

HPB

542

PUBLIC LAW 100-379 [S. 2527]; August 4, 1988

WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT

For a Related Legislative Report, see Conference Report (H.Rept. 100-576, title VI, subtitle E) for P.L. 100-—, the Omnibus Trade and Competitiveness Act of 1988, in the October U.S.C.C. & A.N. pamphlet (No. 7) Legislative History Section.

An Act to require advance notification of plant closings and mass layoffs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Worker Adjustment and Retraining Notification Act”.

(b) **TABLE OF CONTENTS.**—The table of contents is as follows

- Sec. 1. Short title.
- Sec. 2. Definitions; exclusions from definition of loss of employment.
- Sec. 3. Notice required before plant closings and mass layoffs.
- Sec. 4. Exemptions.
- Sec. 5. Administration and enforcement of requirements.
- Sec. 6. Procedures in addition to other rights of employees.
- Sec. 7. Procedures encouraged where not required.
- Sec. 8. Authority to prescribe regulations.
- Sec. 9. Effect on other laws.
- Sec. 10. Report on employment and international competitiveness.
- Sec. 11. Effective date.

SEC. 2. DEFINITIONS; EXCLUSIONS FROM DEFINITION OF LOSS OF EMPLOYMENT.

(a) **DEFINITIONS.**—As used in this Act—

(1) the term “employer” means any business enterprise that employs—

(A) 100 or more employees, excluding part-time employees; or

(B) 100 or more employees who in the aggregate work at least 4,000 hours per week (exclusive of hours of overtime);

(2) the term “plant closing” means the permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees excluding any part-time employees;

(3) the term “mass layoff” means a reduction in force which—

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

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

(i)(I) at least 33 percent of the employees (excluding any part-time employees); and

(II) at least 50 employees (excluding any part-time employees); or

(ii) at least 500 employees (excluding any part-time employees);

(4) the term “representative” means an exclusive representative of employees within the meaning of section 9(a) or 8(f) of the National Labor Relations Act (29 U.S.C. 159(a), 158(f)) or section 2 of the Railway Labor Act (45 U.S.C. 152);

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

(6) subject to subsection (b), the term "employment loss" means (A) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (B) a layoff exceeding 6 months, or (C) a reduction in hours of work of more than 50 percent during each month of any 6-month period;

(7) the term "unit of local government" means any general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers; and

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

(b) EXCLUSIONS FROM DEFINITION OF EMPLOYMENT LOSS.—(1) In the case of a sale of part or all of an employer's business, the seller shall be responsible for providing notice for any plant closing or mass layoff in accordance with section 3 of this Act, up to and including the effective date of the sale. After the effective date of the sale of part or all of an employer's business, the purchaser shall be responsible for providing notice for any plant closing or mass layoff in accordance with section 3 of this Act. Notwithstanding any other provision of this Act, any person who is an employee of the seller (other than a part-time employee) as of the effective date of the sale shall be considered an employee of the purchaser immediately after the effective date of the sale.

(2) Notwithstanding subsection (a)(6), an employee may not be considered to have experienced an employment loss if the closing or layoff is the result of the relocation or consolidation of part or all of the employer's business and, prior to the closing or layoff—

(A) the employer offers to transfer the employee to a different site of employment within a reasonable commuting distance with no more than a 6-month break in employment; or

(B) the employer offers to transfer the employee to any other site of employment regardless of distance with no more than a 6-month break in employment, and the employee accepts within 30 days of the offer or of the closing or layoff, whichever is later.

SEC. 3. NOTICE REQUIRED BEFORE PLANT CLOSINGS AND MASS LAYOFFS.

(a) NOTICE TO EMPLOYEES, STATE DISLOCATED WORKER UNITS, AND LOCAL GOVERNMENTS.—An employer shall not order a plant closing or mass layoff until the end of a 60-day period after the employer serves written notice of such an order—

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

(2) to the State dislocated worker unit (designated or created under title III of the Job Training Partnership Act) and the chief elected official of the unit of local government within which such closing or layoff is to occur.

If there is more than one such unit, the unit of local government which the employer shall notify is the unit of local government to which the employer pays the highest taxes for the year preceding the year for which the determination is made.

(b) **REDUCTION OF NOTIFICATION PERIOD.**—(1) An employer may order the shutdown of a single site of employment before the conclusion of the 60-day period if as of the time that notice would have been required the employer was actively seeking capital or business which, if obtained, would have enabled the employer to avoid or postpone the shutdown and the employer reasonably and in good faith believed that giving the notice required would have precluded the employer from obtaining the needed capital or business.

(2)(A) An employer may order a plant closing or mass layoff before the conclusion of the 60-day period if the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable as of the time that notice would have been required.

(B) No notice under this Act shall be required if the plant closing or mass layoff is due to any form of natural disaster, such as a flood, earthquake, or the drought currently ravaging the farmlands of the United States.

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

(c) **EXTENSION OF LAYOFF PERIOD.**—A layoff of more than 6 months which, at its outset, was announced to be a layoff of 6 months or less, shall be treated as an employment loss under this Act unless—

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

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

(d) **DETERMINATIONS WITH RESPECT TO EMPLOYMENT LOSS.**—For purposes of this section, in determining whether a plant closing or mass layoff has occurred or will occur, employment losses for 2 or more groups at a single site of employment, each of which is less than the minimum number of employees specified in section 2(a) (2) or (3) but which in the aggregate exceed that minimum number, and which occur within a 60-day period shall be considered to be a plant closing or mass layoff unless the employer demonstrates that the employment losses are the result of separate and distinct actions and causes and are not an attempt by the employer to evade the requirements of this Act.

SEC. 4. EXEMPTIONS.

This Act shall not apply to a plant closing or mass layoff if—

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

(2) the closing or layoff constitutes a strike or constitutes a lockout not intended to evade the requirements of this Act. Nothing in this Act shall require an employer to serve written notice pursuant to section 3(a) of this Act when permanently replacing a person who is deemed to be an economic striker under the National Labor Relations Act: *Provided*, That nothing in this Act shall be deemed to validate or invalidate any judicial or administrative ruling relating to the hiring of permanent replacements for economic strikers under the National Labor Relations Act.

SEC. 5. ADMINISTRATION AND ENFORCEMENT OF REQUIREMENTS.

(a) **CIVIL ACTIONS AGAINST EMPLOYERS.**—(1) Any employer who orders a plant closing or mass layoff in violation of section 3 of this Act shall be liable to each aggrieved employee who suffers an employment loss as a result of such closing or layoff for—

(A) back pay for each day of violation at a rate of compensation not less than the higher of—

(i) the average regular rate received by such employee during the last 3 years of the employee's employment; or

(ii) the final regular rate received by such employee; and

(B) benefits under an employee benefit plan described in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)), including the cost of medical expenses incurred during the employment loss which would have been covered under an employee benefit plan if the employment loss had not occurred.

Such liability shall be calculated for the period of the violation, up to a maximum of 60 days, but in no event for more than one-half the number of days the employee was employed by the employer.

(2) The amount for which an employer is liable under paragraph (1) shall be reduced by—

(A) any wages paid by the employer to the employee for the period of the violation;

(B) any voluntary and unconditional payment by the employer to the employee that is not required by any legal obligation; and

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

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

(3) Any employer who violates the provisions of section 3 with respect to a unit of local government shall be subject to a civil penalty of not more than \$500 for each day of such violation, except that such penalty shall not apply if the employer pays to each aggrieved employee the amount for which the employer is liable to that employee within 3 weeks from the date the employer orders the shutdown or layoff.

(4) If an employer which has violated this Act proves to the satisfaction of the court that the act or omission that violated this Act was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this Act the court may, in its discretion, reduce the amount of the liability or penalty provided for in this section.

(5) A person seeking to enforce such liability, including a representative of employees or a unit of local government aggrieved under paragraph (1) or (3), may sue either for such person or for other persons similarly situated, or both, in any district court of the United States for any district in which the violation is alleged to have occurred, or in which the employer transacts business

(6) In any such suit, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs.

(7) For purposes of this subsection, the term, "aggrieved employee" means an employee who has worked for the employer ordering the plant closing or mass layoff and who, as a result of the failure by the employer to comply with section 3, did not receive timely notice either directly or through his or her representative as required by section 3.

(b) **EXCLUSIVITY OF REMEDIES.**—The remedies provided for in this section shall be the exclusive remedies for any violation of this Act. Under this Act, a Federal court shall not have authority to enjoin a plant closing or mass layoff.

SEC. 6. PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES.

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

SEC. 7. PROCEDURES ENCOURAGED WHERE NOT REQUIRED.

It is the sense of Congress that an employer who is not required to comply with the notice requirements of section 3 should, to the extent possible, provide notice to its employees about a proposal to close a plant or permanently reduce its workforce.

SEC. 8. AUTHORITY TO PRESCRIBE REGULATIONS.

(a) The Secretary of Labor shall prescribe such regulations as may be necessary to carry out this Act. Such regulations shall, at a minimum, include interpretative regulations describing the methods by which employers may provide for appropriate service of notice as required by this Act.

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

SEC. 9. EFFECT ON OTHER LAWS.

The giving of notice pursuant to this Act, if done in good faith compliance with this Act, shall not constitute a violation of the National Labor Relations Act or the Railway Labor Act.

SEC. 10. REPORT ON EMPLOYMENT AND INTERNATIONAL COMPETITIVENESS.

Two years after the date of enactment of this Act the Comptroller General shall submit to the Committee on Small Business of both the House and Senate, the Committee on Labor and Human Resources, and the Committee on Education and Labor a report containing a detailed and objective analysis of the effect of this Act on employers (especially small- and medium-sized businesses), the economy (international competitiveness), and employees (in terms of levels and conditions of employment). The Comptroller General shall assess both costs and benefits, including the effect on productivity, competitiveness, unemployment rates and compensation, and worker retraining and readjustment.

Aug. 4

WORKER NOTIFICATION ACT

P.L. 100-379

SEC. 11. EFFECTIVE DATE.

This Act shall take effect on the date which is 6 months after the date of enactment of this Act, except that the authority of the Secretary of Labor under section 8 is effective upon enactment.

[Became law without Presidential signature August 4, 1988.]

Greeley, Casperson make run to nationals

—SPORTS, PAGES 9-10



NEIGHBORS

Older Alaskans
complete
computer training

—PAGES 11-12

TUESDAY

May 24, 1988

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JUNEAU EMPIRE

'The Voice of Alaska's Capital City'

Reagan vetoes trade bill; House override seen

By TOM RAUM

THE ASSOCIATED PRESS

WASHINGTON — President Reagan today vetoed a major trade bill "with sincere regret" and asked Congress to expedite a version more to his liking.

"I want to sign a trade bill this year," he said in the message formally notifying the House and the Senate that he was rejecting the 1,000-page measure.

The leader of House Democrats predicted his chamber would vote to override the veto, but his Senate counterpart said such action there appeared doubtful.

Reagan's veto, announced by his spokesman, turned in part on a provision requiring that workers be given notice of planned plant closings.

Spokesman Marlin Fitzwater said Reagan would sign

a bill bereft of the provision requiring a 60-day notice of closings and layoffs and shorn of proposed restrictions on the export of Alaskan oil.

The bill includes a requirement that employers at large companies give workers 60-day advance notice of plant closings and layoffs, the provision that generated the most recent opposition.

"It is with sincere regret that today I must disapprove and return ... the Omnibus Trade and Competitiveness Act of 1988," Reagan's message said.

In his message, Reagan argued that companies need flexibility in announcing layoffs or closings in order to survive times of economic stress.

"I support voluntarily giving workers or communities as much advance warning as possible when a layoff or

closing becomes necessary. ... It is the humane thing to do," Reagan said.

The president said he felt the bill could hurt the economy, which has created 16 million jobs and has the lowest unemployment rate in 14 years.

"I am convinced this bill will cost jobs and damage our economic growth," Reagan said.

The president also contended that the bill would "push us in the direction of protectionism.

"Closing our borders is not the solution to opening foreign markets," he said.

Reagan's veto of the 1,000-page bill appeared likely to be sustained in the Senate, although perhaps by a narrow margin. The House, where the trade bill has wider support, was expected to take up the veto immediately after

receiving it today.

Speaker Jim Wright, meeting with reporters at the White House before the president signed his veto message, predicted the chamber will override the president.

"We think this bill ought to be passed. ... If, in the final analysis, we cannot muster the votes in the Senate, we will pass the strongest, most effective trade bill that you can, but that will take time," the Texas Democrat said.

Senate Majority Leader Robert Byrd, D-W.V., acknowledged that "the probabilities are" the president's veto will be sustained in the Senate.

But he warned that it will be "extremely difficult" for a new bill to wend its way through the chamber's complex procedures before its scheduled Oct. 8 adjournment.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HL+C	3-29-88	2:00 P.M.
	3-31-88	2:00 P.M.
HC+RA	4-13-88	3:00 P.M.

HOUSE LABOR & COMMERCE COMMITTEE

DATE 3/31/88

TAPE NO. 89

HB 542

BILL NUMBERS: HB 15 (WS) HCR 39, HB 517, HB 394 (W.S.)

MEMBERS PRESENT: Dave, Ellis, Koppen, Davidson, Menard (2:12), Furnace (2:15) Boucher (2:20)

MEMBERS ABSENT: ~~Four~~ None

MEETING CALLED TO ORDER :

TAPE #	BILL #	
000	HB 15	work session -
014		Rep Terry Martin -
029		first bill in 1986 - from Colorado to encourage business in these areas - tax incentives - larger unemployment for tax credit -
275		Gally Sadler - Dept of Labor - economists any area -
300		Boucher
486		Dave - position paper from Rep + Commerce
495		Meeting called to order 2:35
	HB 517	
520	HCR 39	Dave - on his resolution - OS changed foreign to alien -
531		Boucher moved to adopt OS
540		Dave - discussed issue -
546		Ellis - bottom fish industry plants and a corp - importing people from China

TAPE #	BILL #	HOUSE LABOR & COMMERCE	DATE: 3/31 PAGE 2 OF
554		Davidson - Kodiak "Eagle Fisheries"	
		flat fish fillets - corp of dependable workers - 32 Chinese fish filleters	
580		Koponen - sees a need for experience	
587		Ellis - shore base operations - wages?	
		Menaud -	
		Davidson - working with DOI to establish core workers -	
600		Menaud - follow up - when there's an option to lose the option - need to look	
613		Koponen - every state but Alaska it's in place -	
		Dave include Alaska	
623		Ellis - go to Kodiak - resident work force	
TAPES	ONE / SIDE TWO		
000	HCR 39	Ellis still talking booming activities	
019		Davidson - Kodiak open invitation	
036		Koponen - first order of business should be Alaskians working priority in emp	
067		More res. with ind res.	
071	HBS 17	Prime sponsor -	
075		Judy Knight - Rep Ulmer's assist.	

TAPE #	BILL #	HOUSE LABOR & COMMERCE	DATE: 3/31 PAGE 3 OF
081		- Protects volunteers - no objection to amendment - modeled after Fed Reg Fed Volunteer Protection Act states that don't adopt by 1989 - reduction	
109		Koponen - passed 4 pieces of leg previously - am suits followed -	
123		Jim D'Amore - rep. like Rec & Parks Assoc. Organized 100 people passed a resolution in support of HB 517	
144		Bob Carver - Chair - ARRP Leg suit everyone in sight - people stopped volunteering - still at risk - "tending to sue" - Supports HB 517 no object to amendment	
187		Koponen - a bit of history "1705"	
198		Dave - amendment -	
204		Davidson - wants to move - incorp the conceptual amendment - no obj Move the bill the CS as amended No obj.	
224	HB 542	Dave - asks Dinger to explain -	
230		Dinger - proposed CS - last week notification bill - any emp or business plant closure, merger - 20 days notice failure to notify -	

TAPE #

BILL #

HOUSE LABOR & COMMERCE

DATE:

3/31

PAGE

OF

(4)

		Ginger - see Ginger's notes -
256		collective bargain
		21 or more people - covering 70% of employees - 10% employers
266		Boucher - banks etc - does it apply to them
		Ginger - yes if 21 employees.
293		Dof L - repres - nothing on the books!
		Dave - James Sanwick - DOL -
301		Boucher - banking
		James - NO - not his course of -
307		" support changes has stats
318		Koponen moved to adopt CS - no obj
		" moved CS HB 542 - next comm
325		Boucher - wants a note attached RE: banking industry - letter from a women -
339		Menard -
		Dave
371	HB 394	- Dave - Koponen - Chair of sub committee - Work Session - proposed amendments
378		Koponen - looked at Boucher's amendments
394		Dave adopt #1 amendment -
		Davidson -
404		not no objection to the Boucher amend

410		Dewe - another amendment -
419		Ginger - language -
		deny public access to information
449		Ripstein
477		Davidson dealing with two things -
		no need for a conc
492		any objections to amendment 5-1695 ^{Bd}
		no objects - will incorp
501		adopt CS for no - object -
504		Davidson - moved out of commit
525		Dewe - adjourned the meeting at 3:28



Official Business

COMMITTEE:
HOUSE LABOR & COMMERCE

DATE: March 31, 1988

SIGN-IN

Subject of meeting:

HB 15 "An Act providing certain tax benefits in business enterprise zones; and providing for an effective date." WORK SESSION

HCR 39 "Encouraging the restriction of foreign workers on oil and gas production and exploration structures on the outer continental shelf."

HB 517 "An Act relating to civil liability of certain volunteers."

HB 394 "An Act relating to electric and telephone cooperatives; and providing for an effective date." WORK SESSION

PLEASE PRINT
NAME & TITLE

REPRESENTING

ADDRESS & ZIP

PHONE

**DO YOU WANT
TO TESTIFY?**

**SUBJECT:
BILL #**

Sally Sandler Labor Economist IV	Dept of Labor		H W 4500	Yes	HB 15
Judy Hughes	FRAN Ulmer		H W 4947	Yes	HB 517
Jim Dumont	Alk. Rec + Park Assn		H W 586-5226	Yes	HB 517
Bob Ravitt	AARP State Legisl Committee		H W 586-2066	Yes	HB 517
JAMES SANDWICK	DOZ		H W	✓	HB 542
			H W		
			H W		
			H W		
			H W		

5-2116A

Cramer
3/29/88

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to notification of employees when an
7 employer makes a substantial change in a business
8 activity or when a governmental entity contracts
9 certain activities to a private entity."

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

11 * Section 1. LEGISLATIVE FINDINGS. (a) The legislature finds that
12 employment is vitally important to an individual's economic well-being and
13 self-respect. Employees invest their skills and efforts in their employ-
14 er's activity and have a vital stake in the employer's continued operation
15 and their continued employment. When their employment is terminated due to
16 the termination, transfer of ownership, or relocation of the business or
17 governmental activity, the employees suffer heavy economic and personal
18 losses.

19 (b) The legislature further finds that when an employer closes or
20 relocates, particularly if the employer employs a large number of employees
21 in a locality or within an industry, it is difficult, and sometimes impos-
22 sible, for the former employees to find comparable employment with another
23 employer. When an employer closes or relocates or when employees are
24 terminated because of a transfer of ownership, long-time employees lose the
25 seniority, benefits, and unaccrued pension credits they have earned during
26 their many years of service. Employment offering comparable wages and
27 benefits is unavailable to many, and some older employees will be unable to
28 find alternative employment.

29 (c) The legislature determines that employers should be required to

1 notify their employees of anticipated substantial changes in business
2 activity so that the employees can prepare for the future.

3 * Sec. 2. AS 23.10 is amended by adding new sections to read:

4 ARTICLE 7. EMPLOYMENT CLOSURE, RELOCATION, OR TRANSFER.

5 Sec. 23.10.450. RIGHT TO NOTICE. (a) Except as provided in (b)
6 of this section, an employer who expects to make a substantial change
7 in business activity shall give each employee written notice of the
8 anticipated change at least 60 days before the date of change. An
9 employer who fails to give timely notice is liable to an employee for
10 severance pay in the amount of one month's pay.

11 (b) An employer is not liable for severance pay under this
12 section to an employee if

13 (1) the employee is covered by an express contract provid-
14 ing for severance pay in an amount equal to or greater than that
15 required by AS 23.10.450 - 23.10.470; or

16 (2) the predecessor or successor employer offers the em-
17 ployee employment that provides wages and benefits that are substan-
18 tially similar to those that the employee received before the substan-
19 tial change in the business activity.

20 Sec. 23.10.460. GOVERNMENTAL LIABILITY. (a) A governmental
21 entity that ceases to employ employees to perform an activity and
22 contracts with one or more private entities to have all or a substan-
23 tial portion of the activity performed by the private entities shall
24 notify employees whose employment is affected by the cessation as
25 required of employers under AS 23.10.450. The governmental entity is
26 liable to employees for failure to give timely notice as provided in
27 that section.

28 (b) In this section, "governmental entity" means the state, a
29 municipality, a political subdivision of the state, the University of

1 Alaska, or the Alaska Railroad, and includes an administrative unit of
2 the state, municipality, political subdivision, university, or rail-
3 road.

4 Sec. 23.10.470. DEFINITIONS. In AS 23.10.450 - 23.10.470

5 (1) "employee" means an individual employed by an employer
6 or a governmental entity;

7 (2) "employer" includes an individual, partnership, asso-
8 ciation, corporation, business trust, or other nongovernmental entity
9 that employs eight or more persons;

10 (3) "one month's pay" means the average monthly compen-
11 sation paid to an employee by an employer based on the amount of
12 compensation received by the employee during the preceding 12 months;

13 (4) "predecessor employer" means an employer who has trans-
14 ferred the ownership of a business or a part of a business to another;

15 (5) "relocation" of a business or part of a business means
16 removal of all or substantially all operations of the business, a
17 separate facility or branch, or a distinct division or department of a
18 business to a location at least 60 miles away from the original loca-
19 tion;

20 (6) "substantial change in a business activity" means the
21 relocation, termination, or transfer of ownership in a business or a
22 part of a business;

23 (7) "successor employer" means an employer to whom the
24 ownership of a business or a part of a business has been transferred;

25 (8) "termination" of a business or part of a business means
26 that all or substantially all operations of the business, a separate
27 facility or branch, or a distinct division or department of a business
28 cease and that the business or part of the business is permanently
29 closed;

1 (9) "transfer of ownership" of a business or part of a
2 business includes a transfer of ownership in a business, a separate
3 facility or branch, or a distinct division or department of a busi-
4 ness, including sale of stock, a sale of assets, a foreclosure or
5 other form of repossession by creditors, a gift, a devise, or any
6 other means of transfer of ownership.
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File Contents

HB 542 - Severence Pay when Business/Gov't Changes

<u>No.</u>	<u>Description</u>
1.	Bill - HB 542
1.1	Zero Fiscal Note, HB 542 - Dept. of Labor
2.	CSHB 542 (L&C)
2.1	Zero Fiscal Note, CSHB 542(L&C) - Dept. of Labor
3.	Bill Review - Harrison
4.	Committee Report - L&C, 3/31/88, 6 DP
5.	Table A - Employeers in AK subject to Unemployment Laws
6.	Minutes, HL&C, 3/29/88
7.	Minutes, HL&C, 3/31/88
8.	Letter to Rep. Boucher from Panduren, 12/27/87

BILL PREPARATION/ACTION*

Bill # HB 542

Date Referred: 4/1/88 Out:

Title: Severance Pay When Business / Govt Changes

Sponsor: (H) L & C

Referrals: L & C, CRA, JUD, FIN

CONTACTS:*****

Name _____

L & C - Ginger 4/11 [4/13]

Dave will testify at some :

REMARKS: _____

MEETINGS:*****

Date _____ Action _____

4-13-88 1st time. adapt CS HB 542 (L & C) Staff work

take up in work session

*See other side for additional information.

1.1 HB 542

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 542
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____	Agency Affected: <u>Labor</u>
Title: <u>"An Act relating to employer obligations...."</u>	BRU: <u>Labor Standards & Safety</u>
Sponsor: <u>House Labor & Commerce</u>	Components: <u>Wage & Hour</u>
Requestor: <u>House Labor & Commerce</u>	

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (. thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director Phone: 264-2452
 Division: Labor Standards & Safety Date: 3/25/88

Approved by Commissioner: Jim Sampson Date: 3/25/88
 Agency: Department of Labor

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : CS HB 542 (L&C)

(2.1) HB 542

PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: "An Act relating to employer obligations...." BRU: Labor Standards & Safety
 Sponsor: House Labor & Commerce Components: Wage & Hour
 Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director Phone: 264-2452
 Division: Labor Standards & Safety Date: 3/31/88

Approved by Commissioner: Jim Sampson Date: 3/31/88
 Agency: Department of Labor

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
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 Impacted Agency(ies)

③ CSHB542 CL&C



Alaska State Legislature

House of Representatives

Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

April 8, 1988

TO: Henry Springer, Chairman HCRA

FROM: David C. Harrison, P.A., HCRA

SUBJECT: CSHB 542 "An Act relating to employer obligations when an employer makes a substantial change in a business activity or when a governmental entity contracts certain activities to a private entity."
(Sponsor: H. Labor and Commerce Committee)

REVIEW:

Section 1. (a) Findings by the legislature concerning the wellbeing of employees within Alaska is the thrust of this bill. It is recognized that the part of the employees' wellbeing is assured when he/she is notified in a timely manner of a change in his/her employment status either with a private or government employer.

Additional findings indicate employee conditions and status change when an employer:

- 1. closes; 2. relocates; 3 terminates;
- 4. transfers; and/or 5. leases the business activity.

That long-time employees lose seniority, benefits, unaccrued pension credits and in some instances older employees are unable to find alternative employment.

Therefore, the legislature determines that employers should be required to notify their employees of anticipated substantial changes in business activity so that the employee can prepare for the future.

ARTICLE 7. EMPLOYMENT CLOSURE, RELOCATION, OR TRANSFER.

Sec. 23.10.450 RIGHT TO NOTICE

COMMENTS: Under proposed bill, an employer shall give 60 days prior notice of substantial changes affecting employee's employment.

Penalty of employer's failure to notify an employee of substantial change in employment is liable for one

month's severance pay.

Exception to penalty based upon favorable condition for the employee per contracts or successor employer offers employee employment that provides wages and benefits that are substantially similar to those that the employee received before substantial change in the business activity.

Sec. 23.10.460 GOVERNMENTAL LIABILITY

Government liability is somewhat the same as the private business sector but conditions for notice requirements are somewhat different. If a governmental entity chooses contracts and/or leases or conveys government property that would alter an employee's employment status a prior 60 day notice of such would be in order. Appropriate penalties for failure to provide a prior 60 day notice to an employee would be required - severance pay in the amount of one month's pay is indicated.

(b) Governmental entities are spelled out as the state; a municipality; a political subdivision of the state; a school district, including a regional educational attendance area; the University of Alaska; the Alaska Railroad; and an administrative unit of the state, municipality, political subdivision, university, or railroad.

Sec. 23.10.470 provides for definitions in AS 23.10.450 - 23.10.470 as herein stated.

Sec.3 This Act does not modify or terminate the terms of a collective bargaining agreement in existence on the effective date of this Act.

Note: It would seem that an effective date clause would have been spelled out after Sec. 3, of this bill!

HOUSE COMMITTEE REPORT

(4) HB 542

(7)

Date referred: 3/17/88

FURTHER REFERRALS:

C&RA
Judiciary
Finance

DATE:

3/31/88

The Labor & Commerce Committee has considered HB 542

HOUSE BILL NO.

"An Act relating to employer obligations when an employer makes a substantial change in a business activity or when a governmental entity contracts certain activities to a private entity."

RECOMMENDS:

- replace with CS HB542 (L+C) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

David H. Donley
Walter F. Gorman
Ch. C. "Bud" Murphy
Conrad M. ...
Ally Davidson
John Ellis

David H. Donley
 Chairman's signature

TABLE A.
OF THE EMPLOYERS CLASSIFIED IN PRIVATE INDUSTRY, WHO ARE SUBJECT TO ALASKA'S UNEMPLOYMENT INSURANCE LAWS, 54% REPORTED 0 TO 3 EMPLOYEES DURING THE PAY PERIOD THAT INCLUDED THE 12TH OF SEPTEMBER, 1987.

TABLE A

STATEWIDE
EMPLOYERS BY SIZE CLASS
SEPTEMBER 1987

SIZE CLASS	0-3	4-9	10-19	20-49	50-99	100-249	250-499	500-999	1000+	TOTAL
NUMBER OF EMPLOYERS	7,084	3,259	1,385	806	252	164	46	14	7	13,017
PERCENTAGE	54.42	25.04	10.64	6.19	1.94	1.26	.35	.11	.05	100.00

10% of Employers

TABLE B:
APPROXIMATELY 13% OF ALL EMPLOYEES REPORTED BY EMPLOYERS CLASSIFIED IN PRIVATE INDUSTRY, WHO ARE SUBJECT TO ALASKA'S UNEMPLOYMENT INSURANCE LAWS, WERE ON THE PAYROLL OF EMPLOYERS WHO COUNTED 4 TO 9 PERSONS DURING THE PAYROLL PERIOD THAT INCLUDED THE 12TH OF SEPTEMBER, 1987.

TABLE B

STATEWIDE
EMPLOYEES BY SIZE CLASS
SEPTEMBER 1987

SIZE CLASS	0-3	4-9	10-19	20-49	50-99	100-249	250-499	500-999	1000+	TOTAL
EMPLOYEE COUNTS	8,536	19,186	18,671	23,743	17,745	25,059	16,369	9,519	11,496	150,324
PERCENTAGE	5.68	12.76	12.42	15.80	11.80	16.67	10.89	6.33	7.65	100.00

70% of employees

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HB 542

December 27, 1987

Honorable H. A. Boucher
Alaska House of Representatives
PO Box 111038
Anchorage AK 99511

Dear Representative Boucher,

By now, I am sure you are aware of the December 11 closure of First Interstate Bank of Alaska. As an employee of First Interstate at the time of closing, several issues are of great concern to me. I would appreciate your help in looking into these matters, and will supply you with all the facts that are available to me.

As a state chartered bank, First Interstate was closed by the State Banking Commission and FDIC was appointed receiver of the bank. As such, FDIC is now administrator of the employees' 401K retirement plan. Approximately 150 employees are participants in the plan which is with Mutual of New York. FDIC has advised us that before any disbursements can be made, they must first review the plan, which may take up to 90 days. They will then turn it over to IRS for review. All of this may take up to one year. Until this process is complete, employees will not have access to their funds.

During this time, many employees have lost their jobs. Some have been offered temporary employment (60 to 90 days) with the acquiring bank. As a result, it is imperative that we have access to our money as soon as possible. Without jobs, many of us will need those funds just to meet every day living expenses. Considering the current economic conditions in Alaska, can the state afford the additional burden of more homes being foreclosed upon?

Another issue I would like to address is accrued vacation pay. According to FDIC, final pay to employees of a failed bank is regulated under Alaska State Stature 06.05.470 (t) (2). Subsequently, employees were paid for any vacation time which was accrued in the three months prior to the failure. Under those provisions, I was paid \$395.70. I am still owed \$1863.59 for accrued vacation pay. Although at some time we will be given the

opportunity to file a claim on these unpaid earnings, consensus is our chances of receiving further compensation are not good.

The former employees of First Interstate Bank are facing extremely unsettling times. While depositors have suffered no losses in this takeover, employees, on the other hand, do stand to sustain substantial losses, both through non-payment of earned vacation pay and unavailability of 401K funds. Any pressure that you can exert as an elected official upon the FDIC and the IRS to speed up the release of the 401K fund, and upon the State of Alaska Banking Commission to reimburse the employees for lost vacation pay would be greatly appreciated.

I anxiously await your response.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carole Panduren".

Carole Panduren

PO Box 105038

Anchorage AK 99510