

112TH CONGRESS
2D SESSION

S. 3297

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 14, 2012

Mr. BROWN of Ohio (for himself, Mr. MERKLEY, and Mr. KERRY) 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

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

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

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

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

10 “(B) interest on the amount described in sub-
11 paragraph (A) calculated at the prevailing rate;
12 and”; and

13 (D) by striking the matter following sub-
14 paragraph (C) (as so redesignated).

15 (2) CONFORMING AMENDMENT.—Section
16 5(a)(3) of such Act (29 U.S.C. 2104(a)(3)) is
17 amended by inserting “, the Secretary, or the Gov-
18 ernor” after “unit of local government”.

19 (3) EXEMPTION.—Section 5(a)(4) of such Act
20 (29 U.S.C. 2104(a)(4)) is amended by striking “re-
21 duce the amount of the liability or penalty provided
22 for in this section” and inserting “reduce the
23 amount of the liability under paragraph (1) and re-
24 duce the amount of the penalty provided for in para-
25 graph (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) LIMITATION.—An action may be brought under
11 this section not later than 2 years after the date of the
12 last event constituting the alleged violation for which the
13 action is brought.”.

14 (d) POSTING OF NOTICES; PENALTIES.—Section 11
15 of the Worker Adjustment and Retraining Notification Act
16 (29 U.S.C. 2101 note) is amended to read as follows:

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

18 “(a) POSTING OF NOTICES.—Each employer shall
19 post and keep posted in conspicuous places upon its prem-
20 ises where notices to employees are customarily posted a
21 notice to be prepared or approved by the Secretary setting
22 forth excerpts from, or summaries of, the pertinent provi-
23 sions of this Act and information pertinent to the filing
24 of a complaint.

1 adjustment assistance, COBRA benefits, and early access
2 to training services and other services, including coun-
3 seling services, available under title I of the Workforce In-
4 vestment Act of 1998 (29 U.S.C. 2801). Such guide shall
5 be available on the Internet website of the Department
6 of Labor and shall include a description of the benefits
7 and services, the eligibility requirements, and the means
8 of obtaining such benefits and services. Upon receiving no-
9 tice from an employer under section 3(a)(2), the Secretary
10 shall immediately transmit such guide to such employer.”.

11 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

12 In addition to funds authorized to be appropriated
13 for the general enforcement of the Worker Adjustment
14 and Retraining Notification Act (29 U.S.C. 2101 et seq.),
15 there is authorized to be appropriated to the Secretary of
16 Labor such additional sums as may be necessary for the
17 additional enforcement authority authorized by the
18 amendments made by this Act.

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