

SENATE No. 204

The Commonwealth of Massachusetts

In the Year Two Thousand 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
7 closing, 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
16 single municipality or employment site, that is not the result of a plant closing or partial closing
17 that 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
21 conducted at a facility which results in the termination of at least 25 workers and 25 percent of
22 the workforce, or at least 200 workers and which affects workers and communities in a manner
23 similar to that of 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
27 employee for employment by an employer during the previous four quarterly periods; provided,
28 however, that for the purpose of determining eligibility for reemployment assistance benefits,
29 remuneration shall include unemployment insurance benefits paid for weeks of unemployment
30 occurring during said previous four quarterly periods; and provided further, that all or part of
31 such benefits are attributable to service in the employ of the plant closing, partial plant closing
32 employer, or 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
37 days prior to such plant closing, partial closing, or mass layoff, the employer gives written notice
38 of 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
46 commissioner determines that at least ninety per cent of the employees of a facility have been or
47 will be permanently separated within the six month period prior to the date of certification or
48 within such other period as the commissioner shall prescribe; provided that, such period shall fall
49 within six month period prior to the date of certification. The commissioner shall give notice of
50 the determination regarding certification to the employer and if the employees are represented by
51 a 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
54 commissioner determines that at least 25 workers and 25 percent of the workforce; or at least 200

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

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

69 (b) Any interested party notified of a determination under this section may request a
70 hearing within ten days after mailing of the notice of the determination. If a hearing is requested,
71 the commissioner or the commissioner's authorized representative shall afford all interested
72 parties a reasonable opportunity for a fair hearing, except that the commissioner may refer the
73 case to the board of review of hearing and decision in accordance with subsection (d) of section
74 41 The conduct of such hearings before the commissioner or the board of review, as the case
75 may be, shall be in accordance with the procedures prescribed by and pursuant to subsection (b)
76 of 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
80 and the industrial advisory board any determination or decision made pursuant to this section and
81 may 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
83 plant closing, partial closing, or mass layoff, is liable to each employee entitled to notice who
84 lost his or her employment for:

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

88 (2) The value of the cost of any benefits to which the employee would have been entitled
89 had his or her employment not been lost, including the cost of any medical expenses incurred by
90 the 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
92 to a maximum of 60 days, or one-half the number of days that the employee was employed by
93 the employer, whichever period is smaller.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

133 “,partial closing or mass layoff”.

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

136 “, or mass layoff”

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