

111TH CONGRESS
1ST SESSION

H. R. 3042

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2009

Mr. GEORGE MILLER of California (for himself, Mr. McHUGH, Ms. WOOLSEY, and Ms. KAPTUR) introduced the following bill; which was referred to the Committee on Education and Labor

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 such
19 section is amended to read as follows:

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

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

1 (3) CONFORMING AMENDMENTS.—

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

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

13 (b) NOTICE.—

14 (1) NOTICE PERIOD.—

15 (A) IN GENERAL.—Section 3 of the Work-
16 er Adjustment and Retraining Notification Act
17 (29 U.S.C. 2102) is amended by striking “60-
18 day period” and inserting “90-day period” each
19 place it appears.

20 (B) CONFORMING AMENDMENT.—Section
21 5(a)(1) of such Act (29 U.S.C. 2104(a)(1)) is
22 amended in the matter following subparagraph
23 (B), by striking “60 days” and inserting “90
24 days”.

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

3 (A) in paragraph (1), by striking “or, if
4 there is no such representative at that time, to
5 each affected employee; and” and inserting
6 “and to each affected employee;”; and

7 (B) by redesignating paragraph (2) as
8 paragraph (3) and inserting after paragraph
9 (1) the following:

10 “(2) to the Secretary and the Governor of the
11 State where the plant closing or mass layoff is to
12 occur; and”.

13 (3) NOTICE EXCUSED WHERE CAUSED BY TER-
14 RORIST ATTACK.—Section 3(b)(2) of the Worker Ad-
15 justment and Retraining Notification Act (29 U.S.C.
16 2102(b)(2)) is amended by adding at the end the
17 following:

18 “(C) No notice under this Act shall be re-
19 quired if the plant closing or mass layoff is due
20 directly to a terrorist attack on the United
21 States.”.

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

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

4 “(1) in each notice required under such sub-
5 section—

6 “(A) a statement of the number of affected
7 employees;

8 “(B) the reason for the plant closing or
9 mass layoff;

10 “(C) the availability of employment at
11 other establishments owned by the employer;

12 “(D) a statement of each employee’s rights
13 with respect to wages, severance and employee
14 benefits; and

15 “(E) a statement of the available employ-
16 ment and training services provided by the De-
17 partment of Labor; and

18 “(2) in each notice required under such sub-
19 section except for the notice provided to individual
20 employees, the names, addresses, and occupations of
21 the affected employees.”.

22 (5) INFORMATION REGARDING BENEFITS AND
23 SERVICES AVAILABLE TO WORKERS AND DOL NO-
24 TICE TO CONGRESS.—Section 3 of such Act (29

1 U.S.C. 2102) is further amended by adding at the
2 end the following:

3 “(f) INFORMATION REGARDING BENEFITS AND
4 SERVICES AVAILABLE TO EMPLOYEES.—Concurrent with
5 or immediately after providing the notice required under
6 subsection (a)(1), an employer shall provide affected em-
7 ployees with information regarding the benefits and serv-
8 ices available to such employees, as described in the guide
9 compiled by the Secretary under section 13.

10 “(g) ACCESS OF RAPID RESPONSE TEAMS.—An em-
11 ployer who is required to provide notice shall permit, dur-
12 ing work hours, reasonable on-site access to any Federal,
13 State, or local rapid response team responsible for pro-
14 viding reemployment, training, and related services to af-
15 fected employees.

16 “(h) DOL NOTICE TO CONGRESS.—As soon as prac-
17 ticable and not later than 15 days after receiving notifica-
18 tion under subsection (a)(2), the Secretary of Labor shall
19 notify the appropriate Senators and Members of the
20 House of Representatives who represent the area or areas
21 where the plant closing or mass layoff is to occur.”.

22 (c) ENFORCEMENT.—

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

1 (A) in subparagraph (A)—

2 (i) by striking “back pay for each day
3 of violation” and inserting “two days’ pay
4 multiplied by the number of calendar days
5 for which the employer was required but
6 failed to provide notice before such closing
7 or layoff”; and

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

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

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

14 “(B) interest on the amount described in sub-
15 paragraph (A) calculated at the prevailing rate;
16 and”; and

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

19 (2) CONFORMING AMENDMENT.—Section
20 5(a)(3) of such Act (29 U.S.C. 2104(a)(3)) is
21 amended by inserting “, the Secretary of Labor, or
22 the Governor” after “unit of local government”.

23 (3) EXEMPTION.—Section 5(a)(4) of such Act
24 (29 U.S.C. 2104(a)(4)) is amended by striking “re-
25 duce the amount of the liability or penalty provided

1 for in this section” and inserting “reduce the
2 amount of the liability under paragraph (1) and re-
3 duce the amount of the penalty provided for in para-
4 graph (3)”.

5 (4) ADMINISTRATIVE COMPLAINT.—Section
6 5(a)(5) of such Act (29 U.S.C. 2104(a)(5)) is
7 amended—

8 (A) by striking “may sue” and inserting
9 “may,”;

10 (B) by inserting after “both,” the fol-
11 lowing: “(A) file a complaint with the Secretary
12 alleging a violation of section 3, or (B) bring
13 suit”; and

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

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

21 (A) by redesignating subsection (b) as sub-
22 section (d); and

23 (B) by inserting after subsection (a) the
24 following new subsections:

25 “(b) ACTION BY THE SECRETARY.—

1 “(1) ADMINISTRATIVE ACTION.—The Secretary
2 shall receive, investigate, and attempt to resolve
3 complaints of violations of section 3 by an employer
4 in the same manner that the Secretary receives, in-
5 vestigates, and attempts to resolve complaints of vio-
6 lations of sections 6 and 7 of the Fair Labor Stand-
7 ards Act of 1938 (29 U.S.C. 206 and 207).

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

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

18 “(4) SUMS RECOVERED.—Any sums recovered
19 by the Secretary on behalf of an employee under
20 subparagraphs (A), (B), and (D) of section 5(a)(1)
21 shall be held in a special deposit account and shall
22 be paid, on order of the Secretary, directly to each
23 employee affected. Any such sums not paid to an
24 employee because of inability to do so within a pe-
25 riod of 3 years, and any sums recovered by the Sec-

1 retary under subparagraph (C) of section 5(a)(1),
2 shall be credited as an offsetting collection to the ap-
3 propriations account of the Secretary of Labor for
4 expenses for the administration of this Act and shall
5 remain available to the Secretary until expended.

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

13 “(c) LIMITATIONS.—

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

18 “(2) COMMENCEMENT.—In determining when
19 an action is commenced under this section for the
20 purposes of paragraph (1), it shall be considered to
21 be commenced on the date on which the complaint
22 is filed.

23 “(3) LIMITATION ON PRIVATE ACTION WHILE
24 ACTION OF SECRETARY IS PENDING.—If the Sec-
25 retary has instituted an enforcement action or pro-

1 ceeding under subsection (b), an individual employee
2 may not bring an action under subsection (a) during
3 the pendency of the proceeding against any person
4 with respect to whom the Secretary has instituted
5 the proceeding.”.

6 (d) **POSTING OF NOTICES; PENALTIES.**—Section 11
7 of the Worker Adjustment and Retraining Notification Act
8 (29 U.S.C. 2101 note) is amended to read as follows:

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

10 “(a) **POSTING OF NOTICES.**—Each employer shall
11 post and keep posted in conspicuous places upon its prem-
12 ises where notices to employees are customarily posted a
13 notice to be prepared or approved by the Secretary setting
14 forth excerpts from, or summaries of, the pertinent provi-
15 sions of this chapter and information pertinent to the fil-
16 ing of a complaint.

17 “(b) **PENALTIES.**—A willful violation of this section
18 shall be punishable by a fine of not more than \$500 for
19 each separate offense.”.

20 (e) **NON-WAIVER OF RIGHTS AND REMEDIES; INFOR-**
21 **MATION REGARDING BENEFITS AND SERVICES AVAIL-**
22 **ABLE TO EMPLOYEES.**—Such Act is further amended by
23 adding at the end the following:

1 **“SEC. 12. RIGHTS AND REMEDIES NOT SUBJECT TO WAIV-**
2 **ER.**

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

8 “(b) AGREEMENT OR SETTLEMENT.—An agreement
9 or settlement referred to in subsection (a) is an agreement
10 or settlement negotiated by the Secretary, an attorney
11 general of any State, or a private attorney on behalf of
12 affected employees.

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

15 “The Secretary of Labor shall maintain a guide of
16 benefits and services which may be available to affected
17 employees, including unemployment compensation, trade
18 adjustment assistance, COBRA benefits, and early access
19 to training and other services, including counseling serv-
20 ices, available under the Workforce Investment Act of
21 1998. Such guide shall be available on the Internet website
22 of the Department of Labor and shall include a descrip-
23 tion of the benefits and services, the eligibility require-
24 ments, and the means of obtaining such benefits and serv-
25 ices. Upon receiving notice from an employer under sec-

1 tion 3(a)(2), the Secretary shall immediately transmit
2 such guide to such employer.”.

3 **SEC. 3. EFFECTIVE DATE.**

4 Except as otherwise provided in this Act, the provi-
5 sions of this Act, and the amendments made by this Act,
6 shall take effect on the date of the enactment of this Act.

7 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

8 In addition to funds authorized to be appropriated
9 for the general enforcement of the Worker Adjustment
10 and Retraining Notification Act, there is authorized to be
11 appropriated to the Secretary of Labor such additional
12 sums as may be necessary for the additional enforcement
13 authority authorized by the amendments made by this Act.

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