

By Mr. Bachrach, a petition (accompanied by bill, Senate, No. 61) of George Bachrach for legislation to provide for advance notification of mass termination of employees and to provide assistance to affected communities and employees. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-three.

AN ACT TO MITIGATE THE EFFECTS OF MASS UNEMPLOYMENT AND ECONOMIC HARDSHIP FROM MASS TERMINATION OF EMPLOYEES BY PROVIDING FOR ADVANCE NOTIFICATION AND ASSISTANCE TO AFFECTED COMMUNITIES AND EMPLOYEES.

*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. It is hereby determined and declared that: —
- 2 (a) unemployment is a major economic and social problem
- 3 which results in severe hardship to individuals and communi-
- 4 ties;
- 5 (b) mass unemployment resulting from business closings,
- 6 relocations, or reductions in operations, resulting in uniquely
- 7 severe and irreparable economic and social injury to individu-
- 8 als and communities, and results in further unemployment in
- 9 local and related businesses, increases the property tax bur-
- 10 den in local communities, reduces state tax revenues, requires
- 11 increased state expenditures for individual assistance and
- 12 other services, and makes it exceptionally difficult for affect-
- 13 ed individuals to secure new employment and for affected
- 14 communities to maintain or restore their levels of employ-
- 15 ment;
- 16 (c) Adequate notification to affected individuals and com-
- 17 munities are essential to mitigate the severe economic hard-
- 18 ship and dislocation resulting from such mass separations of
- 19 employees, and in order to permit the state and local govern-
- 20 ments to effectively discharge their responsibilities in the pro-
- 21 vision of unemployment compensation and other individual
- 22 benefits and services, in employment placement assistance, in

23 economic and technical assistance to affected communities,  
24 and other services required by such hardship and dislocations

1 SECTION 2. Chapter 149 of the General Laws is hereby  
2 amended by adding the following sections after section 179B  
3 thereof: —

4 *Section 179C.* The following words and phrases, when used  
5 in sections one hundred and seventy-nine C through one hun-  
6 dred and seventy-nine H, inclusive, of this chapter, shall have  
7 the following meanings, unless the context clearly requires  
8 otherwise: —

9 (1) "Employer", any person, corporation, business, or other  
10 entity, which has operated within the commonwealth for at  
11 least the five preceding years either directly or through any  
12 related corporation, and which has employed at least fifty per-  
13 sons at one time during at least six of the preceding twelve  
14 months; provided, however, that "employer" shall not include  
15 the state or any of its political subdivisions or any other or-  
16 ganization which is exempt from taxation under Section 501  
17 of the Internal Revenue Code of the United States; and further  
18 provided, that a corporation which acquires the business of  
19 an employer shall be deemed to have operated within the com-  
20 monwealth during such period as the acquired employer oper-  
21 ated within the commonwealth.

22 "Related corporation", a corporation which either owns  
23 more than fifty per cent of a subject corporation, is more than  
24 fifty per cent owned by a subject corporation, or is more than  
25 fifty per cent owned by a corporation which also owns more  
26 than fifty per cent of a subject corporation.

27 (3) "Employees", persons employed within the common-  
28 wealth on a full-time or part-time basis.

29 (4) "Establishment", any single manufacturing, mechani-  
30 cal, or mercantile establishment, factory, workshop, or other  
31 place of employment of an employer, which has been in exist-  
32 ence for more than three years; provided, however, that "es-  
33 tablishment" shall not include a temporary construction site.

34 "Mass separation", the termination of employment by an  
35 employer within any single twelve month period of either: —

36 (a) more than two hundred and fifty employees of such

37 employer, or (b) a number of employees which reduces the  
38 total number of employees at any establishment to less than  
39 fifty per cent of the base level of employment at such estab-  
40 lishment, or twenty-five employees, whichever number is  
41 greater; provided, however, that "mass separation" shall not  
42 include any temporary or seasonal discharge or layoff for a  
43 specified period of not more than four months. Termination  
44 of employment of individuals employed at a construction site  
45 or other temporary work site not constituting an establish-  
46 ment, shall not constitute a mass separation.

47 (6) "Affected establishment", any establishment of an em-  
48 ployer at which any of the employees whose employment will  
49 be terminated as part of a mass separation are employed.

50 (7) "Affected municipality", the city or town in which any  
51 affected establishment is located.

52 (8) "Affected employee", any employee whose employment  
53 is terminated as part of a mass separation.

54 (9) "Operating loss", the condition of an employer in which  
55 the employer experiences a net loss in the employer's aggre-  
56 gate operations over a period of at least twelve months; pro-  
57 vided, however, that no net operating loss may be recognized  
58 if it results from the extraordinary allocation of costs or rev-  
59 enues between an employer and any related corporation.

60 (10) "Fund" or "Community Jobs Assistance Fund, the  
61 fund established pursuant to section one hundred and seventy-  
62 nine G of this chapter.

63 *Section 179D.* (1) Every employer shall notify in writing the  
64 commissioner, all employees of each affected establishment,  
65 and each affected municipality, at least twelve months prior  
66 to the commencement of any mass separation of employees;  
67 provided, however, that in any case in which the employer  
68 establishes that the mass separation of employees was not  
69 foreseen by the employer and that requiring the employer to  
70 remain open for the full period of notice would result in an  
71 operating loss to the employer attributable to the affected  
72 establishments, the commissioner may approve a shorter  
73 period of notification, and in such case such notification shall  
74 be deemed to constitute compliance with this section. Approv-  
75 al of such shorter period of notification shall not be granted

76 unless a public hearing is held in each affected municipality.

77 (2) Notification shall include the number of employees af-  
78 fected by the mass separation, the wages and other compensa-  
79 tion paid during the preceding twelve months to such em-  
80 ployees, the amount of state and local taxes paid by the em-  
81 ployer during the preceding year and the anticipated impact  
82 of the mass separation on such tax payments, and such other  
83 information as the commissioner may by rule require.

84 (3) Upon receipt of such notice the commissioner shall  
85 make such investigation and take such action as may assist in  
86 maintaining or restoring the level of employment affected by  
87 the mass separation, and shall conduct a public hearing in an  
88 affected municipality upon request by the affected municipali-  
89 ty, or any ten affected employees.

90 *Section 179E.* In any case in which by reason of bankruptcy  
91 of the employer or for other cause the employee is unable to  
92 secure payment of the penalty required by this section from  
93 the employer within four weeks after termination of employ-  
94 ment, the employee shall be entitled to a payment from the  
95 community jobs assistance fund equal to the amount of the  
96 minimum benefit requirement by this section, and in such  
97 case the commissioner shall have a right of action against  
98 such employer for the full amount of such payment together  
99 with interest at the rate of ten per cent per annum, and any  
100 amount so recovered shall be deposited in the community jobs  
101 assistance fund.

102 *Section 179F.* If an employer fails to give one year notifica-  
103 tion, said employer shall be fined Five Hundred Dollars per  
104 day for each day that notification was not given. This Five  
105 Hundred Dollars will be given to the Community Jobs Assist-  
106 ance Fund.

107 *Section 179G.* (1) The community jobs assistance fund shall  
108 be established upon the books of the commonwealth as a sep-  
109 arate fund for the purposes provided in sections one hundred  
110 and seventy-nine C through one hundred and seventy-nine H,  
111 inclusive, of this chapter, and shall be administered by the  
112 commissioner exclusively for those purposes. All payments  
113 made or recovered pursuant to sections one hundred and  
114 seventy-nine E(2) and one hundred and seventy-nine F of

115 this chapter, all appropriations made by the general court to  
116 this fund, and all interest earned by the fund, shall be de-  
117 posited exclusively for such purposes.

118 (2) The commissioner shall have authority to employ  
119 moneys in the fund for the purpose of administering the pro-  
120 visions of sections one hundred and seventy-nine C through  
121 one hundred and seventy-nine H, inclusive, of this chapter.

122 (3) The commissioner shall have authority to make grants  
123 or loans from the fund to affected municipalities and to non-  
124 profit corporations for the purposes of providing employment  
125 opportunities for employees directly affected by a mass sep-  
126 aration and maintaining or restoring levels of employment in  
127 affected municipalities. Such grants and loans may be made  
128 to provide technical and planning assistance, matching funds  
129 to secure federal or other assistance in creation of new em-  
130 ployment opportunities in affected municipalities, provision of  
131 temporary financing or capitalization of new employment op-  
132 portunities in affected municipalities. Priority in awarding  
133 such grants and loans shall be given to the provision of new  
134 employment opportunities to employees directly affected by  
135 mass separations.

136 (4) The commissioner shall promulgate rules governing ap-  
137 plication, processing and approval or requests for assistance  
138 from the fund.

139 *Section 179H.* (1) No employer or other person shall dis-  
140 charge or otherwise penalize any employee because such em-  
141 ployee has instituted, caused to be instituted or participated in  
142 any investigation or proceeding, or exercised any other right,  
143 under the provisions of section one hundred and seventy-nine  
144 C through one hundred and seventy-nine H, inclusive, of this  
145 chapter. The commissioner shall investigate any complaint by  
146 an employee of a violation of this provision and shall notify  
147 the employer of the commissioner's determination upon such  
148 investigation within ninety days of receipt of such complaint.

149 (2) The commissioner shall have the power to investigate  
150 the compliance of any employer with the provisions of sections  
151 one hundred and seventy-nine C through one hundred and  
152 seventy-nine H, inclusive, of this chapter, and in making any  
153 such investigation the commissioner or his duly authorized

154 representative may require the attendance and testimony of  
155 witnesses and the production of books, papers, contracts and  
156 other documents or records. Witnesses shall be summoned in  
157 the same manner and shall be paid the same fees as witnesses  
158 before the superior court in civil cases. The commissioner or  
159 any such representative may administer oaths to witnesses or  
160 take their affirmation. If any person summoned and paid as  
161 a witness refuses to attend, or to be sworn or to affirm, or to  
162 answer any question, or produce any book, paper, contract,  
163 or other document or record pertinent to the matter before  
164 the commissioner or such representative, a justice of the su-  
165 preme judicial or superior court, upon application by said  
166 commissioner or such representative, may issue an order re-  
167 quiring such person to appear before said commissioner or  
168 such representative, and to produce the books, contracts, pap-  
169 ers, documents and records and to give evidence relating to  
170 the matter in question. Upon application by the commissioner  
171 or such representative, commissions to take depositions of  
172 persons without the commonwealth may be issued by a justice  
173 of the supreme judicial or superior court, to be used in hear-  
174 ings before the commissioner or such representative, and all  
175 laws and rules relating to such commissions in civil actions  
176 shall apply to commissions issued hereunder.

177 (3) The commissioner and any employee who is aggrieved  
178 by the failure of an employer to comply with the provisions of  
179 sections one hundred and seventy-nine C through one hundred  
180 seventy-nine H, inclusive, of this chapter, or by a shortened  
181 period of notification by an employer of a mass separation  
182 pursuant to an improper approval by the commissioner under  
183 section one hundred and seventy-nine D(1) of this chapter,  
184 may bring a civil action in the superior court against such  
185 employer. No complaint to or action by the commissioner shall  
186 be a prerequisite to any such action by any employee or af-  
187 fected employee organization. If an employer has violated the  
188 provisions of paragraph one of this action, failed to provide  
189 notice as required by section one hundred and seventy-nine D  
190 of this chapter, provided a shortened period of notice pur-  
191 suant to an improper approval by the commissioner under  
192 section one hundred and seventy-nine D(1) of this chapter,

193 or failed to make any payment required by sections one hun-  
194 dred and seventy-nine E and one hundred and seventy-nine F  
195 of this chapter, the court shall enjoin the employer from carry-  
196 ing out any unlawful discharge, penalty, or mass separation,  
197 and shall order the reinstatement with back pay of any em-  
198 ployee so discharged or separated as part of a mass separa-  
199 tion, until the employer has complied with said requirements.  
200 Any employee entitled to back pay under this provision shall  
201 have an independent right of action against such employer  
202 for such compensation.

203 (4) Any money claim against an employer on behalf of an  
204 employee or the community jobs assistance fund pursuant to  
205 the provisions of sections one hundred and seventy-nine C  
206 through one hundred and seventy-nine H, inclusive, of this  
207 chapter, shall have priority over all other claims against an  
208 employer except for wage claims.

209 (5) Any person who knowingly makes any false statement  
210 of a material fact or knowingly fails to disclose a material  
211 fact in an attempt to influence any action or proceeding under  
212 the provisions of sections one hundred and seventy-nine C  
213 through one hundred seventy-nine H, inclusive, of this chap-  
214 ter, shall be subject to a fine of not more than one thousand  
215 dollars or imprisonment for not more than one year or both.

