

# HOUSE BILL No. 6588

December 6, 2018, Introduced by Reps. Hammoud, Clemente, Hertel, Lasinski, Gay-Dagnogo, Geiss, Wittenberg and Greig and referred to the Committee on Commerce and Trade.

A bill to require certain employers that close or relocate an establishment or engage in a mass layoff to pay severance pay to certain employees; to provide for the powers and duties of certain state governmental officers and entities; to authorize the promulgation of rules; and to provide remedies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "relocation, closing, and mass layoff severance pay act".

3           Sec. 3. As used in this act:

4           (a) "Closing" or "closes" means the permanent shutdown of  
5 commercial operations at a covered establishment. A closing may  
6 occur because of a relocation or a termination or consolidation of

1 the employer's business.

2 (b) "Covered establishment" means a commercial facility or a  
3 part of a commercial facility that employs, or has employed at any  
4 time in the 12-month period immediately preceding a closing, mass  
5 layoff, or relocation, 100 or more employees.

6 (c) "Department" means the department of licensing and  
7 regulatory affairs.

8 (d) "Director" means the director of the department, or his or  
9 her designee.

10 (e) "Eligible employee" means an employee who meets all of the  
11 following conditions:

12 (i) At the time of the closing or mass layoff, has been  
13 continuously employed at the covered establishment for at least 3  
14 years, including any period when the employee was on a leave of  
15 absence. The requirement that the employee be employed at the time  
16 of the closing or mass layoff does not apply to an employee who  
17 voluntarily quit employment at the covered establishment to take a  
18 new job 30 or less days before the date set by the employer for a  
19 closing or mass layoff in an initial notice provided by the  
20 employer under state or federal law.

21 (ii) Has not been discharged for cause.

22 (iii) Has not accepted employment at another or relocated  
23 establishment operated by the employer.

24 (f) "Employer" means a person who directly or indirectly owns  
25 and operates a covered establishment. A parent corporation is  
26 considered an indirect owner and operator of any covered  
27 establishment that is directly owned and operated by its corporate

1 subsidiary.

2 (g) "Gross earnings" includes all pay for regular hours, shift  
3 differentials, premiums, overtime, floating holidays, holidays,  
4 funeral leave, jury duty pay, sick pay, and vacation pay earned  
5 within the 12-month period immediately preceding the closing or  
6 mass layoff. Gross earnings does not include payments made under a  
7 third-party benefit program, such as disability payments.

8 (h) "Mass layoff" means a reduction in workforce, not the  
9 result of a closing, that, for at least 6 months, results in an  
10 employment loss at a covered establishment of either of the  
11 following:

12 (i) Thirty-three percent of the employees and at least 50  
13 employees.

14 (ii) Five hundred employees.

15 (i) "Physical calamity" means a calamity such as fire, flood,  
16 or other natural disaster.

17 (j) "Relocation" means the removal of all or substantially all  
18 of commercial operations in a covered establishment to a new  
19 location, within or without this state, 100 or more miles distant  
20 from its original location.

21 (k) "Week's pay" means an amount equal to an employee's gross  
22 earnings during the 12-month period immediately preceding the month  
23 of the closing or mass layoff, as determined by the department,  
24 divided by the number of weeks in which the employee received gross  
25 earnings during that 12-month period.

26 Sec. 5. (1) Subject to subsection (2), an employer that closes  
27 or engages in a mass layoff at a covered establishment shall pay to

1 an eligible employee of the covered establishment severance pay at  
2 the rate of 1 week's pay for each year that the employee was  
3 employed at the covered establishment and partial pay for any  
4 partial year. The severance pay to eligible employees under this  
5 section is in addition to any final wage payment to the employee  
6 and must be paid within 1 regular pay period after the employee's  
7 last full day of work.

8 (2) Subsection (1) does not apply if either of the following  
9 circumstances exist:

10 (a) The closing of or a mass layoff at a covered establishment  
11 is necessitated by a physical calamity or the final order of a  
12 federal, state, or local government agency.

13 (b) The employee is covered by, and has been paid under the  
14 terms of, a written contract providing for severance pay that is in  
15 an amount that is greater than the severance pay required by this  
16 act. An employer must demonstrate, to the satisfaction of the  
17 department, that the severance pay provided under the terms of the  
18 contract is in an amount that is greater than the severance pay  
19 required by this act.

20 (3) An employer is not exempt from liability for severance pay  
21 under this act solely because it files a voluntary petition for  
22 bankruptcy protection under chapter 7 or chapter 11 of title 11 of  
23 the federal bankruptcy code, 11 USC 701 to 784 and 11 USC 1101 to  
24 1174, or because an involuntary petition is commenced against it  
25 pursuant to section 303 of the federal bankruptcy code, 11 USC 303.

26 (4) An employer that violates this section may be ordered to  
27 pay a civil fine of not more than \$1,000.00 for each separate

1 violation. A violation of this section may be prosecuted by the  
2 prosecutor of the county in which the violation occurred or by the  
3 attorney general. A civil fine must not be imposed under this  
4 subsection if doing so would prevent the violator from making all  
5 payments required under subsection (1).

6       Sec. 7. An employer that violates this act is liable to an  
7 affected employee in the amount of the employee's unpaid severance  
8 pay under this act. One or more employees may bring an action, for  
9 and on behalf of that employee or those employees and any other  
10 employees similarly situated, in any court of competent  
11 jurisdiction to recover the unpaid severance pay. A labor  
12 organization may bring an action on behalf of its members. A court,  
13 in an action brought under this section, in addition to any  
14 judgment awarded to the plaintiff, shall allow for a reasonable  
15 attorney fee and costs of the action to be recovered by the  
16 plaintiff.

17       Sec. 9. The department may bring an action in any court of  
18 competent jurisdiction to recover unpaid severance pay under this  
19 act. The right of an employee to commence an action and of an  
20 employee to become a party plaintiff to any pending action brought  
21 under section 7 terminates upon the filing of a complaint by the  
22 department in an action under this section, unless the action is  
23 dismissed without prejudice by the department. Money from an award  
24 recovered by the department on behalf of an employee under this  
25 section must be held in a special deposit account and must be paid,  
26 on order of the director, to the employee. Money from an award in  
27 the special deposit account remaining 3 or more years after the

1 final disposition of the action, if the money has remained in the  
2 special deposit account because of inability to pay the employee,  
3 must be deposited into the general fund.

4       Sec. 11. (1) An employer shall notify the department in  
5 writing not less than 60 days before relocating or closing a  
6 covered establishment. An employer shall notify the department as  
7 far in advance as practicable, but no later than within 7 days  
8 before a mass layoff at a covered establishment, and shall report  
9 to the department in writing the expected duration of the mass  
10 layoff and whether it is of indefinite or definite duration. The  
11 department shall periodically, but no less frequently than every 30  
12 days, require the employer to report facts that the department  
13 considers relevant to determine whether the mass layoff constitutes  
14 a closing or whether there is a substantial reason to believe the  
15 affected employees will be recalled. A notification or report  
16 provided to the department under this section must contain all  
17 relevant information in the possession of the employer regarding a  
18 potential recall, if applicable.

19       (2) To monitor compliance with the requirements of this act,  
20 an employer shall allow the department access to its employees'  
21 wage records, with appropriate notice and at a mutually agreeable  
22 time.

23       Sec. 13. An employer shall notify the employees of a covered  
24 establishment and the officers of the municipality where the  
25 covered establishment is located in writing not less than 60 days  
26 before closing the covered establishment, unless this notice  
27 requirement is waived by the department. An employer that violates

1 this section is responsible for a state civil infraction and may be  
2 ordered to pay a civil fine of not more than \$500.00. The  
3 department shall not collect a civil fine imposed under this  
4 section if any of the following circumstances exist:

5 (a) The closing is necessitated by a physical calamity or the  
6 final order of a federal, state, or local government agency.

7 (b) The failure to give notice is due to unforeseen  
8 circumstances.

9 (c) Collecting the civil fine would prevent the violator from  
10 making all payments required under section 5(1).

11 Sec. 15. Benefits paid or payable to an eligible employee  
12 under the Michigan employment security act, 1936 (Ex Sess) PA 1,  
13 MCL 421.1 to 421.75, do not reduce the amount of severance pay the  
14 eligible employee is entitled to receive under this act.

15 Sec. 17. The department may promulgate rules to implement this  
16 act pursuant to the administrative procedures act of 1969, 1969 PA  
17 306, MCL 24.201 to 24.328.

18 Sec. 19. This act applies to employment agreements and  
19 collective bargaining agreements that are executed, extended, or  
20 renewed on or after the effective date of this act.

21 Enacting section 1. This act takes effect 90 days after the  
22 date it is enacted into law.