AN ACT concerning employment.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Illinois Worker Adjustment and Retraining Notification Act.

Section 5. Definitions. As used in this Act:

(a) "Affected employees" means employees who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff by their employer.

(b) "Employment loss" means:

(1) an employment termination, other than a discharge for cause, voluntary departure, or retirement;

(2) a layoff exceeding 6 months; or

(3) a reduction in hours of work of more than 50% during each month of any 6-month period.

"Employment loss" does not include instances when the plant closing or layoff is the result of the relocation or consolidation of part or all of the employer's business and, before the closing or layoff, the employer offers to transfer the employee to a different site of employment within a reasonable commuting distance with no more than a 6-month break in employment, or the employer offers to transfer the employee to any other site of employment, regardless of distance, with no more than a 6-month break in employment, and the employee accepts within 30 days of the offer or of the closing or layoff, whichever is later.

(c) "Employer" means any business enterprise that employs:

(1) 75 or more employees, excluding part-time employees; or

(2) 75 or more employees who in the aggregate work at least 4,000 hours per week (exclusive of hours of

overtime).

(d) "Mass layoff" means a reduction in force which:

(1) is not the result of a plant closing; and

(2) results in an employment loss at the single site of employment during any 30-day period for:

(A) at least 33% of the employees (excluding any part-time employees) and at least 25 employees (excluding any part-time employees); or

(B) at least 250 employees (excluding any part-time employees).

(e) "Part-time employee" means an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required.

(f) "Plant closing" means the permanent or temporary shutdown of a single site of employment, or one 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 30-day period for 50 or more employees excluding any part-time employees.

(g) "Representative" means an exclusive representative of employees within the meaning of Section 9(a) or 8(f) of the National Labor Relations Act (29 U.S.C. 159(a), 158(f)) or Section 2 of the Railway Labor Act (45 U.S.C. 152).

Section 10. Notice.

(a) An employer may not order a mass layoff, relocation, or employment loss unless, 60 days before the order takes effect, the employer gives written notice of the order to the following:

(1) affected employees and representatives of affected employees; and

(2) the Department of Commerce and Economic Opportunity and the chief elected official of each municipal and county government within which the employment loss, relocation, or mass layoff occurs.

(b) An employer required to give notice of any mass layoff, relocation, or employment loss under this Act shall include in its notice the elements required by the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.).

(c) Notwithstanding the requirements of subsection (a), an employer is not required to provide notice if a mass layoff, relocation, or employment loss is necessitated by a physical calamity or an act of terrorism or war.

(d) The mailing of notice to an employee's last known address or inclusion of notice in the employee's paycheck shall be considered acceptable methods for fulfillment of the employer's obligation to give notice to each affected employee under this Act.

(e) In the case of a sale of part or all of an employer's business, the seller shall be responsible for providing notice for any plant closing or mass layoff in accordance with this Section, up to and including the effective date of the sale. After the effective date of the sale of part or all of an employer's business, the purchaser shall be responsible for providing notice for any plant closing or mass layoff in accordance with this Section. Notwithstanding any other provision of this Act, any person who is an employee of the seller (other than a part-time employee) as of the effective date of the sale shall be considered an employee of the purchaser immediately after the effective date of the sale.

(f) An employer which is receiving State or local economic development incentives for doing or continuing to do business in this State may be required to provide additional notice pursuant to Section 15 of the Business Economic Support Act.

(g) The rights and remedies provided to employees by this Act are in addition to, and not in lieu of, any other contractual or statutory rights and remedies of the employees, and are not intended to alter or affect such rights and remedies, except that the period of notification required by this Act shall run concurrently with any period of notification

required by contract or by any other law.

(h) It is the sense of the General Assembly that an employer who is not required to comply with the notice requirements of this Section should, to the extent possible, provide notice to its employees about a proposal to close a plant or permanently reduce its workforce.

Section 15. Exceptions.

(a) In the case of a plant closing, an employer is not required to comply with the notice requirement in subsection (a) of Section 10 if:

(1) the Department of Labor determines:

(A) at the time that notice would have been required, the employer was actively seeking capital or business; and

(B) the capital or business sought, if obtained, would have enabled the employer to avoid or postpone the relocation or termination; and

(C) the employer reasonably and in good faith believed that giving the notice required by subsection (a) of Section 10 would have precluded the employer from obtaining the needed capital or business; or

(2) the Department of Labor determines that the need for a notice was not reasonably foreseeable at the time the notice would have been required.

(b) To determine whether the employer was actively seeking capital or business, or that the need for notice was not reasonably foreseeable under subsection (a), the employer shall provide to the Department of Labor:

(1) a written record consisting of those documents relevant to the determination of whether the employer was actively seeking capital or business, or that the need for notice was not reasonably foreseeable; and

(2) an affidavit verifying the contents of the documents contained in the record.

(c) An employer is not required to comply with the notice

requirement in subsection (a) of Section 10 if:

(1) the plant closing is of a temporary facility or the plant closing or layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility or the project or undertaking; or

(2) the closing or layoff constitutes a strike or constitutes a lockout not intended to evade the requirements of this Act. Nothing in this Act shall require an employer to serve written notice when permanently replacing a person who is deemed to be an economic striker under the National Labor Relations Act (29 U.S.C. 151 et seq.). Nothing in this Act shall be deemed to validate or invalidate any judicial or administrative ruling relating to the hiring of permanent replacements for economic strikers under the National Labor Relations Act.

(d) An employer relying on this Section shall provide as much notice as is practicable and at that time shall provide a brief statement of the basis for reducing the notification period.

Section 20. Extension of layoff period. A layoff of more than 6 months which, at its outset, was announced to be a layoff of 6 months or less shall be treated as an employment loss under this Act unless:

(1) the extension beyond 6 months is caused by business circumstances (including unforeseeable changes in price or cost) not reasonably foreseeable at the time of the initial layoff; and

(2) notice is given at the time it becomes reasonably foreseeable that the extension beyond 6 months will be required.

Section 25. Determinations with respect to employment loss. In determining whether a plant closing or mass layoff has

occurred or will occur, employment losses for 2 or more groups at a single site of employment, each of which is less than the minimum number of employees specified in subsection (d) or (f) of Section 5 of this Act but which in the aggregate exceed that minimum number, and which occur within any 90-day period shall be considered to be a plant closing or mass layoff unless the employer demonstrates that the employment losses are the result of separate and distinct actions and causes and are not an attempt by the employer to evade the requirements of this Act.

Section 30. Powers of Director of Labor.

(a) Pursuant to the Illinois Administrative Procedure Act, the Director of Labor shall prescribe such rules as may be necessary to carry out this Act. The rules shall, at a minimum, include provisions that allow the parties access to administrative hearings for any actions of the Department under this Act. The provisions of the Administrative Review Law, and the rules adopted pursuant thereto, apply to and govern all proceedings for the judicial review of decisions under this Act.

(b) In any investigation or proceeding under this Act, the Director of Labor has, in addition to all other powers granted by law, the authority to examine the books and records of an employer, but only to the extent to determine whether a violation of this Act has occurred.

(c) Except as provided in this Section, information obtained from any employer subject to this Act regarding the books, records, or wages paid to workers during the administration of this Act shall:

(1) be confidential;

(2) not be published or open to public inspection;

(3) not be used in any court in any pending action or proceeding; and

(4) not be admissible in evidence in any action or proceeding other than one arising out of this Act.

(d) No finding, determination, decision, ruling, or order

(including any finding of fact, statement, or conclusion made therein) issued pursuant to this Act shall be admissible or used in evidence in any action other than one arising out of this Act, nor shall it be binding or conclusive except as provided in the Act, nor shall it constitute res judicata, regardless of whether the actions were between the same or related parties or involved the same facts.

(e) Any officer or employer of this State, any officer or employee of any entity authorized to obtain information pursuant to this Section, and any agent of this State or of such entity who, except with authority of the Director under this Section, discloses information is guilty of a Class B misdemeanor and is disqualified from holding any appointment or employment by the State.

(f) The Director of Labor has the authority to determine any liabilities or civil penalties under Section 35 and Section 40 of this Act.

Section 35. Violation; liability.

(a) An employer who fails to give notice as required by paragraph (1) of subsection (a) of Section 10 before ordering a mass layoff, relocation, or employment loss is liable to each employee entitled to notice who lost his or her employment for:

(1) Back pay at the average regular rate of compensation received by the employee during the last three years of his or her employment, or the employee's final rate of compensation, whichever is higher.

(2) The value of the cost of any benefits to which the employee would have been entitled had his or her employment not been lost, including the cost of any medical expenses incurred by the employee that would have been covered under an employee benefit plan.

(b) Liability under this Section is calculated for the period of the employer's violation, up to a maximum of 60 days, or one-half the number of days that the employee was employed by the employer, whichever period is smaller.

(c) The amount of an employer's liability under subsection (a) is reduced by the following:

(1) Any wages, except vacation moneys accrued before the period of the employer's violation, paid by the employer to the employee during the period of the employer's violation.

(2) Any voluntary and unconditional payments made by the employer to the employee that were not required to satisfy any legal obligation.

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

(4) Any liability paid by the employer under federal law.

(d) Any liability incurred by an employer under subsection (a) of this Section with respect to a defined benefit pension plan may be reduced by crediting the employee with service for all purposes under such a plan for the period of the violation.

(e) If an employer proves to the satisfaction of the Director that the act or omission that violated this Act was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this Act, the Director may in his or her discretion reduce the amount of liability provided for in this Section.

Section 40. Civil penalty.

(a) An employer who fails to give notice as required by paragraph (2) of subsection (a) of Section 10 is subject to a civil penalty of not more than $500 for each day of the employer's violation. The employer is not subject to a civil penalty under this Section if the employer pays to all applicable employees the amounts for which the employer is liable under Section 35 within 3 weeks from the date the employer orders the mass layoff, relocation, or employment

loss.

(b) The total amount of penalties for which an employer may be liable under this Section shall not exceed the maximum amount of penalties for which the employer may be liable under federal law for the same violation.

(c) Any penalty amount paid by the employer under federal law shall be considered a payment made under this Act.

(d) If an employer proves to the satisfaction of the Director that the act or omission that violated this Act was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this Act, the Director may in his or her discretion reduce the amount of the penalty provided for in this Section.

Section 45. Advisory notice from Department of Commerce and Economic Opportunity. Before September 30 of each year, the Department of Commerce and Economic Opportunity, with the cooperation of the Department of Employment Security, must issue a written notice to each employer that reported to the Department of Employment Security that the employer paid wages to 75 or more individuals with respect to any quarter in the immediately preceding calendar year. The notice must indicate that the employer may be subject to this Act and must generally advise the employer about the requirements of this Act and the remedies provided for violations of this Act.

Section 50. Applicability. This Act applies to plant closings or relocations occurring on or after January 1, 2005.

Section 55. Interpretation. Whenever possible, this Act shall be interpreted in a manner consistent with the federal Worker Adjustment and Retraining Notification Act and the federal regulations and court decisions interpreting that Act to the extent that the provisions of federal and State law are the same.

(20 ILCS 1005/1005-60 rep.)

Section 85. The Department of Employment Security Law of the Civil Administrative Code of Illinois is amended by repealing Section 1005-60.

Section 90. The Unemployment Insurance Act is amended by adding Section 500.1 as follows:

(820 ILCS 405/500.1 new)

Sec. 500.1. Illinois Worker Adjustment and Retraining Notification Act; federal Worker Adjustment and Retraining Notification Act. Benefits payable under this Act may not be denied or reduced because of the receipt of payments related to an employer's violation of the Illinois Worker Adjustment and Retraining Notification Act or the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.).

Section 97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Section 99. Effective date. This Act takes effect January 1, 2005.