

**SENATE . . . . . No. 204**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Anthony W. Petruccelli**

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the notification of large job layoffs. .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Anthony W. Petruccelli	First Suffolk and Middlesex
Gloria L. Fox	7th Suffolk
Willie Mae Allen	6th Suffolk
Elizabeth A. Malia	11th Suffolk

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT RELATIVE TO THE NOTIFICATION OF LARGE JOB LAYOFFS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Section 71A of chapter 151A of the General Laws, as appearing in the  
2   2006 Official Edition, is hereby amended by striking the word “voluntary” from the definition of  
3   “Advance notification.”

4           SECTION 2. Said section 71A of chapter 151A is hereby further amended by replacing  
5   the definition of “Date of certification” with the following definition:-  
6   “Date of certification,” the actual or anticipated date of plant closing, covered partial closing,  
7   or mass layoff as determined by the commissioner.”

8           SECTION 3. Said section 71A of chapter 151A is hereby further amended by replacing  
9   the definition of “date of notification” with the following the following definition:-  
10   “ ‘Date of notification’, the date of announcement by the employer or the commissioner,  
11   whichever is earlier, of a plant closing, covered partial closing, or mass layoff as determined by  
12   the commissioner.”

13 SECTION 4. Said section 71A of chapter 151A is hereby further amended by inserting  
14 after the definition of “Industrial advisory board”, the following definition:-

15 “‘Mass Layoff,’ the reduction, during any 30 days, of an employer’s workforce, within a single  
16 municipality or employment site, that is not the result of a plant closing or partial closing that  
17 affects either at least 25 workers and 25 percent of the workforce, or at least 200 workers.”

18 SECTION 5. Said section 71A of chapter 151A is hereby further amended by replacing  
19 the definition of “partial closing”, with the following definition:-

20 “‘Partial closing’, a permanent cessation of a major discrete portion of the business conducted at  
21 a facility which results in the termination of at least 25 workers and 25 percent of the workforce,  
22 or at least 200 workers and which affects workers and communities in a manner similar to that of  
23 plant closings.”

24 SECTION 6. Said section 71A of chapter 151A is hereby further amended by replacing  
25 the definition of “Wages” with the following definition:-

26 “‘Wages’, as defined in section one of this chapter and remuneration paid to an employee for  
27 employment by an employer during the previous four quarterly periods; provided, however, that  
28 for the purpose of determining eligibility for reemployment assistance benefits, remuneration  
29 shall include unemployment insurance benefits paid for weeks of unemployment occurring  
30 during said previous four quarterly periods; and provided further, that all or part of such benefits  
31 are attributable to service in the employ of the plant closing, partial plant closing employer, or  
32 employer performing a mass layoff.”

33 SECTION 7. Chapter 151A, as so appearing, is hereby amended by striking section 71B,  
34 in its entirety, and replacing it with the following section:-

35 Section 71B. Closing of facility; report; certification; notice; hearing; appeal.

36 (a) An employer may not order a plant closing, partial closing, or mass layoff unless 60 days  
37 prior to such plant closing, partial closing, or mass layoff, the employer gives written notice of  
38 the order to the commissioner, in such form and manner as the commissioner prescribes, such  
39 information as may be necessary to determine an employee's reemployment assistance benefits  
40 rights under section 71A to 71G, inclusive. An employer giving such notice shall include in its  
41 notice the elements required by the Worker Adjustment and Notification Act (29 U.S.C. Sec.  
42 2101 et. Seq.). The commissioner, after making such inquiries and investigations as deemed  
43 necessary, shall certify whether a plant closing, partial closing, or mass layoff has occurred or  
44 will occur.

45 (1) The commissioner shall certify that a plant closing has or will occur if the commissioner  
46 determines that at least ninety per cent of the employees of a facility have been or will be  
47 permanently separated within the six month period prior to the date of certification or within  
48 such other period as the commissioner shall prescribe; provided that, such period shall fall within  
49 six month period prior to the date of certification. The commissioner shall give notice of the  
50 determination regarding certification to the employer and if the employees are represented by a  
51 labor union to such union and to any other person or organization that the commissioner  
52 determines is an interested party.

53 (2) The commissioner shall certify that a partial closing has or will occur if the commissioner  
54 determines that at least 25 workers and 25 percent of the workforce; or at least 200 workers have

55 been or will be permanently separated within the six month period prior to the date of  
56 certification or within such other period as the commissioner shall prescribe; provided that, such  
57 period shall fall within six month period prior to the date of certification. The commissioner shall  
58 give notice of the determination regarding certification to the employer and if the employees are  
59 represented by a labor union to such union and to any other person or organization that the  
60 commissioner determines is an interested party.

61 (3) The commissioner shall certify that a mass layoff has or will occur if the commissioner  
62 determines that at least 25 workers and 25 percent of the workforce; or at least 200 workers have  
63 been or will be permanently separated within the six month period prior to the date of  
64 certification or within such other period as the commissioner shall prescribe; provided that, such  
65 period shall fall within six month period prior to the date of certification. The commissioner shall  
66 give notice of the determination regarding certification to the employer and if the employees are  
67 represented by a labor union to such union and to any other person or organization that the  
68 commissioner determines is an interested party.

69 (b) Any interested party notified of a determination under this section may request a hearing  
70 within ten days after mailing of the notice of the determination. If a hearing is requested, the  
71 commissioner or the commissioner's authorized representative shall afford all interested parties a  
72 reasonable opportunity for a fair hearing, except that the commissioner may refer the case to the  
73 board of review of hearing and decision in accordance with subsection (d) of section 41 The  
74 conduct of such hearings before the commissioner or the board of review, as the case may be,  
75 shall be in accordance with the procedures prescribed by and pursuant to subsection (b) of  
76 section 39. Any interested party aggrieved by any decision on certification may appeal such

77 decision. Such appeal shall be in accordance with the procedures prescribed in sections 40  
78 through 42 inclusive.

79 (c) The commissioner shall report, from time to time, to the secretary of economic affairs and the  
80 industrial advisory board any determination or decision made pursuant to this section and may  
81 provide such information to any other interested individual or organization.

82 (d) An employer who fails to give notice as required by this section before ordering a plant  
83 closing, partial closing, or mass layoff, is liable to each employee entitled to notice who lost his  
84 or her employment for:

85 (1) Back pay at the average regular rate of compensation received by the employee during the  
86 last three years of his or her employment, or the employee's final rate of compensation,  
87 whichever is higher.

88 (2) The value of the cost of any benefits to which the employee would have been entitled had his  
89 or her employment not been lost, including the cost of any medical expenses incurred by the  
90 employee that would have been covered under an employee benefit plan.

91 (3) Liability under this section is calculated for the period of the employer's violation, up to a  
92 maximum of 60 days, or one-half the number of days that the employee was employed by the  
93 employer, whichever period is smaller.

94 (e) The amount of an employer's liability under subdivision (d) is reduced by the following:

95 (1) Any wages, except vacation moneys accrued prior to the period of the employer's violation,  
96 paid by the employer to the employee during the period of the employer's violation.

97 (2) Any voluntary and unconditional payments made by the employer to the employee that were  
98 not required to satisfy any legal obligation.

99 (3) Any payments by the employer to a third party or trustee, such as premiums for health  
100 benefits or payments to a defined contribution pension plan, on behalf of and attributable to the  
101 employee for the period of the violation.

102 (f) Notwithstanding the requirements of subdivision (a), an employer is not required to provide  
103 notice if a plant closing, partial closing, or mass layoff, is necessitated by a physical calamity or  
104 act of war.

105 (g) An employer is not required to comply with the notice requirement contained in this section  
106 if the commissioner determines that all of the following conditions exist:

107 (1) As of the time that notice would have been required, the employer was actively seeking  
108 capital or business.

109 (2) The capital or business sought, if obtained, would have enabled the employer to avoid or  
110 postpone the plant closing, partial closing, or mass layoff.

111 (3) The employer reasonably and in good faith believed that giving the notice required by this  
112 section would have precluded the employer from obtaining the needed capital or business.

113 (h) The commissioner may not determine that the employer was actively seeking capital or  
114 business under paragraph (g) unless the employer provides the department with both of the  
115 following:

116 (1) A written record consisting of all documents relevant to the determination of whether the  
117 employer was actively seeking capital or business, as specified by the commissioner.

118 (2) An affidavit verifying the contents of the documents contained in the record.

119 (i) The affidavit provided to the commissioner pursuant to paragraph (h)(2) of this section shall  
120 contain a declaration signed under penalty of perjury stating that the affidavit and the contents of  
121 the documents contained in the record submitted pursuant to paragraph (h)(1) of this section are  
122 true and correct.

123 SECTION 8. Chapter 151A, as so appearing, is hereby amended by striking section 71C,  
124 in its entirety, and replacing it with the following section:-

125 “Chapter 151A: Section 71C. Regulations; filing with legislature.

126 Section 71C. Any proposed regulations to be issued pursuant to section 71B shall be filed with  
127 the clerk of the house and the clerk of the senate thirty days before publishing a notice of a  
128 public hearing, pursuant to section 2 of chapter 30A.

129 SECTION 9 Section 71D of chapter 151A, as so appearing, is hereby amended by  
130 striking the words “covered partial closing”, and inserting in place thereof the following words:-

131 “,partial closing or mass layoff”.

132 SECTION 10. Section 71F (a)(1) of chapter 151A, as so appearing, is hereby amended  
133 by inserting after the after the words “partial closing”, the following words:-

134 “, or mass layoff”

135 SECTION 11. This act shall take effect upon its passage.