loss at a single site of employment during any thirty (30) day period of at least twenty (20) affected employees.

Sec. 6. As used in this chapter, "municipality" has the meaning set forth in IC 36-1-2-11.

Sec. 7. As used in this chapter, "plant closing" means the permanent or temporary shutdown of:

- (1) a single site of employment; or
- (2) one (1) or more facilities or operating units within a single site of employment;

if the shutdown results in an employment loss at the single site of employment during any thirty (30) day period of at least twenty (20) affected employees.

Sec. 8. As used in this chapter, "political subdivision" has the meaning set forth in IC 36-1-2-13.

Sec. 9. As used in this chapter, "regular rate" has the meaning set forth in IC 22-2-2-4(I)(3).

Sec. 10. As used in this chapter, "representative" means an exclusive representative of employees:

- (1) within the meaning of Section 152(4) or 159(a) of the federal National Labor Relations Act (29 U.S.C. 151 et seq.);
- (2) within the meaning of Section 151 of the federal Railway Labor Act (45 U.S.C. 151 et seq.); or
- (3) of any labor organization formally or effectively recognized by a state or local government or agency as a representative of any unit of employees for purposes of:

- (A) bargaining; or
- (B) grievance representation.

Sec. 11. (a) An employer shall serve written notice of a plant closing or mass layoff not later than ninety (90) days before the date of the plant closing or mass layoff to:

- (1) a representative of an affected employee or, if there is no representative at the time of the notice, each affected employee;
- (2) the department of workforce development; and
- (3) the executive of:
 - (A) each municipality; or



1 **(B) in an unincorporated area, the county;**
 2 **in which the plant closing or mass layoff is to occur.**

3 **(b) The:**

4 **(1) mailing of notice to an affected employee's last known**
 5 **address; or**

6 **(2) inclusion of the notice with the affected employee's**
 7 **paycheck;**

8 **is an acceptable method for fulfilling the employer's obligation to**
 9 **give notice to each affected employee.**

10 **Sec. 12. (a) An employer is not required to provide the written**
 11 **notice required by section 11 of this chapter when permanently**
 12 **replacing a person who is considered an economic striker under the**
 13 **federal National Labor Relations Act (29 U.S.C. 151 et seq.).**

14 **(b) An employer is not required to provide the written notice**
 15 **required by section 11 of this chapter if:**

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

17 **(A) the employer was actively seeking capital or business**
 18 **that, if obtained, would enable the employer to avoid or**
 19 **postpone the plant closing or mass layoff; and**

20 **(B) the employer:**

21 **(i) reasonably; and**

22 **(ii) in good faith;**

23 **believed that giving the notice would have precluded the**
 24 **employer from obtaining the needed capital or business;**

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

28 **(3) the plant closing or mass layoff is the result of a natural**
 29 **disaster.**

30 **An employer shall give as much notice as is practicable under the**
 31 **circumstances described in this subsection to an affected employee,**
 32 **including a brief statement of the basis for reducing the notice**
 33 **period.**

34 **Sec. 13. A layoff of more than six (6) months that at its outset**
 35 **was announced as a layoff of six (6) months or less shall be treated**
 36 **as an employment loss under this chapter, unless:**

37 **(1) the extension of the layoff beyond six (6) months is the**
 38 **result of business circumstances, including unforeseeable**
 39 **changes in price or cost, not reasonably foreseeable at the**
 40 **time of the initial layoff; and**

41 **(2) notice is given to an affected employee at the time that an**
 42 **extension of the layoff beyond six (6) months becomes**



1 reasonably foreseeable to the employer.

2 **Sec. 14. Employment losses of more than one (1) group of**
 3 **employees at a single site of employment, each of which is less than**
 4 **the minimum number of affected employees specified in section 5**
 5 **or 7 of this chapter for a plant closing or mass layoff but that**
 6 **together exceed that minimum number and occur within any**
 7 **ninety (90) day period, are considered to be a plant closing or mass**
 8 **layoff for purposes of this chapter, unless the employer**
 9 **demonstrates that the employment losses are:**

- 10 (1) the result of separate and distinct actions and causes; and
 11 (2) not an attempt by the employer to evade the requirements
 12 of this chapter.

13 **Sec. 15. (a) In the case of a sale of part or all of an employer's**
 14 **business:**

15 (1) up to and including the effective date of the sale, the seller;
 16 or

17 (2) after the effective date of the sale, the purchaser;
 18 is responsible for providing the written notice required by section
 19 11 of this chapter.

20 (b) Notwithstanding any other provision of this chapter, an
 21 individual who is an employee of the seller as of the effective date
 22 of the sale is considered an employee of the purchaser immediately
 23 after the effective date of the sale for the purpose of receiving the
 24 written notice required by section 11 of this chapter.

25 **Sec. 16. (a) As used in this section, "aggrieved employee" means**
 26 **an employee who:**

- 27 (1) experienced employment loss as a result of a plant closing
 28 or mass layoff conducted by the employee's employer; and
 29 (2) as a result of the employer's failure to give the written
 30 notice required by section 11 of this chapter, did not receive
 31 the required notice, either directly or through the employee's
 32 representative.

33 (b) If an employer violates this chapter, an aggrieved employee
 34 may commence an action:

- 35 (1) for the aggrieved employee;
 36 (2) on behalf of other employees similarly situated; or
 37 (3) both for the aggrieved employee and on behalf of other
 38 employees similarly situated;

39 in a court of the county in which the violation is alleged to have
 40 occurred or in which the employer transacts business.

41 (c) The court shall award the following to each aggrieved
 42 employee who suffers an employment loss as a result of the



- 1 employer's violation of this chapter:
- 2 (1) Back pay for each day of the violation at a rate of
- 3 compensation not less than the greater of:
- 4 (A) the average regular rate received by the employee
- 5 during the three (3) years before the date of the plant
- 6 closing or mass layoff; or
- 7 (B) the final regular rate received by the employee.
- 8 (2) Benefits under an employee welfare benefit plan described
- 9 in 29 U.S.C. 1002, including the cost of medical expenses
- 10 incurred during the employment loss that would have been
- 11 covered under the employee benefit plan if the employment
- 12 loss had not occurred.
- 13 (3) Costs and reasonable attorney's fees.
- 14 (d) An employer's liability under subsection (c) is calculated for
- 15 the period of the violation, up to a maximum of ninety (90) days,
- 16 but not more than fifty percent (50%) of the number of days that
- 17 the employee was employed by the employer.
- 18 (e) The amount for which an employer is liable under this
- 19 section to an aggrieved employee is reduced by the following:
- 20 (1) Wages paid by the employer to the employee for the period
- 21 of the violation.
- 22 (2) A voluntary and unconditional payment by the employer
- 23 to the employee that is not required by a legal obligation.
- 24 (3) A payment by the employer to a third party or trustee,
- 25 including, but not limited to:
- 26 (A) premiums for health benefits; or
- 27 (B) payments to a defined contribution pension plan;
- 28 on behalf of and attributable to the employee for the period of
- 29 the violation.
- 30 (4) A monetary amount equal to the amount of service
- 31 credited to the employee for all purposes under a defined
- 32 benefit pension plan for the period of the violation.
- 33 (f) An employer that violates this chapter with respect to the
- 34 notice required to be given to:
- 35 (1) the department of workforce development;
- 36 (2) a municipality; or
- 37 (3) in an unincorporated area, a county;
- 38 under section 11(a) of this chapter commits a Class C infraction for
- 39 each day that the violation occurs, up to a maximum of ninety (90)
- 40 days.
- 41 (g) Except as provided in section 19 of this chapter, the remedies
- 42 provided for in this section are the exclusive remedies for any



1 violation of this chapter.
2 **Sec. 17. It is a defense to a violation of this chapter that:**
3 **(1) the act or omission that constituted a violation of this**
4 **chapter was in good faith; and**
5 **(2) the employer had reasonable grounds for believing that**
6 **the act or omission was not a violation of this chapter.**
7 **Sec. 18. A court does not have authority to enjoin a plant closing**
8 **or mass layoff for a violation of this chapter.**
9 **Sec. 19. (a) The rights and remedies provided to employees by**
10 **this chapter are:**
11 **(1) in addition to, and not instead of, any other contractual or**
12 **statutory rights and remedies of the employees; and**
13 **(2) not intended to alter or affect those other rights and**
14 **remedies;**
15 **except that the period of notification required by this chapter runs**
16 **concurrently with any period of notification required by contract**
17 **or any other statute.**
18 **(b) Notice requirements under this chapter are in addition to the**
19 **requirements of the federal Worker Adjustment and Retraining**
20 **Notification Act (29 U.S.C. 2101 et seq.).**
21 **Sec. 20. The commissioner of the department of workforce**
22 **development may adopt rules under IC 4-22-2 to implement this**
23 **chapter, including uniform standards by which employers may**
24 **provide for appropriate service of notice required by this chapter.**

