

VETO MESSAGE:

Yes

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No

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RWH 5/13/08

Title 34.
Chapter 21. (New)
Plant Closings,
Transfers, Mass
Layoffs
§§1-7 -
C.34:21-1 to
34:21-7

P.L. 2007, CHAPTER 212, *approved December 20, 2007*
Assembly, No. 1044 (*Fifth Reprint*)

1 AN ACT concerning prenotification of certain plant closings³,
2 transfers and mass layoffs³ and supplementing Title 34 of the
3 Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. As used in this act:

9 "Commissioner" means the Commissioner of Labor and
10 Workforce Development.

11 "Department" means the Department of Labor and Workforce
12 Development.

13 "Employer" means an individual or private business entity which
14 employs the workforce at an establishment.

15 "Establishment" means a single place of employment which has
16 been operated by an employer for a period longer than three years,
17 but shall not include a temporary construction site.

18 ³"Establishment" may be a single location or a group of contiguous
19 locations, including groups of facilities which form an office or
20 industrial park or separate facilities just across the street from each
21 other.

22 "Facility" means a building.³

23 ²"Full-time employee" means an employee who is not a part-time
24 employee.

25 "Mass layoff" means a reduction in force which is not the result
26 of a transfer or termination of operations and which results in the
27 termination of employment at an establishment during any 30-day
28 period for 500 or more full-time employees or for 50 or more of the
29 full-time employees representing one third or more of the full-time
30 employees at the establishment.

31 ³"Operating unit" means an organizationally distinct product,

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALA committee amendments adopted February 27, 2006.

²Assembly floor amendments adopted May 22, 2006.

³Assembly floor amendments adopted June 8, 2006.

⁴Senate floor amendments adopted March 12, 2007.

⁵Assembly amendments adopted in accordance with Governor's recommendations December 10, 2007.

1 operation, or specific work function within or across facilities at a
2 single establishment.³

3 "Part-time employee" means an employee who is employed for
4 an average of fewer than 20 hours per week or who has been
5 employed for fewer than six of the 12 months preceding the date on
6 which notice is required pursuant to this act.²

7 "Response team" means the plant closing response team
8 established pursuant to section 5 of this act.

9 "Termination of employment" means the layoff of an employee
10 without a commitment to reinstate the employee to his previous
11 employment within six months of the layoff, except that
12 "termination of employment" shall not mean ²a voluntary departure
13 or retirement or a discharge or suspension for misconduct of the
14 employee connected with the employment or² any layoff of a
15 seasonal employee or refer to any situation in which an employer
16 offers to an employee, at a location inside the State and not more
17 than 50 miles from the previous place of employment, the same
18 employment or a position with equivalent status, benefits, pay and
19 other terms and conditions of employment¹, and, except that a
20 layoff of more than six months which, at its outset, was announced
21 to be a layoff of six months or less, shall not be treated as a
22 termination of employment under this act if the extension beyond
23 six months is caused by business circumstances not reasonably
24 foreseeable at the time of the initial layoff, and notice is given at the
25 time it becomes reasonably foreseeable that the extension beyond
26 six months will be required¹.

27 "Termination of operations" means the ³termination of all or a
28 portion of the operations conducted in an] permanent or temporary
29 shutdown of a single³ establishment³, or of one or more facilities or
30 operating units within a single establishment³, except ³[for] that
31 "termination of operations" shall not include³ a termination of
32 operations made necessary because of a ²[court order, including
33 bankruptcy,]² fire, flood, natural disaster, national emergency, act
34 of war, civil disorder or industrial sabotage¹, decertification from
35 participation in the Medicare and Medicaid programs as provided
36 under Titles XVIII and XIX of the federal "Social Security Act,"
37 ²[P.L.] Pub.L.² 74-271 (42 U.S.C. s.1395 et seq.) or license
38 revocation pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.)¹.

39 "Transfer of operations" means the ³permanent or temporary³
40 transfer of ³[all or a portion of the operations conducted in an] a
41 single³ establishment³, or one or more facilities or operating units
42 within a single establishment,³ to another location, inside or outside
43 of this State.
44

45 2. If an establishment is subject to a transfer of operations or a
46 termination of operations which results, during any continuous

1 period of not more than ¹[180] ²[90¹] 30² days, in the termination
 2 of employment of 50 or more ²full-time² employees, ²or if an
 3 employer conducts a mass layoff,² the employer who operates the
 4 establishment ²or conducts the mass layoff² shall:

5 a. Provide, in the case of an employer who employs ¹[200]
 6 ²[50¹] 100² or more ²full-time² employees, not less than ¹[180]
 7 ⁵[90¹] 60⁵ days ⁵. or the period of time required pursuant to the
 8 federal "Worker Adjustment and Retraining Notification Act," 29
 9 U.S.C. s.2101 et seq., or any amendments thereto, whichever is
 10 longer,⁵ before the first termination of employment occurs in
 11 connection with the termination or transfer of operations, ¹[or, in
 12 the case of an employer who employs more than 49 and less than
 13 200 employees, not less than 90 days before the first termination of
 14 employment occurs in connection with the termination or transfer of
 15 operations,]¹ ²or mass layoff,² notification of the termination or
 16 transfer of operations ²or mass layoff² to the Commissioner of
 17 Labor and Workforce Development, the chief elected official of the
 18 municipality where the establishment is located, each employee
 19 whose employment is to be terminated and any collective
 20 bargaining units of employees at the establishment;

21 b. Provide to each ²full-time² employee whose employment is
 22 terminated and to whom the employer provides less than the
 23 number of days of notification required pursuant to subsection a. of
 24 this section, severance pay equal to one week of pay for each ²full²
 25 year of employment. The rate of severance pay provided by the
 26 employer pursuant to this subsection b. shall be ¹[one-half of]¹ the
 27 average regular rate of compensation received during the
 28 employee's last three years of employment with the employer or
 29 ¹[one-half of]¹ the final regular rate of compensation paid to the
 30 employee, whichever rate is higher. The severance pay provided by
 31 the employer pursuant ²to² this subsection b. shall be in addition to
 32 any severance pay provided by the employer pursuant to a
 33 collective bargaining agreement or for any other reason, except that
 34 any back pay provided by the employer to the employee pursuant to
 35 section 5 of the "Worker Adjustment and Retraining Notification
 36 Act," Pub.L.100-379 (29 U.S.C. ¹[§] s.¹ 2104), because of a
 37 violation of section 3 of that act (29 U.S.C. ¹[§] s.¹ 2102) shall be
 38 credited toward meeting the severance pay requirements of this
 39 subsection b.; ²and²

40 c. Provide the response team with the amount of on-site work-
 41 time access to the employees of the establishment that the response
 42 team determines is necessary for the response team to carry out its
 43 responsibilities pursuant to section 5 of this act.

44 ²In determining whether a termination or transfer of operations
 45 or a mass layoff is subject to the notification requirements of this
 46 section, any terminations of employment for two or more groups at

1 a single establishment occurring within any 90-day period, when
2 each group has less than the number of terminations which would
3 trigger the notification requirements of this section but the
4 aggregate for all of the groups exceeds that number, shall be
5 regarded as subject to the notification requirements unless the
6 employer demonstrates that the cause of the terminations for each
7 group is separate and distinct from the causes of the terminations
8 for the other group or groups.²
9

10 3. The notification provided pursuant to subsection a. of
11 section 2 of this act shall include:

12 a. A statement of the number of employees whose employment
13 will be terminated in connection with the ²mass layoff or² transfer
14 or termination of operations of the establishment, the date or dates
15 on which the ²mass layoff or² transfer or termination of operations
16 and each termination of employment will occur;

17 b. A statement of the reasons for the ²mass layoff or² transfer
18 or termination of operations;

19 c. A statement of any employment available to employees at
20 any other establishment operated by the employer, and information
21 regarding the benefits, pay and other terms and conditions of that
22 employment and the location of the other establishment;

23 d. A statement of any employee rights with respect to wages,
24 severance pay, benefits, pension or other terms of employment as
25 they relate to the termination, including, but not limited to, any
26 rights based on a collective bargaining agreement or other existing
27 employer policy;

28 e. A disclosure of the amount of the severance pay which is
29 payable pursuant to the provisions of subsection b. of section 2 of
30 this act; and

31 f. A statement of the employees' right to receive from the
32 response team, pursuant to subsection c. of section 2 and subsection
33 a. of section 5 of this act, information, referral and counseling
34 regarding: public programs which may make it possible to delay or
35 prevent the transfer or termination of operations ²or mass layoff²;
36 public programs and benefits to assist the employees; and employee
37 rights based on law.

38 The notification shall be in writing and, after the commissioner
39 has made a form for the notification available to employers,
40 provided on that form. The commissioner shall make the form
41 available to employers not more than 90 days following the
42 effective date of this act.
43

44 4. This act shall not be construed as limiting or modifying any
45 provision of a collective bargaining agreement which requires
46 notification, severance payment or other benefits on terms which
47 are more favorable to employees than those required by this act.

1 5. a. There is established, in the Department of Labor and
2 Workforce Development, a response team. The purpose of the
3 response team is to provide appropriate information, referral and
4 counseling, as rapidly as possible, to workers who are subject to
5 plant closings or mass layoffs.

6 b. In the case of each transfer or termination of the operations in
7 an establishment which results in the termination of 50 or more
8 employees, the response team shall:

9 (1) Offer to meet with the representatives of the management of
10 the establishment to discuss available public programs which may
11 make it possible to delay or prevent the transfer or termination of
12 operations, including economic development incentive and
13 workforce development programs;

14 (2) Meet on site with workers and provide information, referral
15 and counseling regarding:

16 (a) Available public programs which may make it possible to
17 delay or prevent the transfer or termination of operations, including
18 economic development incentive and workforce development
19 programs;

20 (b) Public programs or benefits which may be available to assist
21 the employees, including, but not limited to, unemployment
22 compensation benefits, job training or retraining programs, and job
23 search assistance; and

24 (c) Employee rights based on this act or any other law which
25 applies to the employees with respect to wages, severance pay,
26 benefits, pensions or other terms of employment as they relate to
27 the termination of employment; and

28 (3) Seek to facilitate cooperation between representatives of the
29 management and employees at the establishment to most effectively
30 utilize available public programs which may make it possible to
31 delay or prevent the transfer or termination of operations or to assist
32 employees if it is not possible to prevent the termination.

33
34 6. An aggrieved employee or former employee or his authorized
35 representative may ⁴[file a complaint with the department or]⁴
36 initiate suit in Superior Court under this act either individually or
37 on behalf of employees or former employees affected by a violation
38 of the provisions of this act. If an action is undertaken on behalf of
39 affected employees or former employees, the party initiating the
40 action shall inform the department, which shall notify each affected
41 employee or former employee. If ⁴[the department or]⁴ the court
42 finds the employer has violated the provisions of this act, it shall
43 award to the aggrieved present or former employees: costs of the
44 action, including reasonable attorneys' fees; ⁴and⁴ compensatory
45 damages, including lost wages, benefits and other remuneration.
46 Any award of compensatory damages for lost wages shall be limited
47 to the amount of severance pay required pursuant to subsection b. of

1 section 2 of this act.

2

3 ³7. This act shall be known and may be cited as the “Millville
4 Dallas Airmotive Plant Job Loss Notification Act.”³

5

6 ³[7.] 8.³ This act shall take effect immediately.

7

8

9

10

11 Requires prenotification of certain plant closings, transfers and
12 mass layoffs.

ASSEMBLY, No. 1044

STATE OF NEW JERSEY

212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Assemblyman JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblyman JOSEPH V. EGAN

District 17 (Middlesex and Somerset)

Co-Sponsored by:

Assemblymen Gordon and Diegnan

SYNOPSIS

Requires prenotification of certain plant closings.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 2/24/2006)

1 AN ACT concerning prenotification of certain plant closings and
2 supplementing Title 34 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act:

8 "Commissioner" means the Commissioner of Labor and
9 Workforce Development.

10 "Department" means the Department of Labor and Workforce
11 Development.

12 "Employer" means an individual or private business entity which
13 employs the workforce at an establishment.

14 "Establishment" means a single place of employment which has
15 been operated by an employer for a period longer than three years,
16 but shall not include a temporary construction site.

17 "Response team" means the plant closing response team
18 established pursuant to section 5 of this act.

19 "Termination of employment" means the layoff of an employee
20 without a commitment to reinstate the employee to his previous
21 employment within six months of the layoff, except that
22 "termination of employment" shall not mean any layoff of a
23 seasonal employee or refer to any situation in which an employer
24 offers to an employee, at a location inside the State and not more
25 than 50 miles from the previous place of employment, the same
26 employment or a position with equivalent status, benefits, pay and
27 other terms and conditions of employment.

28 "Termination of operations" means the termination of all or a
29 portion of the operations conducted in an establishment, except for
30 a termination of operations made necessary because of a court
31 order, including bankruptcy, fire, flood, natural disaster, national
32 emergency, act of war, civil disorder or industrial sabotage.

33 "Transfer of operations" means the transfer of all or a portion of
34 the operations conducted in an establishment to another location,
35 inside or outside of this State.

36

37 2. If an establishment is subject to a transfer of operations or a
38 termination of operations which results, during any continuous
39 period of not more than 180 days, in the termination of employment
40 of 50 or more employees, the employer who operates the
41 establishment shall:

42 a. Provide, in the case of an employer who employs 200 or more
43 employees, not less than 180 days before the first termination of
44 employment occurs in connection with the termination or transfer of
45 operations, or, in the case of an employer who employs more than
46 49 and less than 200 employees, not less than 90 days before the
47 first termination of employment occurs in connection with the
48 termination or transfer of operations, notification of the termination

1 or transfer of operations to the Commissioner of Labor and
2 Workforce Development, the chief elected official of the
3 municipality where the establishment is located, each employee
4 whose employment is to be terminated and any collective
5 bargaining units of employees at the establishment;

6 b. Provide to each employee whose employment is terminated
7 and to whom the employer provides less than the number of days of
8 notification required pursuant to subsection a. of this section,
9 severance pay equal to one week of pay for each year of
10 employment. The rate of severance pay provided by the employer
11 pursuant to this subsection b. shall be one-half of the average
12 regular rate of compensation received during the employee's last
13 three years of employment with the employer or one-half of the
14 final regular rate of compensation paid to the employee, whichever
15 rate is higher. The severance pay provided by the employer
16 pursuant this subsection b. shall be in addition to any severance pay
17 provided by the employer pursuant to a collective bargaining
18 agreement or for any other reason, except that any back pay
19 provided by the employer to the employee pursuant to section 5 of
20 the "Worker Adjustment and Retraining Notification Act,"
21 Pub.L.100-379 (29 U.S.C. §2104), because of a violation of section
22 3 of that act (29 U.S.C. §2102) shall be credited toward meeting the
23 severance pay requirements of this subsection b.;

24 c. Provide the response team with the amount of on-site work-
25 time access to the employees of the establishment that the response
26 team determines is necessary for the response team to carry out its
27 responsibilities pursuant to section 5 of this act.

28
29 3. The notification provided pursuant to subsection a. of section
30 2 of this act shall include:

31 a. A statement of the number of employees whose employment
32 will be terminated in connection with the transfer or termination of
33 operations of the establishment, the date or dates on which the
34 transfer or termination of operations and each termination of
35 employment will occur;

36 b. A statement of the reasons for the transfer or termination of
37 operations;

38 c. A statement of any employment available to employees at any
39 other establishment operated by the employer, and information
40 regarding the benefits, pay, and other terms and conditions of that
41 employment and the location of the other establishment;

42 d. A statement of any employee rights with respect to wages,
43 severance pay, benefits, pension or other terms of employment as
44 they relate to the termination, including, but not limited to, any
45 rights based on a collective bargaining agreement or other existing
46 employer policy;

47 e. A disclosure of the amount of the severance pay which is
48 payable pursuant to the provisions of subsection b. of section 2 of

1 this act; and

2 f. A statement of the employees' right to receive from the
3 response team, pursuant to subsection c. of section 2 and subsection
4 a. of section 5 of this act, information, referral and counseling
5 regarding: public programs which may make it possible to delay or
6 prevent the transfer or termination of operations; public programs
7 and benefits to assist the employees; and employee rights based on
8 law.

9 The notification shall be in writing and, after the commissioner
10 has made a form for the notification available to employers,
11 provided on that form. The commissioner shall make the form
12 available to employers not more than 90 days following the
13 effective date of this act.

14

15 4. This act shall not be construed as limiting or modifying any
16 provision of a collective bargaining agreement which requires
17 notification, severance payment or other benefits on terms which
18 are more favorable to employees than those required by this act.

19

20 5. a. There is established, in the Department of Labor and
21 Workforce Development, a response team. The purpose of the
22 response team is to provide appropriate information, referral and
23 counseling, as rapidly as possible, to workers who are subject to
24 plant closings or mass layoffs.

25 b. In the case of each transfer or termination of the operations in
26 an establishment which results in the termination of 50 or more
27 employees, the response team shall:

28 (1) Offer to meet with the representatives of the management of
29 the establishment to discuss available public programs which may
30 make it possible to delay or prevent the transfer or termination of
31 operations, including economic development incentive and
32 workforce development programs;

33 (2) Meet on site with workers and provide information, referral
34 and counseling regarding:

35 (a) Available public programs which may make it possible to
36 delay or prevent the transfer or termination of operations, including
37 economic development incentive and workforce development
38 programs;

39 (b) Public programs or benefits which may be available to assist
40 the employees, including, but not limited to, unemployment
41 compensation benefits, job training or retraining programs, and job
42 search assistance; and

43 (c) Employee rights based on this act or any other law which
44 applies to the employees with respect to wages, severance pay,
45 benefits, pensions or other terms of employment as they relate to
46 the termination of employment; and

47 (3) Seek to facilitate cooperation between representatives of the
48 management and employees at the establishment to most effectively

1 utilize available public programs which may make it possible to
2 delay or prevent the transfer or termination of operations or to assist
3 employees if it is not possible to prevent the termination.
4

5 6. An aggrieved employee or former employee or his authorized
6 representative may file a complaint with the department or initiate
7 suit in Superior Court under this act either individually or on behalf
8 of employees or former employees affected by a violation of the
9 provisions of this act. If an action is undertaken on behalf of
10 affected employees or former employees, the party initiating the
11 action shall inform the department, which shall notify each affected
12 employee or former employee. If the department or the court finds
13 the employer has violated the provisions of this act, it shall award to
14 the aggrieved present or former employees: costs of the action,
15 including reasonable attorneys' fees; compensatory damages,
16 including lost wages, benefits and other remuneration. Any award
17 of compensatory damages for lost wages shall be limited to the
18 amount of severance pay required pursuant to subsection b. of
19 section 2 of this act.
20

21 7. This act shall take effect immediately.
22
23

24 STATEMENT 25

26 This bill requires prenotification for certain anticipated plant
27 closings and mass layoffs in order to provide the time needed to
28 avoid closings of viable plants, and, if a closing is unavoidable, to
29 help workers to effectively utilize the services needed to make a
30 timely transition to new employment or occupations.

31 The bill requires that in a plant closing or mass layoff involving
32 the permanent layoff of 50 or more employees, the employer is
33 required to provide:

34 1. A notice, 180 days in advance if the employer has 200 or
35 more employees or 90 days in advance if the employer has more
36 than 49 and less than 200 employees, of the closing or mass layoff
37 to the Commissioner of Labor and Workforce Development, the
38 local municipality, the employees and their representatives; and

39 2. If the required prenotification is not given, the payment of
40 one week of severance pay per year of service, whether or not the
41 workplace is located in the Urban Enterprise Zone. This severance
42 pay would be in addition to any severance pay provided by the
43 employer for any other reason, except that payments imposed on the
44 employer because of a violation of federal prenotification standards
45 would be credited toward meeting this bill's severance pay
46 requirements. The severance pay would be one-half of the average
47 regular pay rate.

48 The notification requirements of the bill do not apply to

A1044 VAN DREW, JOHNSON

6

1 governmental employers, to seasonal employees or layoffs where
2 the employer has a commitment to rehire within six months, to
3 employers who offer alternative employment at a location not more
4 than 50 miles from the previous job site, or to terminations made
5 necessary by bankruptcy or other court orders, fires and other
6 disasters or circumstances beyond the control of the employer.

7 The bill also establishes a response team in the Department of
8 Labor and Workforce Development to provide counseling, referral
9 and other appropriate services, as rapidly as possible, to workers
10 who are subject to plant closings or mass layoffs covered by the
11 bill. The bill requires an employer to provide access to employees
12 so that the team may carry out its responsibilities under the bill.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1044

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 27, 2006

The Assembly Labor Committee reports favorably Assembly Bill No. 1044, with committee amendments.

As amended by the committee, the bill requires prenotification for certain anticipated plant closings and mass layoffs in order to provide the time needed to avoid closings of viable plants, and, if a closing is unavoidable, to help workers to effectively utilize the services needed to make a timely transition to new employment or occupations.

As amended, the bill requires that in a plant closing or mass layoff involving the permanent layoff of 50 or more employees, the employer is required to provide:

1. A notice, not less than 90 days in advance, if the employer has 50 or more employees, of the closing or mass layoff to the Commissioner of Labor and Workforce Development, the local municipality, the employees and their representatives; and

2. If the required prenotification is not given, the payment of one week of severance pay per year of service to affected employees. This severance pay would be in addition to any severance pay provided by the employer for any other reason, except that payments imposed on the employer because of a violation of federal prenotification standards would be credited toward meeting this bill's severance pay requirements.

The notification requirements of the bill do not apply to governmental employers, to seasonal employees or layoffs where the employer has a commitment to rehire within six months, to employers who offer alternative employment at a location not more than 50 miles from the previous job site, or to terminations made necessary by bankruptcy or other court orders, fires and other disasters, or decertification from participation in the federal Medicare and Medicaid programs or facility license revocation pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.).

The bill also establishes a response team in the Department of Labor and Workforce Development to provide counseling, referral and other appropriate services, as rapidly as possible, to workers who are subject to plant closings or mass layoffs covered by the bill. The bill

requires an employer to provide access to employees so that the team may carry out its responsibilities under the bill.

The committee amendments provide that:

1. A layoff of more than six months which, at its outset, was announced to be a layoff of six months or less, is not treated as a termination of employment under the bill if the extension beyond six months is caused by business circumstances not reasonably foreseeable at the time of the initial layoff, and notice is given at the time it becomes reasonably foreseeable that the extension beyond six months will be required;

2. A hospital is not subject to the bill for terminating operations because of decertification from participation in the federal Medicare and Medicaid programs or facility license revocation pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.);

3. The minimum period of prenotification for an employer of more than 200 employees is reduced from 180 days to 90 days, making it the same as the 90-day prenotification required for an employer of 50 to 199 employees: and

4. The rate of severance pay under the bill is the average rate of compensation during the employee's last three years of employment or the final rate of compensation, whichever rate is higher, not one-half of those rates.

This bill was pre-filed for introduction in the 2006-2007 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

SENATE LABOR COMMITTEE

STATEMENT TO

[Third Reprint]

ASSEMBLY, No. 1044

STATE OF NEW JERSEY

DATED: FEBRUARY 26, 2007

The Senate Labor Committee reports favorably Assembly Bill No.1044.

This bill, entitled the "Millville Dallas Airmotive Plant Job Loss Notification Act," requires prenotification for certain anticipated plant closings and mass layoffs in order to provide the time needed to avoid closings of viable plants, and, if a closing is unavoidable, to help workers to effectively utilize the services needed to make a timely transition to new employment or occupations.

The bill requires that any employer of 100 or more employees who conducts a plant closing or mass layoff resulting in the permanent layoff of 50 or more full-time employees in a 30 day period to provide:

1. A notice, not less than 90 days in advance of the closing or mass layoff to the Commissioner of Labor and Workforce Development, the local municipality, the employees and their representatives; and

2. If the required prenotification is not given, provide each terminated full-time employee severance pay at a rate of one week of pay for each full year of employment, based on the average rate of compensation during the employee's last three years of employment or the final rate of compensation, whichever rate is higher.

In any mass layoff in which terminations of employment are not the result of a transfer or termination of operations, the employer is not required to give notice unless, during a 30-day period, at least 500 employees are terminated or at least 50 employees, representing at least one third of the full-time employees, are terminated.

Excluded from the provisions of the bill are any part-time employee who is employed for an average of less than 20 hours per week or who has been employed for less than six months of the 12 months preceding the date on which notice is required pursuant to the bill and excludes from the definition of "termination of employment" any voluntary departure or retirement, and any discharge or suspension for misconduct connected with the employment.

Also excluded are governmental employers, seasonal employees or layoffs where the employer has a commitment to rehire within six months, to employers who offer alternative employment at a location

not more than 50 miles from the previous job site, or to terminations made necessary fires and other disasters, or, in the case of a health care facility, decertification from participation in the federal Medicare and Medicaid programs or facility license revocation.

A layoff of more than six months which, at its outset, was announced to be a layoff of six months or less, is not treated as a termination of employment under the bill if the extension beyond six months is caused by business circumstances not reasonably foreseeable at the time of the initial layoff, and notice is given at the time it becomes reasonably foreseeable that the extension beyond six months will be required.

The bill also establishes a response team in the Department of Labor and Workforce Development to provide counseling, referral and other appropriate services, as rapidly as possible, to workers who are subject to plant closings or mass layoffs covered by the bill. The bill requires an employer to provide access to employees so that the team may carry out its responsibilities under the bill.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 1044

with Assembly Floor Amendments
(Proposed By Assemblyman VAN DREW)

ADOPTED: MAY 22, 2006

These Assembly amendments:

1. Exclude from the provisions of the bill any employee who is employed for an average of less than 20 hours per week or who has been employed for less than six months of the 12 months preceding the date on which notice is required pursuant to the bill;

2. Exclude from the definition of "termination of employment" any voluntary departure or retirement and any discharge or suspension for misconduct connected with the employment;

3. Reduce, from 90 days to 30 days, the continuous period in which the minimum numbers of terminations of employment must occur to trigger the bill's notification requirements, except that if two or more groups are subject to terminations of employment over a 90-day period and the aggregate number of terminations exceeds the trigger, the notification requirements apply unless the employer demonstrates that the cause of the terminations for each group is separate and distinct from the causes of the terminations for the other group or groups;

4. Increase, from 50 to 100, the minimum number of employees employed by an employer for the employer to be subject to the bill's notification requirements;

5. Provide, in any mass layoff in which terminations of employment are not the result of a transfer or termination of operations, that the employer is not required to give notice unless, during a 30-day period, at least 500 employees are terminated or at least 50 employees, representing at least one third of the full-time employees, are terminated; and

6. Remove the exemption from the provisions of the bill for any termination of operations due to bankruptcy or other court order.

All of the amendments are based on provisions of the federal "Worker Adjustment and Retraining Notification Act," Pub.L.100-379 (29 U.S.C. s.2101 et seq.).

STATEMENT TO
[Second Reprint]
Assembly, No. 1044

with Assembly Floor Amendments
(Proposed By Assemblyman VAN DREW)

ADOPTED: JUNE 8, 2006

These Assembly amendments modify the definitions in the bill of "termination of operations" and "transfer of operations" from the termination or transfer of all or a portion of operations at an establishment to the permanent or temporary shut down or transfer of a single establishment, or one or more facilities or operating units within a single establishment. The amendments define "facility" to mean a building, and "operating unit" to mean an organizationally distinct product, operation, or specific work function within or across facilities at a single establishment.

The amendments to the bill's definitions of termination or transfer of operations make them consistent with the definition of "plant closing" in the federal "Worker Adjustment and Retraining Notification Act," Pub.L.100-379 (29 U.S.C. s.2101 et seq.) and the definitions of facility and operating unit are based on the definitions in the regulations adopted pursuant to that act.

Finally, the amendments entitle the bill the "Millville Dallas Airmotive Plant Job Loss Notification Act" in honor of the workers who were laid off when that plant closed in 2004 and who would have been given greater protection had this bill been in effect at that time.

STATEMENT TO
[Third Reprint]
ASSEMBLY, No. 1044

with Senate Floor Amendments
(Proposed By Senator SWEENEY)

ADOPTED: MARCH 12, 2007

These Senate amendments remove the provisions of the bill making the Department of Labor and Workforce Development responsible for adjudicating complaints from employees and former employees regarding violations of the bill and awarding damages and costs of the action, leaving the Superior Court with exclusive jurisdiction in actions for violations of the bill's provisions.

SENATE, No. 472

STATE OF NEW JERSEY
212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator JOSEPH V. DORIA, JR.

District 31 (Hudson)

Co-Sponsored by:

Senator Asselta

SYNOPSIS

Requires prenotification of certain plant closings.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning prenotification of certain plant closings and
2 supplementing Title 34 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act:

8 "Commissioner" means the Commissioner of Labor and
9 Workforce Development.

10 "Department" means the Department of Labor and Workforce
11 Development.

12 "Employer" means an individual or private business entity which
13 employs the workforce at an establishment.

14 "Establishment" means a single place of employment which has
15 been operated by an employer for a period longer than three years,
16 but shall not include a temporary construction site.

17 "Response team" means the response team established pursuant
18 to section 5 of this act.

19 "Termination of employment" means the layoff of an employee
20 without a commitment to reinstate the employee to his previous
21 employment within six months of the layoff, except that
22 "termination of employment" shall not mean any layoff of a
23 seasonal employee or refer to any situation in which an employer
24 offers to an employee, at a location inside the State and not more
25 than 50 miles from the previous place of employment, the same
26 employment or a position with equivalent status, benefits, pay and
27 other terms and conditions of employment.

28 "Termination of operations" means the termination of all or a
29 portion of the operations conducted in an establishment, except for
30 a termination of operations made necessary because of a court
31 order, fire, flood, natural disaster, national emergency, act of war,
32 civil disorder or industrial sabotage.

33 "Transfer of operations" means the transfer of all or a portion of
34 the operations conducted in an establishment to another location,
35 inside or outside of this State.

36

37 2. If an establishment is subject to a transfer of operations or a
38 termination of operations which results, during any continuous
39 period of not more than 180 days, in the termination of employment
40 of 50 or more employees, the employer who operates the
41 establishment shall:

42 a. Provide, in the case of an employer who employs 200 or more
43 employees, not less than 180 days before the first termination of
44 employment occurs in connection with the termination or transfer of
45 operations, or, in the case of an employer who employs more than
46 49 and less than 200 employees, not less than 90 days before the
47 first termination of employment occurs in connection with the
48 termination or transfer of operations, notification of the termination

1 or transfer of operations to the Commissioner of Labor and
2 Workforce Development, the chief elected official of the
3 municipality where the establishment is located, each employee
4 whose employment is to be terminated and any collective
5 bargaining units of employees at the establishment;

6 b. Provide to each employee whose employment is terminated
7 and to whom the employer provides less than the number of days of
8 notification required pursuant to subsection a. of this section,
9 severance pay equal to one week of pay for each year of
10 employment. The rate of severance pay provided by the employer
11 pursuant to this subsection b. shall be one-half of the average
12 regular rate of compensation received during the employee's last
13 three years of employment with the employer or one-half of the
14 final regular rate of compensation paid to the employee, whichever
15 rate is higher. The severance pay provided by the employer
16 pursuant this subsection b. shall be in addition to any severance pay
17 provided by the employer pursuant to a collective bargaining
18 agreement or for any other reason, except that any back pay
19 provided by the employer to the employee pursuant to section 5 of
20 the "Worker Adjustment and Retraining Notification Act,"
21 Pub.L.100-379 (29 U.S.C. §2104), because of a violation of section
22 3 of that act (29 U.S.C. §2102) shall be credited toward meeting the
23 severance pay requirements of this subsection b.;

24 c. Provide the response team with the amount of on-site work-
25 time access to the employees of the establishment that the response
26 team determines is necessary for the response team to carry out its
27 responsibilities pursuant to section 5 of this act.

28
29 3. The notification provided pursuant to subsection a. of section
30 2 of this act shall include:

31 a. A statement of the number of employees whose employment
32 will be terminated in connection with the transfer or termination of
33 operations of the establishment, the date or dates on which the
34 transfer or termination of operations and each termination of
35 employment will occur;

36 b. A statement of the reasons for the transfer or termination of
37 operations;

38 c. A statement of any employment available to employees at any
39 other establishment operated by the employer, and information
40 regarding the benefits, pay, and other terms and conditions of that
41 employment and the location of the other establishment;

42 d. A statement of any employee rights with respect to wages,
43 severance pay, benefits, pension or other terms of employment as
44 they relate to the termination, including, but not limited to, any
45 rights based on a collective bargaining agreement or other existing
46 employer policy;

1 e. A disclosure of the amount of the severance pay which is
2 payable pursuant to the provisions of subsection b. of section 2 of
3 this act; and

4 f. A statement of the employees' right to receive from the
5 response team, pursuant to subsection c. of section 2 and subsection
6 a. of section 5 of this act, information, referral and counseling
7 regarding: public programs which may make it possible to delay or
8 prevent the transfer or termination of operations; public programs
9 and benefits to assist the employees; and employee rights based on
10 law.

11 The notification shall be in writing and, after the commissioner
12 has made a form for the notification available to employers,
13 provided on that form. The commissioner shall make the form
14 available to employers not more than 90 days following the
15 effective date of this act.

16

17 4. This act shall not be construed as limiting or modifying any
18 provision of a collective bargaining agreement which requires
19 notification, severance payment or other benefits on terms which
20 are more favorable to employees than those required by this act.

21

22 5. a. There is established, in the Department of Labor and
23 Workforce Development, a response team. The purpose of the
24 response team is to provide appropriate information, referral and
25 counseling, as rapidly as possible, to workers who are subject to
26 termination of operations or mass layoffs.

27 b. In the case of each transfer or termination of the operations in
28 an establishment which results in the termination of 50 or more
29 employees, the response team shall:

30 (1) Offer to meet with the representatives of the management of
31 the establishment to discuss available public programs which may
32 make it possible to delay or prevent the transfer or termination of
33 operations, including economic development incentive and
34 workforce development programs;

35 (2) Meet on site with workers and provide information, referral
36 and counseling regarding:

37 (a) Available public programs which may make it possible to
38 delay or prevent the transfer or termination of operations, including
39 economic development incentive and workforce development
40 programs;

41 (b) Public programs or benefits which may be available to assist
42 the employees, including, but not limited to, unemployment
43 compensation benefits, job training or retraining programs, and job
44 search assistance; and

45 (c) Employee rights based on this act or any other law which
46 applies to the employees with respect to wages, severance pay,
47 benefits, pensions or other terms of employment as they relate to
48 the termination of employment; and

1 (3) Seek to facilitate cooperation between representatives of the
2 management and employees at the establishment to most effectively
3 utilize available public programs which may make it possible to
4 delay or prevent the transfer or termination of operations or to assist
5 employees if it is not possible to prevent the termination.

6
7 6. An aggrieved employee or former employee or his authorized
8 representative may file a complaint with the department or initiate
9 suit in Superior Court under this act either individually or on behalf
10 of employees or former employees affected by a violation of the
11 provisions of this act. If an action is undertaken on behalf of
12 affected employees or former employees, the party initiating the
13 action shall inform the department. If the department or the court
14 finds the employer has violated the provisions of this act, it shall
15 award to the aggrieved present or former employees: costs of the
16 action, including reasonable attorneys' fees; compensatory damages,
17 including lost wages, benefits and other remuneration. Any award
18 of compensatory damages for lost wages shall be limited to the
19 amount of severance pay required pursuant to subsection b. of
20 section 2 of this act.

21
22 7. This act shall take effect immediately.

23
24
25 STATEMENT

26
27 This bill requires prenotification for certain anticipated plant
28 closings and mass layoffs in order to provide the time needed to
29 avoid closings of viable plants, and, if a closing is unavoidable, to
30 help workers to effectively utilize the services needed to make a
31 timely transition to new employment or occupations.

32 The bill requires that during a termination of operation or mass
33 layoff involving the permanent layoff of 50 or more employees, the
34 employer is required to provide:

35 1. A notice, 180 days in advance if the employer has 200 or
36 more employees or 90 days in advance if the employer has more
37 than 49 and less than 200 employees, of the termination or mass
38 layoff to the Commissioner of Labor and Workforce Development,
39 the local municipality, the employees and their representatives; and

40 2. If the required prenotification is not given, severance pay
41 equal to one week of pay for each year of employment. This
42 severance pay would be in addition to any severance pay provided
43 by the employer for any other reason, except that payments imposed
44 on the employer because of a violation of federal prenotification
45 standards would be credited toward meeting this bill's severance
46 pay requirements. The severance pay would be one-half of the
47 average regular pay rate.

S472 SWEENEY, DORIA

6

1 The notification requirements of the bill do not apply to
2 governmental employers, to seasonal employees or layoffs where
3 the employer has a commitment to rehire within six months, to
4 employers who offer alternative employment at a location not more
5 than 50 miles from the previous job site, or to terminations made
6 necessary by bankruptcy or other court orders, fires and other
7 disasters or circumstances beyond the control of the employer.

8 The bill also establishes a response team in the Department of
9 Labor and Workforce Development to provide counseling, referral
10 and other appropriate services, as rapidly as possible, to workers
11 who are subject to termination of operation or mass layoffs covered
12 by the bill. The bill requires an employer to provide access to
13 employees so that the team may carry out its responsibilities under
14 the bill.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 472

STATE OF NEW JERSEY

DATED: JANUARY 26, 2006

This bill requires prenotification for certain anticipated plant closings and mass layoffs in order to provide the time needed to avoid closings of viable plants, and, if a closing is unavoidable, to help workers effectively utilize the services needed to make a timely transition to new employment or occupations.

The bill requires that during a termination of operation or mass layoff involving the permanent layoff of 50 or more employees, the employer is required to provide:

1. A notice, 180 days in advance if the employer has 200 or more employees or 90 days in advance if the employer has more than 49 and less than 200 employees, of the termination or mass layoff to the Commissioner of Labor and Workforce Development, the local municipality, the employees and their representatives; and

2. If the required prenotification is not given, severance pay equal to one week of pay for each year of employment. This severance pay would be in addition to any severance pay provided by the employer for any other reason, except that payments imposed on the employer because of a violation of federal prenotification standards would be credited toward meeting this bill's severance pay requirements. The severance pay would be one-half of the average regular pay rate.

The notification requirements of the bill do not apply to governmental employers, to seasonal employees or layoffs where the employer has a commitment to rehire within six months, to employers who offer alternative employment at a location not more than 50 miles from the previous job site, or to terminations made necessary by bankruptcy or other court orders, fires and other disasters or circumstances beyond the control of the employer.

The bill also establishes a response team in the Department of Labor and Workforce Development to provide counseling, referral and other appropriate services, as rapidly as possible, to workers who are subject to termination of operation or mass layoffs covered by the bill. The bill requires an employer to provide access to employees so that the team may carry out its responsibilities under the bill.

This bill was pre-filed for introduction in the 2006-2007 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO

SENATE, No. 472

with Senate Floor Amendments
(Proposed By Senator SWEENEY)

ADOPTED: MARCH 20, 2006

This bill requires prenotification for certain anticipated plant closings and mass layoffs in order to provide the time needed to avoid closings of viable plants, and, if a closing is unavoidable, to help workers to effectively utilize the services needed to make a timely transition to new employment or occupations. The floor amendments provide that:

1. A layoff of more than six months which, at its outset, was announced to be a layoff of six months or less, is not treated as a termination of employment under the bill if the extension beyond six months is caused by business circumstances not reasonably foreseeable at the time of the initial layoff, and notice is given at the time it becomes reasonably foreseeable that the extension beyond six months will be required;

2. A hospital is not subject to the bill for terminating operations because of decertification from participation in the federal Medicare and Medicaid programs or license revocation pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.);

3. Any employer who employs 50 or more employees shall provide not less than 90 days notification before the first termination or employment occurs: and

4. The rate of severance pay under the bill is the average rate of compensation during the employee's last three years of employment or the final rate of compensation, whichever rate is higher, not one-half of those rates.

STATEMENT TO
[First Reprint]
SENATE, No. 472

with Senate Floor Amendments
(Proposed By Senator SWEENEY)

ADOPTED: JUNE 30, 2006

These Senate amendments:

1. Exclude from the provisions of the bill any employee who is employed for an average of less than 20 hours per week or who has been employed for less than six months of the 12 months preceding the date on which notice is required pursuant to the bill;

2. Exclude from the definition of "termination of employment" any voluntary departure or retirement and any discharge or suspension for misconduct connected with the employment;

3. Reduce, from 90 days to 30 days, the continuous period in which the minimum numbers of terminations of employment must occur to trigger the bill's notification requirements, except that if two or more groups are subject to terminations of employment over a 90-day period and the aggregate number of terminations exceeds the trigger, the notification requirements apply unless the employer demonstrates that the cause of the terminations for each group is separate and distinct from the causes of the terminations for the other group or groups;

4. Increase, from 50 to 100, the minimum number of employees employed by an employer for the employer to be subject to the bill's notification requirements;

5. Provide, in any mass layoff in which terminations of employment are not the result of a transfer or termination of operations, that the employer is not required to give notice unless, during a 30-day period, at least 500 employees are terminated or at least 50 employees, representing at least one third of the full-time employees, are terminated;

6. Remove the exemption from the provisions of the bill for any termination of operations due to bankruptcy or other court order;

7. Modify the definitions in the bill of "termination of operations" and "transfer of operations" from the termination or transfer of all or a portion of operations at an establishment to the permanent or temporary shut down or transfer of a single establishment, or one or more facilities or operating units within a single establishment;

8. Define "facility" to mean a building, and "operating unit" to mean an organizationally distinct product, operation, or specific work function within or across facilities at a single establishment;

9. Make the bill's definitions of termination or transfer of operations consistent with the definition of "plant closing" in the

federal "Worker Adjustment and Retraining Notification Act," Pub.L.100-379 (29 U.S.C.s.2101 et seq.) and the definitions of facility and operating unit are based on the definitions in the regulations adopted pursuant to that act.

All of the amendments described above are based on provisions of the federal "Worker Adjustment and Retraining Notification Act," Pub.L.100-379 (29 U.S.C.s.2101 et seq.).

Finally, the amendments give the bill the title of "Millville Dallas Airmotive Plant Job Loss Notification Act" in honor of the workers who were laid off when that plant closed in 2004 and who would have been given greater protection had this bill been in effect at that time.

STATEMENT TO

[Second Reprint]

SENATE, No. 472

with Senate Floor Amendments
(Proposed By Senator SWEENEY)

ADOPTED: MARCH 12, 2007

These Senate amendments remove the provisions of the bill making the Department of Labor and Workforce Development responsible for adjudicating complaints from employees and former employees regarding violations of the bill and awarding damages and costs of the action, leaving the Superior Court with exclusive jurisdiction in actions for violations of the bill's provisions.

ASSEMBLY BILL NO. 1044
(Fourth Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I herewith return Assembly Bill No. 1044 (Fourth Reprint) with my recommendations for reconsideration.

This bill would require private employers with 100 or more full-time employees to provide employees, union representatives and certain government officials with at least 90 days notice prior to any "mass layoff," "transfer of operations," or "termination of operations," as defined in the bill.

An employer's failure to provide notice in accordance with the provisions of the bill would result in the employer paying severance pay to each full-time employee that is equal to one week's pay for each full year the employee worked for the employer. The bill further provides that the amount of the severance would be calculated based on either the average regular rate of compensation received during the employee's last three years of employment with the employer, or the final regular rate of compensation paid to the employee, whichever rate is higher. The bill would require the severance pay to be in addition to any other severance pay provided by the employer to the employee pursuant to a collective bargaining agreement or for any other reason. The bill would also authorize the employee, or a representative, to initiate suit in Superior Court to enforce these protections.

I commend the sponsors for crafting a bill that seeks to balance the needs of both employees and employers and to address shortcomings with the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. ("WARN Act"). It is imperative that employees, union representatives, and governmental officials be provided notice prior to any mass layoffs or plant closures or transfers. Advance notification will allow public officials, employees, and their

representatives to bring their energies to bear to save or restructure going concerns, or, in the alternative, afford government the lead time necessary to implement job training and other workforce programs in a timely fashion. However, employers benefit from consistency with respect to notification laws of this type. In this respect, it is important to note that, under the federal WARN Act and under the laws of other states that have adopted their own plant-closure mandatory notice laws, employers are required to provide at least 60 days notice.

While I strongly encourage all employers to provide employees with as much notice as possible, and I support efforts in the Congress to lengthen the minimum notice provided under the WARN Act from 60 to 90 days, I recommend that New Jersey use the notification period that currently is in use in all other states - 60 days. I further recommend that this notice period be automatically extended to match any extension that may be made in the notice period under the WARN Act.

Accordingly, I herewith return Assembly Bill No. 1044 (Fourth Reprint) and recommend that it be amended as follows:

Page 3, Section 2, Line 43:

Delete "90" and insert "60 or the period of time required pursuant to the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq., or any amendments thereto, whichever is longer"

Respectfully,

/s/ Jon S. Corzine

Governor

[seal]

Attest:

/s/ Kenneth H. Zimmerman

Chief Counsel to the Governor