

112TH CONGRESS
2D SESSION

S. 3402

To require the Secretary of Labor to maintain a publicly available list of all employers that relocate a call center overseas, to make such companies ineligible for Federal grants or guaranteed loans, and to require disclosure of the physical location of business agents engaging in customer service communications, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 18, 2012

Mr. CASEY (for himself and Mr. BROWN of Ohio) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require the Secretary of Labor to maintain a publicly available list of all employers that relocate a call center overseas, to make such companies ineligible for Federal grants or guaranteed loans, and to require disclosure of the physical location of business agents engaging in customer service communications, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “The United States Call
3 Center Worker and Consumer Protection Act of 2012”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **AGENCY.**—The term “agency” means a
7 Federal or State executive agency or a military de-
8 partment.

9 (2) **BUSINESS ENTITY.**—The term “business
10 entity” means any organization, corporation, trust,
11 partnership, sole proprietorship, unincorporated as-
12 sociation, or venture established to make a profit, in
13 whole or in part, by purposefully availing itself of
14 the privilege of conducting commerce in the United
15 States.

16 (3) **CALL CENTER.**—The term “call center”
17 means a facility or other operation whereby employ-
18 ees receive incoming telephone calls, emails, or other
19 electronic communication for the purpose of pro-
20 viding customer assistance or other service.

21 (4) **CONSUMER.**—The term “consumer” means
22 any individual within the territorial jurisdiction of
23 the United States who purchases, transacts, or con-
24 tracts for the purchase or transaction of any goods,
25 merchandise, or services, not for resale in the ordi-
26 nary course of the individual’s trade or business, but

1 for the individual's use or that of a member of the
2 individual's household.

3 (5) CUSTOMER SERVICE COMMUNICATION.—

4 The term “customer service communication” means
5 any telecommunication or wire communication be-
6 tween a consumer and a business entity in further-
7 ance of commerce.

8 (6) EMPLOYER.—The term “employer” means
9 any business enterprise that employs in a call cen-
10 ter—

11 (A) 50 or more employees, excluding part-
12 time employees; or

13 (B) 50 or more employees who in the ag-
14 gregate work at least 1,500 hours per week (ex-
15 clusive of hours of overtime).

16 (7) PART-TIME EMPLOYEE.—the term “part-
17 time employee” means an employee who is employed
18 for an average of fewer than 20 hours per week or
19 who has been employed for fewer than 6 of the 12
20 months preceding the date on which notice is re-
21 quired.

22 (8) RELOCATING AND RELOCATION.—The
23 terms “relocating” and “relocation” refer to the clo-
24 sure of a call center, or the cessation of operations
25 of a call center, or 1 or more facilities or operating

1 units within a call center comprising at least 30 per-
2 cent of the call center's, or operating unit's, total
3 volume when measured against the previous 12-
4 month average call volume of operations or substan-
5 tially similar operations to a location outside of the
6 United States.

7 (9) SECRETARY.—The term “Secretary” means
8 the Secretary of Labor.

9 (10) TELECOMMUNICATION.—The term “tele-
10 communication” means the transmission, between or
11 among points specified by the communicator, of in-
12 formation of the communicator's choosing, without
13 change in the form or content of the information as
14 sent and received.

15 (11) WIRE COMMUNICATION AND COMMUNICA-
16 TION BY WIRE.—The term “wire communication” or
17 “communication by wire” means the transmission of
18 writing, signs, signals, pictures, and sounds of all
19 kinds by aid of wire, cable, or other like connection
20 between the points of origin and reception of such
21 transmission, including all instrumentalities, facili-
22 ties, apparatus, and services (among other things,
23 the receipt, forwarding, and delivery of communica-
24 tions) incidental to such transmission.

1 **SEC. 3. LIST OF CALL CENTERS RELOCATING OVERSEAS**
2 **AND INELIGIBILITY FOR GRANTS OR GUAR-**
3 **ANTEED LOANS.**

4 (a) LIST.—

5 (1) NOTICE REQUIREMENT.—

6 (A) IN GENERAL.—Not fewer than 120
7 days before relocating a call center to a location
8 outside of the United States, an employer shall
9 notify the Secretary of such relocation.

10 (B) PENALTY.—A person who violates sub-
11 paragraph (A) shall be subject to a civil penalty
12 not to exceed \$10,000 for each day of violation.

13 (2) ESTABLISHMENT AND MAINTENANCE OF
14 LIST.—

15 (A) IN GENERAL.—The Secretary shall es-
16 tablish, maintain, and make available to the
17 public a list of all employers who relocate a call
18 center as described in paragraph (1)(A).

19 (B) TERM.—Each employer included in
20 the list required by subparagraph (A) shall re-
21 main on the list for a period not to exceed 3
22 years after each instance of relocating a call
23 center.

24 (C) REMOVAL.—The Secretary may re-
25 move an employer from the list required by sub-
26 paragraph (A) if the Secretary determines that

1 the employer has relocated a call center from a
2 location outside of the United States to a loca-
3 tion in the United States.

4 (b) INELIGIBILITY FOR GRANTS OR GUARANTEED
5 LOANS.—

6 (1) INELIGIBILITY.—Except as provided in sub-
7 section (b) and notwithstanding any other provision
8 of law, an employer who appears on the list required
9 by subsection (a)(2)(A) shall be ineligible for any di-
10 rect or indirect Federal grants or Federal guaran-
11 teed loans for 5 years after the date such employer
12 was added to the list.

13 (2) EXCEPTIONS.—The Secretary, in consulta-
14 tion with the appropriate agency providing a loan or
15 grant, may waive the eligibility restriction provided
16 under subsection (a) if the employer applying for
17 such loan or grant demonstrates that a lack of such
18 loan or grant would—

19 (A) threaten national security;

20 (B) result in substantial job loss in the
21 United States; or

22 (C) harm the environment.

23 (c) PREFERENCE IN FEDERAL CONTRACTING FOR
24 NOT RELOCATING A CALL CENTER OVERSEAS.—The
25 head of an agency, when awarding a civilian or defense-

1 related contract, shall give preference to a United States
 2 employer that does not appear on the list required by sub-
 3 section (a)(2)(A).

4 (d) EFFECTIVE DATE.—This section shall take effect
 5 on the date that is 1 year after the date of the enactment
 6 of this Act.

7 **SEC. 4. RULE OF CONSTRUCTION RELATED TO FEDERAL**
 8 **BENEFITS FOR WORKERS.**

9 No provision of section 3 shall be construed to permit
 10 withholding or denial of payments, compensation, or bene-
 11 fits under any provision of Federal law (including Federal
 12 unemployment compensation, disability payments, or
 13 worker retraining or readjustment funds) to workers em-
 14 ployed by employers that relocate operations outside the
 15 United States.

16 **SEC. 5. REQUIRED DISCLOSURE BY BUSINESS ENTITIES EN-**
 17 **GAGED IN CUSTOMER SERVICE COMMUNICA-**
 18 **TIONS OF PHYSICAL LOCATION.**

19 (a) IN GENERAL.—Except as provided in subsection
 20 (b), a business entity that either initiates or receives a cus-
 21 tomer service communication shall require that each of its
 22 employees or agents participating in the communication
 23 disclose their physical location at the beginning of each
 24 customer service communication so initiated or received.

25 (b) EXCEPTIONS.—

1 (1) BUSINESS ENTITIES LOCATED IN THE
 2 UNITED STATES.—The requirements of subsection
 3 (a) shall not apply to a customer service communica-
 4 tion involving a business entity if all of the employ-
 5 ees or agents of the business entity participating in
 6 such communication are physically located in the
 7 United States.

8 (2) COMMUNICATION INITIATED BY CONSUMER
 9 KNOWINGLY TO FOREIGN ENTITY OR ADDRESS.—
 10 The requirements of subsection (a) shall not apply
 11 to an employee or agent of a business entity partici-
 12 pating in a customer service communication with a
 13 consumer if—

14 (A) the customer service communication
 15 was initiated by the consumer;

16 (B) the employee or agent is physically lo-
 17 cated outside the United States; and

18 (C) the consumer knows or reasonably
 19 should know that the employee or agent is
 20 physically located outside the United States.

21 (3) EMERGENCY SERVICES.—The requirements
 22 of subsection (a) shall not apply to a customer serv-
 23 ice communication relating to the provision of emer-
 24 gency services (as defined by the Federal Trade
 25 Commission).

1 (4) BUSINESS ENTITIES AND CUSTOMER SERV-
2 ICE COMMUNICATIONS EXCLUDED BY FEDERAL
3 TRADE COMMISSION.—The Federal Trade Commis-
4 sion may exclude certain classes or types of business
5 entities or customer service communications from
6 the requirements of subsection (a) if the Commission
7 finds exceptionally compelling circumstances that
8 justify such exclusion.

9 (c) TRANSFER TO U.S.-BASED CUSTOMER SERVICE
10 CENTER.—A business entity that is subject to the require-
11 ments of subsection (a) shall, at the request of a customer,
12 transfer the customer to a customer service agent who is
13 physically located in the United States.

14 (d) CERTIFICATION REQUIREMENT.—Each year,
15 each business entity that participates in a customer service
16 communication shall certify to the Federal Trade Commis-
17 sion that it has complied or failed to comply with the re-
18 quirements of subsections (a) and (c).

19 (e) REGULATIONS.—Not later than 1 year after the
20 date of the enactment of this Act, the Federal Trade Com-
21 mission shall promulgate such regulations as may be nec-
22 essary to carry out the provisions of this section.

23 (f) EFFECTIVE DATE.—The requirements of sub-
24 section (a) shall apply with respect to customer service

1 communications occurring on or after the date that is 1
2 year after the date of the enactment of this Act.

3 **SEC. 6. ENFORCEMENT.**

4 (a) IN GENERAL.—Any failure to comply with the
5 provisions of section 5 shall be treated as a violation of
6 a regulation under section 18(a)(1)(B) of the Federal
7 Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regard-
8 ing unfair or deceptive acts or practices.

9 (b) POWERS OF FEDERAL TRADE COMMISSION.—

10 (1) IN GENERAL.—The Federal Trade Commis-
11 sion shall prevent any person from violating section
12 5 and any regulation promulgated thereunder, in the
13 same manner, by the same means, and with the
14 same jurisdiction, powers, and duties as though all
15 applicable terms and provisions of the Federal Trade
16 Commission Act (15 U.S.C. 41 et seq.) were incor-
17 porated into and made a part of this Act.

18 (2) PENALTIES.—Any person who violates regu-
19 lations promulgated under section 5 shall be subject
20 to the penalties and entitled to the privileges and
21 immunities provided in the Federal Trade Commis-
22 sion Act in the same manner, by the same means,
23 and with the same jurisdiction, power, and duties as
24 though all applicable terms and provisions of the

1 Federal Trade Commission Act were incorporated
2 into and made part of this Act.

3 (c) AUTHORITY PRESERVED.—Nothing in this sec-
4 tion or section 5 shall be construed to limit the authority
5 of the Federal Trade Commission under any other provi-
6 sion of law.

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