

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

---

**The Commonwealth of Massachusetts**

PRESENTED BY:

**Mr. Petruccelli**

*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:
Mr. Petruccelli	First Suffolk and Middlesex
Gloria L. Fox	7th Suffolk
Willie Mae Allen	6th 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 2006 Official  
2 Edition, is hereby amended by striking the word “voluntary” from the definition of “Advance  
3 notification.”

4

5 SECTION 2. Said section 71A of chapter 151A is hereby further amended by replacing the  
6 definition of “Date of certification” with the following definition:-

7

8 “Date of certification,” the actual or anticipated date of plant closing, covered partial closing,  
9 or mass layoff as determined by the commissioner.”

10

11 SECTION 3. Said section 71A of chapter 151A is hereby further amended by replacing the  
12 definition of “date of notification” with the following the following definition:-

13

14 “ ‘Date of notification’, the date of announcement by the employer or the commissioner,  
15 whichever is earlier, of a plant closing, covered partial closing, or mass layoff as determined by  
16 the commissioner.”

17

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

20

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

24

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

27

28 “‘Partial closing’, a permanent cessation of a major discrete portion of the business conducted  
29 at a facility which results in the termination of at least 25 workers and 25 percent of the

30 workforce, or at least 200 workers and which affects workers and communities in a manner  
31 similar to that of plant closings.”

32

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

35

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

43

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

46

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

48

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

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

66 (2) The commissioner shall certify that a partial closing has or will occur if the commissioner  
67 determines that at least 25 workers and 25 percent of the workforce; or at least 200 workers  
68 have been or will be permanently separated within the six month period prior to the date of  
69 certification or within such other period as the commissioner shall prescribe; provided that,

70 such period shall fall within six month period prior to the date of certification. The  
71 commissioner shall give notice of the determination regarding certification to the employer and  
72 if the employees are represented by a labor union to such union and to any other person or  
73 organization that the commissioner determines is an interested party.

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

82 (b) Any interested party notified of a determination under this section may request a hearing  
83 within ten days after mailing of the notice of the determination. If a hearing is requested, the  
84 commissioner or the commissioner's authorized representative shall afford all interested  
85 parties a reasonable opportunity for a fair hearing, except that the commissioner may refer the  
86 case to the board of review of hearing and decision in accordance with subsection (d) of section  
87 41 The conduct of such hearings before the commissioner or the board of review, as the case  
88 may be, shall be in accordance with the procedures prescribed by and pursuant to subsection  
89 (b) of section 39. Any interested party aggrieved by any decision on certification may appeal

90 such decision. Such appeal shall be in accordance with the procedures prescribed in sections 40  
91 through 42 inclusive.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

136

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

139

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

141

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

145

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

148

149 “,partial closing or mass layoff”.

150

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

153

154 “, or mass layoff”.

155

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

157