

By: Representatives McCoy, Moak, Flaggs,  
Fredericks

To: Judiciary A

HOUSE BILL NO. 682

1 AN ACT TO REQUIRE CERTAIN EMPLOYERS TO GIVE EMPLOYEES WRITTEN  
2 NOTICE AT LEAST SIXTY DAYS BEFORE ORDERING A PLANT CLOSING OR MASS  
3 LAYOFF; TO DEFINE CERTAIN TERMS FOR THE PURPOSES OF THIS ACT; TO  
4 EXEMPT EMPLOYERS FROM COMPLYING WITH THE NOTICE REQUIREMENTS OF  
5 THIS ACT UNDER CERTAIN CONDITIONS; TO PROVIDE PENALTIES FOR  
6 VIOLATIONS OF THE REQUIREMENTS OF THIS ACT; TO AUTHORIZE THE  
7 MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY TO PROMULGATE RULES  
8 AND REGULATIONS NECESSARY TO CARRY OUT THE PROVISIONS OF THIS ACT;  
9 AND FOR RELATED PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 **SECTION 1.** (1) As used in this act, the following words  
12 and phrases shall have the meanings ascribed in this section  
13 unless the context clearly indicates otherwise:

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

18 (b) "Attorney General" means the Attorney General of  
19 the State of Mississippi.

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

22 (i) One hundred (100) or more employees, excluding  
23 part-time employees; or

24 (ii) One hundred (100) or more employees who in  
25 the aggregate work at least four thousand (4,000) hours per week  
26 (exclusive of hours of overtime).

27 (d) (i) "Employment loss," subject to the provisions  
28 this paragraph (d), means:

29 1. An employment termination, other than a  
30 discharge for cause, voluntary departure, or retirement;



31                   2. A layoff exceeding six (6) months; or  
32                   3. A reduction in hours of work of more than  
33 fifty percent (50%) during each month of any six-month period.

34                   (ii) 1. In the case of a sale of part or all of  
35 an employer's business, the seller shall be responsible for  
36 providing notice for any plant closing or mass layoff in  
37 accordance with Section 2 of this act, up to and including the  
38 effective date of the sale. After the effective date of the sale  
39 of part or all of an employer's business, the purchaser shall be  
40 responsible for providing notice for any plant closing or mass  
41 layoff in accordance with Section 2 of this act. Any person who  
42 is an employee of the seller (other than a part-time employee) as  
43 of the effective date of the sale shall be considered an employee  
44 of the purchaser immediately after the effective date of the sale.

45                   2. Notwithstanding subparagraph (i) of this  
46 paragraph (d), an employee may not be considered to have  
47 experienced an employment loss if the closing or layoff is the  
48 result of the relocation or consolidation of part or all of the  
49 employer's business and, before the closing or layoff:

50                   a. The employer offers to transfer the  
51 employee to a different site of employment within a reasonable  
52 commuting distance with no more than a six-month break in  
53 employment; or

54                   b. The employer offers to transfer the  
55 employee to any other site of employment regardless of distance  
56 with no more than a six-month break in employment, and the  
57 employee accepts the offer within thirty (30) days of the offer or  
58 of the closing or layoff, whichever is later.

59                   (e) "Mass layoff" means a reduction in force that:

60                   (i) Is not the result of a plant closing; and

61                   (ii) Results in an employment loss at the single  
62 site of employment during any thirty-day period for at least:



- 63                   1. Thirty-three percent (33%) of the  
64 employees (excluding part-time employees); and  
65                   2. Fifty (50) employees (excluding part-time  
66 employees); or  
67                   3. Five hundred (500) employees (excluding  
68 part-time employees).

69           (f) "Part-time employee" means an employee who is  
70 employed for an average of fewer than twenty (20) hours per week  
71 or who has been employed for fewer than six (6) of the twelve (12)  
72 months preceding the date on which notice is required.

73           (g) "Plant closing" means the permanent or temporary  
74 shutdown of a single site of employment, or one or more facilities  
75 or operating units within a single site of employment, if the  
76 shutdown results in an employment loss at the single site of  
77 employment during any thirty-day period for fifty (50) or more  
78 employees excluding any part-time employees.

79           (h) "Representative" means an exclusive representative  
80 of employees within the meaning of 29 USCS Section 159(a) or  
81 158(f) or 45 USCS Section 152.

82           (i) "State" means the State of Mississippi.

83           (j) "Unit of local government" means any municipality  
84 or county existing under the laws of the state.

85           **SECTION 2.** (1) An employer shall not order a plant closing  
86 or mass layoff until the end of a sixty-day period after the  
87 employer serves written notice of such order of closing or mass  
88 layoff to:

89           (a) Each representative of the affected employees as of  
90 the time of the notice or, if there is no such representative at  
91 that time, to each affected employee; and

92           (b) To the state or entity designated by the state to  
93 carry out rapid response activities under 29 USCS Section  
94 2864(a)(2)(A), the Attorney General and the chief elected official  
95 of the unit of local government within which such closing or



96 layoff is to occur. If there is more than one (1) such unit of  
97 local government, the employer shall notify the unit of local  
98 government to which the employer pays the highest taxes for the  
99 year preceding the year for which the determination is made.

100 (2) (a) An employer may order the shutdown of a single site  
101 of employment before the conclusion of the sixty-day period if, as  
102 of the time that notice would have been required, the employer was  
103 actively seeking capital or business that, if obtained, would have  
104 enabled the employer to avoid or postpone the shutdown and the  
105 employer reasonably and in good faith believed that giving the  
106 notice required would have precluded the employer from obtaining  
107 the needed capital or business.

108 (b) (i) An employer may order a plant closing or mass  
109 layoff before the conclusion of the sixty-day period if the  
110 closing or mass layoff is caused by business circumstances that  
111 were not reasonably foreseeable as of the time that notice would  
112 have been required.

113 (ii) No notice shall be required under this act if  
114 the plant closing or mass layoff is due to any form of natural  
115 disaster.

116 (c) An employer relying on this subsection (2) shall  
117 give as much notice as is practicable and at that time shall give  
118 a brief statement of the basis for reducing the notification  
119 period.

120 (3) A layoff of more than six (6) months which, at its  
121 outset, was announced to be a layoff of six (6) months or less,  
122 shall be treated as an employment loss under this act unless:

123 (a) The extension beyond six (6) months is caused by  
124 business circumstances (including unforeseeable changes in price  
125 or cost) not reasonably foreseeable at the time of the initial  
126 layoff; and



127 (b) Notice is given at the time it becomes reasonably  
128 foreseeable that the extension beyond six (6) months will be  
129 required.

130 (4) For the purposes of this section, in determining whether  
131 a plant closing or mass layoff has occurred or will occur,  
132 employment losses for two (2) or more groups at a single site of  
133 employment, each of which is less than the minimum number of  
134 employees specified in Section 1(1)(e) or (g) of this act but  
135 which in the aggregate exceed that minimum number, and  
136 which occur within any ninety-day period shall be considered to be  
137 a plant closing or mass layoff unless the employer demonstrates  
138 that the employment losses are the result of separate and distinct  
139 actions and causes and are not an attempt by the employer to evade  
140 the requirements of this act.

141 **SECTION 3.** (1) This act shall not apply to a plant closing  
142 or mass layoff if:

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

148 (b) The closing or layoff constitutes a strike or  
149 constitutes a lockout not intended to evade the requirements of  
150 this act.

151 (2) Nothing in this act shall require an employer to serve  
152 written notice under Section 2(1) of this act when permanently  
153 replacing a person who is deemed to be an economic striker under  
154 the National Labor Relations Act (29 USCS Section 151 et seq.).

155 **SECTION 4.** (1) (a) Any employer who orders a plant closing  
156 or mass layoff in violation of Section 2 of this act shall be  
157 liable to each aggrieved employee who suffers an employment loss  
158 as a result of such closing or layoff for:



159 (i) Back pay for each day of violation at a rate  
160 of compensation not less than the higher of:

161 1. The average regular rate received by such  
162 employee during the last three (3) years of the employee's  
163 employment; or

164 2. The final regular rate received by such  
165 employee; and

166 (ii) Benefits under an employee benefit plan  
167 described in 29 USCS Section 1002(3), including the cost of  
168 medical expenses incurred during the employment loss which would  
169 have been covered under an employee benefit plan if the employment  
170 loss had not occurred.

171 Such liability shall be calculated for the period of the  
172 violation, up to a maximum of sixty (60) days, but in no event for  
173 more than one-half (1/2) the number of days the employee was  
174 employed by the employer.

175 (b) The amount for which an employer is liable under  
176 paragraph (a) of this subsection (1) shall be reduced by:

177 (i) Any wages paid by the employer to the employee  
178 for the period of the violation;

179 (ii) Any voluntary and unconditional payment by  
180 the employer to the employee that is not required by any legal  
181 obligation; and

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

186 In addition, any liability incurred under paragraph (a) of this  
187 subsection (1) with respect to a defined benefit pension plan may  
188 be reduced by crediting the employee with service for all purposes  
189 under such a plan for the period of the violation.

190 (c) Any employer who violates the provisions of Section  
191 2 of this act with respect to a unit of local government shall be



192 subject to a civil penalty of not more than Five Hundred Dollars  
193 (\$500.00) for each day of such violation, except that the penalty  
194 shall not apply if the employer pays to each aggrieved employee  
195 the amount for which the employer is liable to that  
196 employee within three (3) weeks from the date the employer orders  
197 the shutdown or layoff.

198 (d) If an employer who has violated this act proves to  
199 the satisfaction of the court that the act or omission that  
200 violated this act was in good faith and that the employer had  
201 reasonable grounds for believing that the act or omission was not  
202 a violation of this act the court, in its discretion, may reduce  
203 the amount of the liability or penalty provided for in this  
204 section.

205 (e) A person seeking to enforce liability under this  
206 act, including, but not limited to, a representative of employees,  
207 the Attorney General or a unit of local government aggrieved under  
208 paragraph (a) or (c) of this subsection (1), may sue either for  
209 such person or for other persons similarly situated, or both, in  
210 the circuit court of the county in the state in which the  
211 violation is alleged to have occurred, or in which the employer  
212 transacts business. In any such suit, the court, in its  
213 discretion, may allow the prevailing party a reasonable attorney's  
214 fee as part of the costs.

215 (f) For the purposes of this subsection (1), the term  
216 "aggrieved employee" means an employee who has worked for the  
217 employer ordering the plant closing or mass layoff and who, as a  
218 result of the failure by the employer to comply with Section 2 of  
219 this act, did not receive timely notice either directly or through  
220 his or her representative as required by Section 2 of this act.

221 (2) Except as otherwise provided in this act, the remedies  
222 provided for in this section shall be the exclusive remedies under  
223 the laws of the state for any violation of this act.



224           **SECTION 5.** The rights and remedies provided to employees by  
225 this act are in addition to, and not in lieu of, any other  
226 contractual or statutory rights and remedies of the employees, and  
227 are not intended to alter or affect such rights and remedies,  
228 except that the period of notification required by this act shall  
229 run concurrently with any period of notification required by  
230 contract or by any other statute.

231           **SECTION 6.** It is the sense of the Legislature that an  
232 employer who is not required to comply with the notice  
233 requirements of Section 2 of this act should, to the extent  
234 possible, provide notice to its employees about a proposal to  
235 close a plant or permanently reduce its workforce.

236           **SECTION 7.** (1) The Mississippi Department of Employment  
237 Security, in consultation with the Attorney General, shall  
238 prescribe such regulations as may be necessary to carry out the  
239 provisions of this act. Such regulations shall, at a minimum,  
240 include interpretative regulations describing the methods by which  
241 employers may provide for appropriate service of notice as  
242 required by this act. The mailing of notice to an employee's last  
243 known address or inclusion of notice in the employee's paycheck  
244 will be considered acceptable methods for fulfillment of the  
245 employer's obligation to give notice to each affected employee  
246 under this act.

247           **SECTION 8.** This act shall take effect and be in force from  
248 and after July 1, 2009.

