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State of Minnesota  
**HOUSE OF REPRESENTATIVES**

EIGHTY-EIGHTH SESSION

**H. F. No. 1266**

03/05/2013 Authored by Winkler and Sundin

The bill was read for the first time and referred to the Committee on Labor, Workplace and Regulated Industries

1.1 A bill for an act  
1.2 relating to employment; requiring employers to provide notice of business  
1.3 closings and mass layoffs; requiring rulemaking; providing penalties; proposing  
1.4 coding for new law as Minnesota Statutes, chapter 268B; repealing Minnesota  
1.5 Statutes 2012, section 116L.976.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. **[268B.01] MINNESOTA WORKER ADJUSTMENT AND**  
1.8 **RETRAINING NOTIFICATION ACT.**

1.9 This chapter shall be known and may be cited as the "Minnesota Worker Adjustment  
1.10 and Retraining Notification Act." This chapter is in addition to the requirements of the  
1.11 federal Worker Adjustment and Retraining Notification Act, United States Code, title  
1.12 29, sections 2101 to 2109.

1.13 Sec. 2. **[268B.02] DEFINITIONS.**

1.14 Subdivision 1. **Definitions.** For the purposes of this chapter, the terms in this section  
1.15 have the meanings given them.

1.16 Subd. 2. **Aggrieved employee.** "Aggrieved employee" means an employee who  
1.17 has worked for the employer ordering the business closing or mass layoff and who, as  
1.18 a result of the failure by the employer to comply with section 268B.03, did not receive  
1.19 timely notice either directly or through the employee's representative.

1.20 Subd. 3. **Business closing.** "Business closing" means the permanent or temporary  
1.21 shutdown of a single site of employment of one or more facilities or operating units that will  
1.22 result in an employment loss for 25 or more employees, other than part-time employees.

1.23 Subd. 4. **Commissioner.** "Commissioner" means the commissioner of employment  
1.24 and economic development.

2.1 Subd. 5. **Department.** "Department" means the Department of Employment and  
 2.2 Economic Development.

2.3 Subd. 6. **Employee.** "Employee" means a worker who may reasonably expect to  
 2.4 experience an employment loss as a consequence of a proposed business closing or mass  
 2.5 layoff by an employer.

2.6 Subd. 7. **Employer.** "Employer" means a person who employs 25 or more  
 2.7 employees, excluding part-time employees.

2.8 Subd. 8. **Employment loss.** "Employment loss" means an employment termination,  
 2.9 other than a discharge for cause, voluntary separation, or retirement; a layoff exceeding six  
 2.10 months; or a reduction in hours of more than 50 percent of work of individual employees  
 2.11 during each month of a six-month period. Employment loss does not include instances  
 2.12 when a business closing or mass layoff is the result of the relocation or consolidation of  
 2.13 part or all of the employer's business and, before the business closing or mass layoff,  
 2.14 the employer offers to transfer the employee to a different site of employment within a  
 2.15 reasonable commuting distance with no more than a six-month break in employment.

2.16 Subd. 9. **Mass layoff.** "Mass layoff" means a reduction in employment force that  
 2.17 is not the result of a business closing and results in an employment loss at a single site  
 2.18 of employment during any 30-day period of 25 or more employees, other than part-time  
 2.19 employees.

2.20 Subd. 10. **Part-time employee.** "Part-time employee" means an employee who is  
 2.21 employed for an average of fewer than 20 hours per week or an employee, including a  
 2.22 full-time employee, who has been employed for fewer than six of the 12 months preceding  
 2.23 the date on which notice is required.

2.24 Subd. 11. **Representative.** "Representative" means a representative of employees  
 2.25 under section 179.01, subdivision 5, or an exclusive representative of employees within  
 2.26 the meaning of section 9(a) of the federal National Labor Relations Act, United States  
 2.27 Code, title 29, section 151, et seq., and the federal Railway Labor Act, United States  
 2.28 Code, title 45, section 151, et seq.

2.29 Subd. 12. **Single site of employment.** "Single site of employment" means a single  
 2.30 location or a group of contiguous locations, such as a group of structures that form a  
 2.31 campus or business park or separate facilities across the street from each other.

2.32 **Sec. 3. [268B.03] NOTICE; REQUIREMENTS.**

2.33 Subdivision 1. **30-day notice.** (a) An employer who plans a business closing or a  
 2.34 mass layoff must not order such action until the end of a 30-day period which begins  
 2.35 after the employer serves written notice of such action to the affected employees or

3.1 their representatives, the local unit of government in which the action occurs, and the  
3.2 department. However, if an applicable collective bargaining agreement designates a  
3.3 different notice period, the notice period in the collective bargaining agreement governs.

3.4 (b) An employer who has previously announced and carried out a short-term  
3.5 mass layoff of six months or less which is extended beyond six months due to business  
3.6 circumstances not reasonably foreseeable at the time of the initial mass layoff is required to  
3.7 give notice when it becomes reasonably foreseeable that the extension is required. A mass  
3.8 layoff extending beyond six months from the date the mass layoff commenced for any other  
3.9 reason is treated as an employment loss from the date of commencement of the mass layoff.

3.10 (c) In the case of the sale of part or all of a business, the seller is responsible for  
3.11 providing notice of any business closing or mass layoff which will take place up to and on  
3.12 the effective date of the sale. The buyer is responsible for providing notice of any business  
3.13 closing or mass layoff that will take place thereafter.

3.14 Subd. 2. **Notice requirements.** (a) Notice from the employer required by  
3.15 subdivision 1 to the affected employees or their representatives, to the local unit of  
3.16 government, and to the department must be in written form and must contain the following:

3.17 (1) the name and address of the employment site where the business closing or mass  
3.18 layoff will occur and the name and telephone number of a company official to contact  
3.19 for further information;

3.20 (2) a statement as to whether the planned action is expected to be permanent or  
3.21 temporary and, if the entire business is to be closed, a statement to that effect;

3.22 (3) the expected date of the first employment loss and the anticipated schedule for  
3.23 employment losses; and

3.24 (4) the job titles of positions to be affected and the names of the employees currently  
3.25 holding the affected jobs. The notice to the local unit of government and to the department  
3.26 must also include the address of each affected employee and whether the employee is  
3.27 covered by a collective bargaining agreement. The local unit of government and the  
3.28 department shall maintain the confidentiality of the names and addresses of employees.

3.29 (b) The notice may include additional information useful to the employees, such  
3.30 as information about available dislocated worker assistance and, if the planned action is  
3.31 expected to be temporary, the estimated duration, if known.

3.32 Subd. 3. **Notice delivery.** Any reasonable method of delivery to the affected  
3.33 employees or their representatives, the local unit of government, and the department,  
3.34 which is designed to ensure receipt of notice of at least 30 days before the planned action,  
3.35 is acceptable. In the case of notification directly to affected employees, insertion of notice  
3.36 into pay envelopes is a viable option.

4.1 Subd. 4. **Additional employer responsibility under federal WARN Act.** An  
4.2 employer providing notice of a plant closing, substantial layoff, or relocation of operations  
4.3 under the federal Worker Adjustment and Retraining Notification Act, United States Code,  
4.4 title 29, sections 2101 to 2109, must, in addition to the requirements under that act, provide  
4.5 notice in the same manner and to the same extent as notice is required by subdivision 2.

4.6 Sec. 4. **[268B.04] NOTICE; EXEMPTIONS, SPECIAL CIRCUMSTANCES.**

4.7 Subdivision 1. **Strike or lockout.** If a business closing or mass layoff constitutes  
4.8 a strike or lockout not intended to evade the requirements of this chapter, notice is not  
4.9 required to be given by the employer. This chapter does not require an employer to serve  
4.10 written notice when permanently replacing an employee who is deemed to be an economic  
4.11 striker under the federal National Labor Relations Act. This chapter shall not be deemed  
4.12 to validate or invalidate any judicial or administrative ruling relating to the hiring of  
4.13 permanent replacements for economic strikers under the federal National Labor Relations  
4.14 Act. If an employer hires temporary workers to replace employees during the course of a  
4.15 strike or lockout and later terminates these temporary workers at the conclusion of the  
4.16 strike or lockout, this chapter does not require an employer to serve written notice on the  
4.17 terminated temporary workers.

4.18 Subd. 2. **Rolling layoffs.** (a) When affected employees will not be terminated on the  
4.19 same date, the date of the first individual employment loss within the 30-day notice period  
4.20 triggers the notice requirement. An employee's last day of employment is considered the  
4.21 date of that employee's layoff. The first and subsequent groups of terminated employees  
4.22 are entitled to a full 30-days' notice.

4.23 (b) An employer must give notice if the number of employment losses of two or  
4.24 more actions in any 90-day period triggers the notice requirements in section 268B.03  
4.25 for a business closing or a mass layoff. An employer is not required to give notice if  
4.26 the number of employment losses from one action in a 30-day period does not meet the  
4.27 requirements of section 268B.03. All employment losses in any 90-day period must be  
4.28 aggregated to trigger the notice requirement unless the employer demonstrates to the  
4.29 department that the employment losses during the 90-day period are the result of separate  
4.30 and distinct actions and causes.

4.31 Subd. 3. **Extended notice.** (a) Additional notice is required if the date or schedule  
4.32 of dates of a planned business closing or mass layoff is extended beyond the date or the  
4.33 ending date of any period announced in the original notice.

4.34 (b) If the postponement is for less than 30 days, the additional notice must be given  
4.35 as soon as possible to the affected employees or their representatives, the local unit of

5.1 government, and the department and must include reference to the earlier notice, the date  
5.2 to which the planned action is postponed, and the reasons for the postponement. The notice  
5.3 must be given in a manner which will provide the information to all affected employees.

5.4 (c) If the postponement is for more than 30 days, the additional notice must be  
5.5 treated as new notice subject to the provisions of section 268B.03.

5.6 Subd. 4. **Faltering company.** (a) An exception to the 30-day notice applies to  
5.7 business closings but not to mass layoffs if the following requirements are met:

5.8 (1) an employer must have been actively seeking capital or business at the time that  
5.9 the 30-day notice would have been required by seeking financing or refinancing through  
5.10 the arrangement of loans or the issuance of stocks, bonds, or other methods of internally  
5.11 generated financing, or by seeking additional money, credit, or business through any other  
5.12 commercially reasonable method. The employer must identify specific actions taken to  
5.13 obtain capital or business;

5.14 (2) the employer must, at the time notice is actually given, provide a statement of  
5.15 explanation for reducing the notice period in addition to the other notice requirements  
5.16 in section 268B.03;

5.17 (3) there must have been a realistic opportunity to obtain the financing or business  
5.18 sought;

5.19 (4) the financing or business sought must have been sufficient, if obtained, to have  
5.20 enabled the employer to avoid or postpone the shutdown. The employer must be able to  
5.21 objectively demonstrate that the amount of capital or the volume of new business sought  
5.22 would have enabled the company to keep the facility, operating unit, or site open for a  
5.23 reasonable period of time; and

5.24 (5) the employer reasonably and in good faith must have believed that giving the  
5.25 required notice would have precluded the employer from obtaining the needed capital  
5.26 or business. The employer must be able to objectively demonstrate that the employer  
5.27 reasonably thought that a potential customer or source of financing would have been  
5.28 unwilling to provide the new business or capital if notice had been given. This condition  
5.29 may be satisfied if the employer can show that the financing or business source would  
5.30 choose not to do business with a troubled company or with a company whose workforce  
5.31 would be looking for other jobs.

5.32 (b) The exception under this subdivision must be narrowly construed.

5.33 Subd. 5. **Unforeseeable business circumstance.** An exception to the 30-day notice  
5.34 applies to business closings and mass layoffs if the following requirements are met:

5.35 (1) business circumstances occurred that were not reasonably foreseeable at the time  
5.36 that the 30-day notice would have been required;

6.1 (2) the employer must, at the time notice is actually given, provide a statement of  
 6.2 explanation for reducing the notice period in addition to the other notice requirements  
 6.3 in section 268B.03;

6.4 (3) an important indicator of a reasonably unforeseeable business circumstance is  
 6.5 that the circumstance is caused by some sudden, dramatic, and unexpected action or  
 6.6 condition outside the employer's control; and

6.7 (4) the employer must exercise commercially reasonable business judgment as  
 6.8 would a similarly situated employer in predicting the demands of the employer's particular  
 6.9 market. The employer is not required to accurately predict general economic conditions  
 6.10 that also may affect demand for products or services.

6.11 Subd. 6. **Natural disaster.** An exception to the 30-day notice applies to business  
 6.12 closings and mass layoffs if the following requirements are met:

6.13 (1) a natural disaster occurred at the time notice would have been required;

6.14 (2) the employer must, at the time notice is actually given, provide a statement of  
 6.15 explanation for reducing the notice period in addition to the other notice requirements  
 6.16 in section 268B.03;

6.17 (3) floods, earthquakes, droughts, storms, tornadoes, and similar effects of nature are  
 6.18 natural disasters under this subdivision;

6.19 (4) an employer must be able to demonstrate that the business closing or mass layoff  
 6.20 is a direct result of the natural disaster; and

6.21 (5) if a business closing or mass layoff occurs as an indirect result of a natural  
 6.22 disaster, this exception does not apply but the unforeseeable business circumstance  
 6.23 exception in subdivision 5 may be applicable.

6.24 **Sec. 5. [268B.05] ENFORCEMENT AND PENALTIES.**

6.25 Subdivision 1. **Rulemaking.** The commissioner shall adopt rules regarding  
 6.26 enforcement of this chapter and investigations to determine whether an employer has  
 6.27 violated any provisions of this chapter. A determination by the department that a violation  
 6.28 has occurred shall be considered final agency action.

6.29 Subd. 2. **Civil penalty.** (a) If an employer is found by the commissioner to have  
 6.30 violated this chapter, any rule adopted under subdivision 1, or federal requirements under  
 6.31 the Worker Adjustment and Retraining Notification Act, United States Code, title 29,  
 6.32 sections 2101 to 2109, and the commissioner issues an order to comply, the commissioner  
 6.33 shall order the employer to cease and desist from engaging in the violative practice and  
 6.34 to take affirmative steps that, in the judgment of the commissioner, will effectuate the  
 6.35 purposes of the section or rule violated.

7.1 (b) The commissioner shall order the employer to pay back pay and benefits to  
7.2 each aggrieved employee in the same manner as an employer is liable to an employee  
7.3 under United States Code, title 29, section 2104, except that the payments calculated  
7.4 under United States Code, title 29, section 2104(a)(1)(A), shall be tripled for each day  
7.5 an employer is found to have violated section 268B.03.

7.6 (c) An employer who violates section 268B.03 with respect to the department shall  
7.7 be subject to a civil penalty of not more than \$100 per aggrieved employee for each day  
7.8 of the violation. An employer who is found by the commissioner to have repeatedly or  
7.9 willfully violated section 268B.03 shall be subject to a civil penalty of \$1,000 for each  
7.10 violation for each employee. Any penalties collected by the department shall be deposited  
7.11 in the general fund.

7.12 (d) In determining the amount of a civil penalty under this subdivision, the  
7.13 appropriateness of the penalty to the size of the employer's business and the gravity of the  
7.14 violation shall be considered. In addition, the commissioner may order the employer to  
7.15 reimburse the department and the attorney general for all appropriate litigation and hearing  
7.16 costs expended in preparation for and in conducting the contested case proceeding,  
7.17 unless payment of costs would impose extreme financial hardship on the employer. If the  
7.18 employer is able to establish extreme financial hardship, the commissioner may order  
7.19 the employer to pay a percentage of the total costs that will not cause extreme financial  
7.20 hardship. Costs include but are not limited to the following:

7.21 (1) costs of services rendered by the attorney general, including reasonable attorney  
7.22 fees;

7.23 (2) costs of services of private attorneys if engaged by the department and reasonable  
7.24 attorney fees;

7.25 (3) costs of services of administrative law judges, court reporters, and expert  
7.26 witnesses; and

7.27 (4) the cost of transcripts.

7.28 (e) Interest shall accrue on and be added to the unpaid balance of a commissioner's  
7.29 order from the date the order is signed by the commissioner until it is paid, at an annual  
7.30 rate provided in section 549.09, subdivision 1, paragraph (c). The commissioner may  
7.31 establish escrow accounts for purposes of distributing damages and payments.

7.32 Subd. 3. **Civil action.** (a) A person seeking to enforce liability for a violation of this  
7.33 chapter, any rule adopted under subdivision 1, or federal requirements under the Worker  
7.34 Adjustment and Retraining Notification Act, United States Code, title 29, sections 2101 to  
7.35 2109, including an aggrieved employee, a representative, a local unit of government, or

8.1 the commissioner, may bring a civil action seeking redress and payment from an employer,  
8.2 either for the person or for other persons similarly situated, or both, directly to district court.

8.3 (b) An employer who violates section 268B.03 shall be liable to each aggrieved  
8.4 employee in the same manner as an employer is liable to an employee under United  
8.5 States Code, title 29, section 2104, except that the payments calculated under United  
8.6 States Code, title 29, section 2104(a)(1)(A), shall be tripled for each day an employer is  
8.7 found to have violated section 268B.03.

8.8 (c) Any action brought under this subdivision may be filed in the district court of  
8.9 the county where a violation is alleged to have been committed, a district court where the  
8.10 respondent resides or has a principal place of business, or any other court of competent  
8.11 jurisdiction. The action may be brought by one or more parties.

8.12 (d) In any action brought under this subdivision, the court shall order an employer  
8.13 who is found to have committed a violation of this chapter, any rule adopted under  
8.14 subdivision 1, or federal requirements under the Worker Adjustment and Retraining  
8.15 Notification Act, United States Code, title 29, sections 2101 to 2109, to pay to the plaintiff  
8.16 all costs, disbursements, witness fees, and reasonable attorney fees.

8.17 Subd. 4. **Exclusive remedy.** The penalties provided for in this section and under the  
8.18 Worker Adjustment and Retraining Notification Act, United States Code, title 29, sections  
8.19 2101 to 2109, shall be the exclusive remedies for any violation of this chapter. Under this  
8.20 chapter, a court shall not have authority to enjoin a business closing or mass layoff.

8.21 **Sec. 6. REPEALER.**

8.22 Minnesota Statutes 2012, section 116L.976, is repealed.

**116L.976 EARLY WARNING SYSTEM.**

Subdivision 1. **Notice.** (a) The commissioner shall encourage those business establishments considering a decision to effect a plant closing, substantial layoff, or relocation of operations located in this state to give notice of that decision as early as possible to the commissioner, the employees of the affected establishment, any employee organization representing the employees, and the local government unit in which the affected establishment is located. This notice shall be in addition to any notice required under the Worker Adjustment and Retraining Notification Act, United States Code, title 29, section 2101.

(b) For purposes of this section, "plant closing" means the announced or actual 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 employees who work less than 20 hours per week.

Subd. 2. **Employer responsibility.** An employer providing notice of a plant closing, substantial layoff, or relocation of operations under the Worker Adjustment and Retraining Notification Act, United States Code, title 29, section 2101, or under subdivision 1 must report to the commissioner the names, addresses, and occupations of the employees who will be or have been terminated.