AN ACT to repeal 109.07 (2); to renumber and amend 109.07 (1); to amend 71.07 (2dj) (am) 1, 101.27 (3) (intro.), 109.01 (2) and 560.15 (1) (b) 1; and to create 20.445 (1) (jm), 109.07 (1), 109.07 (3) to (6), 109.12 and 893.97 of the statutes, relating to: remedies for failure to notify of business closings or mass layoffs, by employers, creating a business closing surcharge, granting rule–making authority, making an appropriation and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.445 (1) (jm) of the statutes is created to read:

20.445 (1) (jm) Dislocated worker program grants. All moneys received from the business closing surcharge under s. 109.07 (4m), for providing grants under s. 109.07 (4m), are appropriated to the department to make grants to persons providing to dislocated workers programs offering training and related employment services including but not limited to:

- Providing short-term or intensive job search assistance;
- Providing cognitive and vocational training or placement assistance;
- Providing self-sufficiency assistance;
- Providing information through one or more public or private employment agencies.

SECTION 2. 71.07 (2dj) (am) 1 of the statutes is amended to read:

71.07 (2dj) (am) 1. Modify “member of a targeted group”, as defined in section 51 (d) of the internal revenue code, to include dislocated farmers, persons unemployed as a result of a business action subject to s. 109.07 (1m) and persons whose unemployment benefits have expired.

SECTION 3. 71.28 (1dj) (am) 1 of the statutes is amended to read:

71.28 (1dj) (am) 1. Modify “member of a targeted group”, as defined in section 51 (d) of the internal revenue code, to include dislocated farmers, persons unemployed as a result of a business action subject to s. 109.07 (1m) and persons whose unemployment benefits have expired.

SECTION 4. 71.47 (1dj) (am) 1 of the statutes is amended to read:

71.47 (1dj) (am) 1. Modify “member of a targeted group”, as defined in section 51 (d) of the internal revenue code, to include dislocated farmers, persons unemployed as a result of a business action subject to s. 109.07 (1m) and persons whose unemployment benefits have expired.

SECTION 5. 101.27 (3) (intro.) of the statutes is amended to read:

101.27 (3) GRANTS. (intro.) From the appropriation under s. 20.445 (1) (bc), (jm), (mb) and (mc), the department shall make grants to persons providing to dislocated workers programs offering training and related employment services including but not limited to the following:

- Providing short-term or intensive job search assistance;
- Providing cognitive and vocational training or placement assistance;
- Providing self-sufficiency assistance;
- Providing information through one or more public or private employment agencies.

SECTION 6. 109.01 (2) of the statutes is amended to read:

109.01 (2) “Employer” Except as provided in s. 109.07 (1) (d), “employer” means any person engaged in any activity, enterprise or business employing one or more persons within the state, including the state and its political subdivisions and charitable, nonprofit or tax–exempt organizations and institutions.

SECTION 7. 109.07 (1) of the statutes is renumbered 109.07 (1m) and amended to read:

109.07 (1m) Every Subject to sub. (5) or (6), an employer employing 100 or more persons in this state who has decided upon a merger, liquidation, disposition or relocation within or without the state, resulting in a cessation of business operations affecting 10 or more employees business closing or mass layoff in this state shall promptly notify the subunit of the department that administrates s. 101.27, any affected employe, any collec-
tive bargaining representative of any affected employe, and the highest official of any town, village, city or county. The affected place of employment is located in writing of such action no later than 60 days prior to the date that such merger, liquidation, disposition, relocation or cessation the business closing or mass layoff takes place. The employer shall provide in writing all information concerning its payroll, affected employees and the wages and other remuneration owed to such employees as the department may require. The department may in addition require the employer to submit a plan setting forth the manner in which final payment in full shall be made to affected employees. The department shall promptly provide a copy of the notice required under this subsection to the department of development and shall cooperate with the department of development in the performance of its responsibilities under s. 560.15. This subsection does not apply to a business closing or mass layoff that is caused by a strike or lockout.

SECTION 8. 109.07 (1) of the statutes is created to read:

109.07 (1) In this section:

(a) “Affected employe” means an employe who loses, or may reasonably be expected to lose, his or her employment with an employer who is required to give notice under sub. (1m) because of the business closing or mass layoff.

(b) “Business closing” means a permanent or temporary shutdown of an employment site or of one or more facilities or operating units at an employment site or within a single municipality that affects 25 or more employees, not including new or low-hour employes.

(c) “Employe benefit plan” means a plan as defined in 29 USC 1002 (3).

(d) “Employer” means any business enterprise that employs 50 or more persons in this state.

(e) “Highest official” means the mayor of a city, town board chairperson or village president, except as follows:
   1. For a city organized under subch. I of ch. 64, “highest official” means both the president of the city council and the city manager.
   2. For a village organized under subch. I of ch. 64, “highest official” means both the president of the village board of trustees and the village manager.

(f) “Mass layoff” means a reduction in an employer’s work force that is not the result of a business closing and that affects the following numbers of employees at an employment site or within a single municipality, not including new or low-hour employes:
   1. At least 25% of the employer’s work force or 25 employees, whichever is greater; or
   2. At least 500 employees.

(g) “Municipality” means a city, village or town.

(h) “New or low-hour employe” means an employe who has been employed by an employer for fewer than 6 of the 12 months preceding the date on which a notice is required under sub. (1m) or who averages fewer than 20 hours of work per week.

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109.07 (3) to (6) of the statutes are created to read:

109.07 (3) (a) If an employer fails to give timely notice to an affected employe as required under sub. (1m), the affected employe may recover, as provided under sub. (4), all of the following:

   1. Pay, for the days during the recovery period described under par. (c) that the employe would have worked if the business closing or mass layoff had not occurred, based on the greater of the following:
      a. The employe’s regular rate of pay from the employer, averaged over the shorter of the 3-year period preceding the business closing or mass layoff or the entire period during which the employe was employed by the employer.
      b. The employe’s regular rate of pay from the employer at the time of the business closing or mass layoff.

   2. The value of any benefit that the employe would have received under an employe benefit plan during the recovery period described under par. (c), but did not receive because of the business closing or mass layoff, including the cost of medical treatment incurred that would have been covered under the employe benefit plan.

   b. The amount that an employe may recover under par. (a) shall be reduced by any cost that the employer incurs by crediting the employe, under an employe benefit plan, for time not actually served because of a business closing or mass layoff.

   c. The recovery period under par. (a) begins on the day that the business closing or mass layoff occurs. The recovery period equals the number of days in the period beginning on the day on which an employer is required to give notice under sub. (1m) and ending on whichever of the following occurs first:
      1. The day that the employer actually gave the notice to the employe.
      2. The day that the business closing or mass layoff occurred.

   4 (a) An employe whose employer fails to notify timely the employe under sub. (1m) may file a claim with the department. If the employe files a claim with the department no later than 300 days after the business closing or mass layoff, the department shall, in the manner provided in s. 109.09, investigate the claim, determine the number of days that the employer was late in providing notice and, on behalf of the employe, attempt to recover from the employer the payment under sub. (3).

   (b) If the department does not recover payment within 180 days after a claim is filed or within 30 days after it notifies the employe of its determination under
par. (a), whichever is first, the department shall refer the
claim to the department of justice. The department of jus-
tice may bring an action in circuit court on behalf of the
employe to recover the payment under sub. (3).
(c) If the department of justice does not bring an
action under par. (b) within 120 days after the claim is
referred to it, the employe may bring an action in circuit
court to recover the payment under sub. (3). If the
employe prevails in the action, he or she shall also
recover costs under ch. 814 and, notwithstanding s.
814.04 (1), reasonable attorney fees.
(d) An action under this section shall be begun within
one year after the department refers the claim to the
department of justice under par. (b), or be barred.
(4m) (a) If an employer fails to give timely notice to
the highest official of a municipality as required under
sub. (1m), the department shall assess a business closing
surcharge against the employer of not more than $500 for
each day in the period beginning on the day that the
employer was required to give notice to the highest offi-
cial and ending on the earlier of the day that the employer
actually gave notice to the highest official or the day that
the business closing or mass layoff occurred.
(b) The department shall deposit business closing
surcharges collected under par. (a) in the general fund.
(5) (a) An employer is not liable under this section for
a failure to give notice to any person under sub. (1m), if
the department determines all of the following:
1. When the notice under sub. (1m) would have been
timely given, that the employer was actively seeking cap-
ital or business to enable the employer to avoid or post-
pone indefinitely the business closing or mass layoff.
2. That the employer reasonably and in good faith
believed that giving the notices to all parties required
under sub. (1m) would have prevented the employer
from obtaining the capital or business.
(b) The department may not determine that an
employer was actively seeking capital or business under
par. (a) 1. unless the employer has a written record, made
while the employer was seeking capital or business, of
those activities. The record shall consist of the docu-
ments and other material specified by the department by
rule under s. 109.12 (1) (b). The employer shall have
individual documents in the record notarized, as required
by the department’s rules. The employer shall provide
the department with an affidavit verifying the content of
the notarized documents.
(6) An employer is not liable under this section for a
failure to give notice to any person under sub. (1m), if the
department determines that the business closing or mass
layoff is the result of any of the following:
(a) The sale of part or all of the employer’s business,
if the purchaser agrees in writing, as part of the purchase
agreement, to hire substantially all of the affected
employes with not more than a 6–month break in
employment.
(b) The relocation of part or all of an employer’s busi-
ness within a reasonable commuting distance, if the
employer offers to transfer substantially all of the
affected employes with not more than a 6–month break in
employment.
(c) The completion of a particular project or work of
a specific duration, including seasonal work, if the
affected employes were hired with the understanding that
their employment was limited to the duration of such
work or project.
(d) Business circumstances that were not foreseeable
when the notice would have been timely given.
(e) A natural or man–made disaster beyond the con-
trol of the employer.
(f) A temporary cessation in business operations, if
the employer recalls the affected employes on or before
the 60th day beginning after the cessation.
(7) Each employer shall post, in one or more conspic-
uous places where notices to employes are customarily
posted, a notice in a form approved by the department set-
ting forth employes’ rights under this section. Any
employer who violates this subsection shall forfeit not
more than $100.
SECTION 11. 109.12 of the statutes is created to read:
109.12 Rules and report. The department shall do
all of the following:
(1) Promulgate rules to do all of the following:
(a) Aid the administration of this chapter, including
the enforcement of s. 109.07 and criteria for exceptions
under s. 109.07 (5) and (6).
(b) Establish the form and content of the record
required under s. 109.07 (5) (b) and specify the docu-
ments that must contain notarized signatures.
(2) Not later than March 1 annually, beginning with
1990, submit a written report on its activities in the pre-
ceeding 12 months related to the enforcement and admin-
istration of s. 109.07 to the chief clerk of each house of
the legislature for distribution under s. 13.172 (3) to the
standing committees with jurisdiction over labor.
(3) Include, in the report required under sub. (2), the
number, type and disposition of all determinations made
by the department under s. 109.07 (5) and (6).
SECTION 12. 560.15 (1) (b) 1. of the statutes is amended to read:
560.15 (1) (b) 1. The department of industry, labor
and human relations under s. 109.07 (1m).
SECTION 13. 893.97 of the statutes is created to read:
893.97 Business closing notification. An action
arising under s. 109.07 (3) is subject to the limitations
under s. 109.07 (4) (d).
SECTION 14. Nonstatutory provisions. (1) The
department of industry, labor and human relations shall
do all of the following:
(a) Submit the proposed rules required under section
109.12 (1) of the statutes, as created by this act, to the legis-
lative council staff under section 227.15 (1) of the statu-
utes no later than the first day of the 10th month beginning after the effective date of this paragraph.

(b) Establish the form for the notice required under section 109.07 (7) of the statutes, as created by this act, no later than the first day of the 5th month beginning after publication.

Section 15. Initial applicability. (1) In this section:
(a) “Business closing” has the meaning given in section 109.07 (1) (b) of the statutes, as created by this act.
(b) “Employer” has the meaning given in section 109.07 (1) (d) of the statutes, as created by this act.
(c) “Mass layoff” has the meaning given in section 109.07 (1) (f) of the statutes, as created by this act.

(2) This act first applies to a business closing or mass layoff, by an employer that employs 100 or more persons, that occurs on the effective date of this subsection.
(3) This act first applies to a business closing or mass layoff, by an employer that employs fewer than 100 persons, that occurs on the 60th day beginning after the effective date of this subsection.