

111TH CONGRESS
1ST SESSION

S. 1374

To amend the Worker Adjustment and Retraining Notification Act to minimize the adverse effects of employment dislocation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2009

Mr. BROWN (for himself, Mr. KERRY, Mr. DURBIN, Mr. HARKIN, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Worker Adjustment and Retraining Notification Act to minimize the adverse effects of employment dislocation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Forewarn Act”.

5 **SEC. 2. AMENDMENTS TO THE WARN ACT.**

6 (a) DEFINITIONS.—

7 (1) EMPLOYER, PLANT CLOSING, AND MASS
8 LAYOFF.—Paragraphs (1) through (3) of section
9 2(a) of the Worker Adjustment and Retraining Noti-

1 fication Act (29 U.S.C. 2101(a) (1)–(3)) are amend-
2 ed to read as follows:

3 “(1) the term ‘employer’ means any business
4 enterprise that employs 75 or more employees and
5 includes any parent corporation of which such busi-
6 ness enterprise is a subsidiary;

7 “(2) the term ‘plant closing’ means the perma-
8 nent or temporary shutdown of a single site of em-
9 ployment, or of one or more facilities or operating
10 units within a single site of employment, which re-
11 sults in an employment loss at such site, during any
12 30-day period, for 25 or more employees;

13 “(3) the term ‘mass layoff’ means a reduction
14 in force at a single site of employment which results
15 in an employment loss at such site, during any 30-
16 day period, for 25 or more employees;”.

17 (2) SECRETARY OF LABOR.—

18 (A) DEFINITION.—Paragraph (8) of sec-
19 tion 2(a) of such Act (29 U.S.C. 2101(a)(8)) is
20 amended to read as follows:

21 “(8) the term ‘Secretary’ means the Secretary
22 of Labor or a representative of the Secretary of
23 Labor.”.

1 (B) REGULATIONS.—Section 8(a) of such
 2 Act (29 U.S.C. 2107(a)) is amended by striking
 3 “of Labor”.

4 (3) CONFORMING AMENDMENTS.—

5 (A) NOTICE.—Section 3(d) of such Act (29
 6 U.S.C. 2102(d)) is amended by striking out “,
 7 each of which is less than the minimum number
 8 of employees specified in section 2(a)(2) or (3)
 9 but which in the aggregate exceed that min-
 10 imum number,” and inserting “which in the ag-
 11 gregate exceed the minimum number of employ-
 12 ees specified in section 2(a)(2) or (3)”.

13 (B) DEFINITIONS.—Section 2(b)(1) of
 14 such Act (29 U.S.C. 2101(b)(1)) is amended by
 15 striking “(other than a part-time employee)”.

16 (b) NOTICE.—

17 (1) NOTICE PERIOD.—Section 3 of the Worker
 18 Adjustment and Retraining Notification Act (29
 19 U.S.C. 2102) is amended by striking “60-day pe-
 20 riod” and inserting “90-day period” each place it
 21 appears.

22 (2) RECIPIENTS.—Section 3(a) of such Act (29
 23 U.S.C. 2102(a)) is amended—

24 (A) in paragraph (1), by striking “or, if
 25 there is no such representative at that time, to

1 each affected employee; and” and inserting
2 “and to each affected employee;”; and

3 (B) by redesignating paragraph (2) as
4 paragraph (3) and inserting after paragraph
5 (1) the following:

6 “(2) to the Secretary and the Governor of the
7 State where the plant closing or mass layoff is to
8 occur; and”.

9 (3) NOTICE EXCUSED WHERE CAUSED BY TER-
10 RORIST ATTACK.—Section 3(b)(2) of the Worker Ad-
11 justment and Retraining Notification Act (29 U.S.C.
12 2102(b)(2)) is amended by adding at the end the
13 following:

14 “(C) No notice under this Act shall be required if
15 the plant closing or mass layoff is due directly to a ter-
16 rorist attack on the United States.”.

17 (4) CONTENT OF NOTICE.—Section 3 of such
18 Act (29 U.S.C. 2102) is further amended by adding
19 at the end the following:

20 “(e) CONTENT OF NOTICES.—An employer who is re-
21 quired to provide notice as required under subsection (a)
22 shall include—

23 “(1) in each notice required under such sub-
24 section—

1 “(A) a statement of the number of affected
2 employees;

3 “(B) the reason for the plant closing or
4 mass layoff;

5 “(C) the availability of employment at
6 other establishments owned by the employer;

7 “(D) a statement of each employee’s rights
8 with respect to wages and severance and em-
9 ployee benefits; and

10 “(E) a statement of the available employ-
11 ment and training services provided by the De-
12 partment of Labor; and

13 “(2) in each notice required under such sub-
14 section except for the notice provided to individual
15 employees, the names, addresses, and occupations of
16 the affected employees.”.

17 (5) INFORMATION REGARDING BENEFITS AND
18 SERVICES AVAILABLE TO WORKERS AND DOL NO-
19 TICE TO CONGRESS.—Section 3 of such Act (29
20 U.S.C. 2102) is further amended by adding at the
21 end the following:

22 “(f) INFORMATION REGARDING BENEFITS AND
23 SERVICES AVAILABLE TO EMPLOYEES.—Concurrent with
24 or immediately after providing the notice required under
25 subsection (a)(1), an employer shall provide affected em-

1 ployees with information regarding the benefits and serv-
 2 ices available to such employees, as described in the guide
 3 compiled by the Secretary under section 13.

4 “(g) ACCESS OF RAPID RESPONSE TEAMS.—An em-
 5 ployer who is required to provide notice under subsection
 6 (a) shall permit, during work hours, reasonable on-site ac-
 7 cess to any Federal, State, or local rapid response team
 8 under section 134(a)(2)(A) of the Workforce Investment
 9 Act of 1998 (29 U.S.C. 2864(a)(2)(A)) responsible for
 10 providing reemployment, training services, and related
 11 services to affected employees.

12 “(h) DOL NOTICE TO CONGRESS.—As soon as prac-
 13 ticable and not later than 15 days after receiving notice
 14 under subsection (a)(2), the Secretary of Labor shall no-
 15 tify the appropriate Senators and Members of the House
 16 of Representatives who represent the area or areas where
 17 the plant closing or mass layoff is to occur.”.

18 (c) ENFORCEMENT.—

19 (1) AMOUNT.—Section 5(a)(1) of the Worker
 20 Adjustment and Retraining Notification Act (29
 21 U.S.C. 2104(a)(1)) is amended—

22 (A) in subparagraph (A)—

23 (i) by striking “back pay for each day
 24 of violation” and inserting “two days’ pay
 25 multiplied by the number of calendar days

for which the employer was required but failed to provide notice before such closing or layoff”; and

(ii) in clause (ii), by striking “and” at the end thereof;

(B) by redesignating subparagraph (B) as subparagraph (C);

(C) by inserting after subparagraph (A) the following:

“(B) interest on the amount described in subparagraph (A) calculated at the prevailing rate; and”;

(D) by striking the matter following subparagraph (C) (as so redesignated).

(2) CONFORMING AMENDMENT.—Section 5(a)(3) of such Act (29 U.S.C. 2104(a)(3)) is amended by inserting “, the Secretary, or the Governor” after “unit of local government”.

(3) EXEMPTION.—Section 5(a)(4) of such Act (29 U.S.C. 2104(a)(4)) is amended by striking “reduce the amount of the liability or penalty provided for in this section” and inserting “reduce the amount of the liability under paragraph (1) and reduce the amount of the penalty provided for in paragraph (3)”.

1 (4) ADMINISTRATIVE COMPLAINT.—Section
2 5(a)(5) of such Act (29 U.S.C. 2104(a)(5)) is
3 amended—

4 (A) by striking “may sue” and inserting
5 “may,”;

6 (B) by inserting after “both,” the fol-
7 lowing: “(A) file a complaint with the Secretary
8 alleging a violation of section 3, or (B) bring
9 suit,”; and

10 (C) by adding at the end thereof the fol-
11 lowing new sentence: “A person seeking to en-
12 force such liability may use one or both of the
13 enforcement mechanisms described in subpara-
14 graphs (A) and (B).”.

15 (5) ACTION BY THE SECRETARY.—Section 5 of
16 such Act (29 U.S.C. 2104) is further amended—

17 (A) by redesignating subsection (b) as sub-
18 section (d); and

19 (B) by inserting after subsection (a) the
20 following new subsections:

21 “(b) ACTION BY THE SECRETARY.—

22 “(1) ADMINISTRATIVE ACTION.—The Secretary
23 shall receive, investigate, and attempt to resolve
24 complaints of violations of section 3 by an employer
25 in the same manner that the Secretary receives, in-

1 investigates, and attempts to resolve complaints of vio-
2 lations of sections 6 and 7 of the Fair Labor Stand-
3 ards Act of 1938 (29 U.S.C. 206 and 207).

4 “(2) SUBPOENA POWERS.—For the purposes of
5 any investigation provided for in this section, the
6 Secretary shall have the subpoena authority provided
7 for under section 9 of the Fair Labor Standards Act
8 of 1938 (29 U.S.C. 209).

9 “(3) CIVIL ACTION.—The Secretary may bring
10 an action in any court of competent jurisdiction to
11 recover on behalf of an employee the backpay, inter-
12 est, benefits, and liquidated damages described in
13 subsection (a).

14 “(4) SUMS RECOVERED.—Any sums recovered
15 by the Secretary on behalf of an employee under
16 subparagraphs (A) and (B) of subsection (a)(1) shall
17 be held in a special deposit account and shall be
18 paid, on order of the Secretary, directly to each em-
19 ployee affected. Any such sums not paid to an em-
20 ployee because of inability to do so within a period
21 of 3 years, and any sums recovered by the Secretary
22 under subparagraph (C) of subsection (a)(1), shall
23 be credited as an offsetting collection to the appro-
24 priations account of the Secretary for expenses for

1 the administration of this Act and shall remain
2 available to the Secretary until expended.

3 “(5) ACTION TO COMPEL RELIEF BY SEC-
4 RETARY.—The district courts of the United States
5 shall have jurisdiction, for cause shown, over an ac-
6 tion brought by the Secretary to restrain the with-
7 holding of payment of back pay, interest, benefits, or
8 other compensation, plus interest, found by the court
9 to be due to employees under this Act.

10 “(c) LIMITATIONS.—

11 “(1) LIMITATIONS PERIOD.—An action may be
12 brought under this section not later than 2 years
13 after the date of the last event constituting the al-
14 leged violation for which the action is brought.

15 “(2) LIMITATION ON PRIVATE ACTION WHILE
16 ACTION OF SECRETARY IS PENDING.—If the Sec-
17 retary has instituted an enforcement action or pro-
18 ceeding under subsection (b), an individual employee
19 may not bring an action under subsection (a) during
20 the pendency of the proceeding against any person
21 with respect to whom the Secretary has instituted
22 the proceeding.”.

23 (d) POSTING OF NOTICES; PENALTIES.—Section 11
24 of the Worker Adjustment and Retraining Notification Act
25 (29 U.S.C. 2101 note) is amended to read as follows:

1 **“SEC. 11. POSTING OF NOTICES; PENALTIES.**

2 “(a) POSTING OF NOTICES.—Each employer shall
3 post and keep posted in conspicuous places upon its prem-
4 ises where notices to employees are customarily posted a
5 notice to be prepared or approved by the Secretary setting
6 forth excerpts from, or summaries of, the pertinent provi-
7 sions of this Act and information pertinent to the filing
8 of a complaint.

9 “(b) PENALTIES.—The Secretary may impose a civil
10 penalty on any person who willfully violates this section
11 of not more than \$500 for each separate offense.”.

12 (e) NON-WAIVER OF RIGHTS AND REMEDIES; INFOR-
13 MATION REGARDING BENEFITS AND SERVICES AVAIL-
14 ABLE TO EMPLOYEES.—Such Act (29 U.S.C. 2101 et
15 seq.) is further amended by adding at the end the fol-
16 lowing:

17 **“SEC. 12. RIGHTS AND REMEDIES NOT SUBJECT TO WAIV-**
18 **ER.**

19 “(a) IN GENERAL.—The rights and remedies pro-
20 vided under this Act (including the right to maintain a
21 civil action) may not be waived, deferred, or lost pursuant
22 to any agreement or settlement other than an agreement
23 or settlement described in subsection (b).

24 “(b) AGREEMENT OR SETTLEMENT.—An agreement
25 or settlement referred to in subsection (a) is an agreement
26 or settlement negotiated by the Secretary, an attorney

1 general of any State, or a private attorney on behalf of
2 affected employees.

3 **“SEC. 13. INFORMATION REGARDING BENEFITS AND SERV-**
4 **ICES AVAILABLE TO WORKERS.**

5 “The Secretary of Labor shall maintain a guide of
6 benefits and services which may be available to affected
7 employees, including unemployment compensation, trade
8 adjustment assistance, COBRA benefits, and early access
9 to training services and other services, including coun-
10 seling services, available under title I of the Workforce In-
11 vestment Act of 1998 (29 U.S.C. 2801). Such guide shall
12 be available on the Internet website of the Department
13 of Labor and shall include a description of the benefits
14 and services, the eligibility requirements, and the means
15 of obtaining such benefits and services. Upon receiving no-
16 tice from an employer under section 3(a)(2), the Secretary
17 shall immediately transmit such guide to such employer.”.

18 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

19 In addition to funds authorized to be appropriated
20 for the general enforcement of the Worker Adjustment
21 and Retraining Notification Act (29 U.S.C. 2101 et seq.),
22 there is authorized to be appropriated to the Secretary of
23 Labor such additional sums as may be necessary for the

1 additional enforcement authority authorized by the
2 amendments made by this Act.

