

110TH CONGRESS
1ST SESSION

H. R. 3796

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

OCTOBER 10, 2007

Mr. GEORGE MILLER of California (for himself, Ms. KAPTUR, Mr. KILDEE, Mr. BISHOP of New York, Mrs. MCCARTHY of New York, Ms. SHEAPORTER, Mr. KUCINICH, Mr. DAVIS of Illinois, Mr. GRIJALVA, and Ms. WOOLSEY) 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 “Early Warning and
5 Health Care for Workers Affected by Globalization Act”.

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

7 (a) DEFINITIONS.—

1 (1) EMPLOYER, PLANT CLOSING, AND MASS
2 LAYOFF.—Paragraphs (1) through (3) of section
3 2(a) of the Worker Adjustment and Retraining Noti-
4 fication Act (29 U.S.C. 2101(a)(1)–(3)) are amend-
5 ed to read as follows:

6 “(1) the term ‘employer’ means any business
7 enterprise that employs 100 or more employees;

8 “(2) the term ‘plant closing’ means—

9 “(A) the permanent or temporary shut-
10 down of a single site of employment, or of one
11 or more facilities or operating units within a
12 single site of employment, which results in an
13 employment loss at such site, during any 30-
14 day period, for 25 or more employees; or

15 “(B) the permanent or temporary shut-
16 down of multiple sites of employment, or of one
17 or more facilities or operating units within such
18 sites, which results in an employment loss, dur-
19 ing any 30-day period, for 100 or more employ-
20 ees.

21 “(3) the term ‘mass layoff’ means—

22 “(A) a reduction in force at a single site
23 of employment which results in an employment
24 loss at such site, during any 30-day period, for
25 25 or more employees; or

1 “(B) a reduction in force at multiple sites
2 of employment which results in an employment
3 loss, during any 30-day period, for 100 or more
4 employees.”.

5 (2) SECRETARY OF LABOR.—

6 (A) DEFINITION.—Paragraph (8) of such
7 section is amended to read as follows:

8 “(8) the term ‘Secretary’ means the Secretary
9 of Labor or a representative of the Secretary of
10 Labor.”.

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

14 (3) CONFORMING AMENDMENTS.—

15 (A) NOTICE.—Section 3(d) of such Act (29
16 U.S.C. 2102(d)) is amended by striking out “,
17 each of which is less than the minimum number
18 of employees specified in section 2(a)(2) or (3)
19 but which in the aggregate exceed that min-
20 imum number,” and inserting “which in the ag-
21 gregate exceed the minimum number of employ-
22 ees specified in section 2(a)(2) or (3)”.

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

1 (b) NOTICE.—

2 (1) NOTICE PERIOD.—

3 (A) IN GENERAL.—Section 3 of the Work-
4 er Adjustment and Retraining Notification Act
5 (29 U.S.C. 2102) is amended by striking “60-
6 day period” and inserting “90-day period” each
7 place it appears.

8 (B) CONFORMING AMENDMENT.—Section
9 5(a)(1) of such Act (29 U.S.C. 2104(a)(1)) is
10 amended in the matter following subparagraph
11 (B), by striking “60 days” and inserting “90
12 days”.

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

15 (A) in paragraph (1), by striking “or, if
16 there is no such representative at that time, to
17 each affected employee; and” and inserting
18 “and to each affected employee;”; and

19 (B) by redesignating paragraph (2) as
20 paragraph (3) and inserting after paragraph
21 (1) the following:

22 “(2) to the Secretary; and”.

23 (3) INFORMATION REGARDING BENEFITS AND
24 SERVICES AVAILABLE TO WORKERS AND DOL NO-
25 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 “(e) 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 12.

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

16 (c) ENFORCEMENT.—

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

20 (A) in subparagraph (A)(ii), by striking
21 “and” at the end thereof;

22 (B) by redesignating subparagraph (B) as
23 subparagraph (D);

24 (C) by inserting after subparagraph (A)
25 the following new subparagraphs:

1 “(B) interest on the amount described in
2 subparagraph (A) calculated at the prevailing
3 rate;

4 “(C) an additional amount as liquidated
5 damages equal to the sum of the amount de-
6 scribed in subparagraph (A) and the interest
7 described in subparagraph (B); and”;

8 (D) in the matter following subparagraph
9 (B), by striking “for the period of the violation,
10 up to a maximum of 60 days” and inserting
11 “for the number of workdays that an affected
12 employee would have worked during the period
13 of the violation, up to a maximum of 90 days”.

14 (2) EXEMPTION.—Section 5(a)(4) of such Act
15 (29 U.S.C. 2104(a)(4)) is amended by striking “re-
16 duce the amount of the liability or penalty provided
17 for in this section” and inserting “reduce the
18 amount of the liability under subparagraph (C) of
19 paragraph (1) and reduce the amount of the penalty
20 provided for in paragraph (3)”.

21 (3) ADMINISTRATIVE COMPLAINT.—Section
22 5(a)(5) of such Act (29 U.S.C. 2104(a)(5)) is
23 amended—

24 (A) by striking “may sue,” and inserting
25 “may,”;

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

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

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

12 (A) by redesignating subsection (b) as sub-
13 section (d); and

14 (B) by inserting after subsection (a) the
15 following new subsections:

16 “(b) ACTION BY THE SECRETARY.—

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

24 “(2) SUBPOENA POWERS.—For the purposes of
25 any investigation provided for in this section, the

1 Secretary shall have the subpoena authority provided
2 for under section 9 of the Fair Labor Standards Act
3 of 1938 (29 U.S.C. 209).

4 “(3) CIVIL ACTION.—The Secretary may bring
5 an action in any court of competent jurisdiction to
6 recover on behalf of an employee the backpay, inter-
7 est, benefits, and liquidated damages described in
8 subsection (a).

9 “(4) SUMS RECOVERED.—Any sums recovered
10 by the Secretary on behalf of an employee under
11 subparagraphs (A), (B), and (D) of section 5(a)(1)
12 shall be held in a special deposit account and shall
13 be paid, on order of the Secretary, directly to each
14 employee affected. Any such sums not paid to an
15 employee because of inability to do so within a pe-
16 riod of 3 years, and any sums recovered by the Sec-
17 retary under subparagraph (C) of section 5(a)(1),
18 shall be credited as an offsetting collection to the ap-
19 propriations account of the Secretary of Labor for
20 expenses for the administration of this Act and shall
21 remain available to the Secretary until expended.

22 “(5) ACTION TO COMPEL RELIEF BY SEC-
23 RETARY.—The district courts of the United States
24 shall have jurisdiction, for cause shown, over an ac-
25 tion brought by the Secretary to restrain the with-

1 holding of payment of back pay, interest, benefits, or
2 other compensation, plus interest, found by the court
3 to be due to employees under this Act.

4 “(c) LIMITATIONS.—

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

9 “(2) COMMENCEMENT.—In determining when
10 an action is commenced under this section for the
11 purposes of paragraph (1), it shall be considered to
12 be commenced on the date on which the complaint
13 is filed.

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

22 (d) POSTING OF NOTICES; PENALTIES.—Section 11
23 of the Worker Adjustment and Retraining Notification Act
24 (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 chapter and information pertinent to the fil-
8 ing of a complaint.

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

12 (e) INFORMATION REGARDING BENEFITS AND SERV-
13 ICES AVAILABLE TO EMPLOYEES.—Such Act is further
14 amended by adding at the end the following:

15 **“SEC. 12. INFORMATION REGARDING BENEFITS AND SERV-**
16 **ICES AVAILABLE TO WORKERS.**

17 “The Secretary of Labor shall maintain a guide of
18 benefits and services which may be available to affected
19 employees, including unemployment compensation, trade
20 adjustment assistance, COBRA benefits, and services
21 available under the Workforce Investment Act of 1998.
22 Such guide shall be available on the Internet website of
23 the Department of Labor and shall include a description
24 of the benefits and services, the eligibility requirements,
25 and the means of obtaining such benefits and services.
26 Upon receiving notice from an employer under section

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

3 **SEC. 3. EXTENSION OF COBRA BENEFITS FOR CERTAIN IN-**
4 **DIVIDUALS CERTIFIED AS TAA ELIGIBLE.**

5 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
6 INCOME SECURITY ACT OF 1974.—

7 (1) SPECIAL RULE FOR QUALIFIED TAA ELIGI-
8 BLE EMPLOYEES.—

9 (A) IN GENERAL.—Section 602(2)(A) of
10 the Employee Retirement Income Security Act
11 of 1974 (29 U.S.C. 1162(2)(A)) is amended—

12 (i) by moving clause (v) to after
13 clause (iv) and before the flush left sen-
14 tence beginning with “In the case of a
15 qualified beneficiary”; and

16 (ii) by inserting after clause (v) the
17 following new clause:

18 “(vi) SPECIAL RULE FOR QUALIFIED
19 TAA ELIGIBLE EMPLOYEES.—In the case of
20 a qualifying event described in section
21 603(2), clauses (i) and (ii) shall not apply
22 to a qualified TAA eligible employee (as
23 defined in section 607(6)).”.

24 (B) QUALIFIED TAA ELIGIBLE EMPLOYEE
25 DEFINED.—Section 607 of such Act (29 U.S.C.

1 1167) is amended by adding at the end the fol-
2 lowing new paragraph:

3 “(6) QUALIFIED TAA ELIGIBLE EMPLOYEE.—
4 The term ‘qualified TAA eligible employee’ means a
5 covered employee, with respect to a qualifying event,
6 if—

7 “(A) the qualifying event is attributable to
8 the conditions specified in section 222 of the
9 Trade Act of 1974 (19 U.S.C. 2272) based on
10 which the Secretary of Labor has certified a
11 group of workers as eligible to apply for adjust-
12 ment assistance under subchapter A of chapter
13 2 of title II of such Act;

14 “(B) such certification applies to the cov-
15 ered employee; and

16 “(C) as of the date of such qualifying
17 event the covered employee has attained age 55
18 or has completed 10 or more years of service
19 with the employer.”.

20 (2) CONFORMING AMENDMENTS.—Section
21 602(2)(A) of such Act (29 U.S.C. 1162(2)(A)) is
22 further amended—

23 (A) in clause (i), by striking “In the case
24 of” and inserting “Subject to clause (vi), in the
25 case of”; and

1 (B) in clause (ii), by striking “If a quali-
2 fying event” and inserting “Subject to clause
3 (vi), if a qualifying event”.

4 (b) EFFECTIVE DATE.—

5 (1) GENERAL RULE.—The amendments made
6 by this section shall apply for plan years beginning
7 on or after January 1, 2008.

8 (2) SPECIAL RULE FOR COLLECTIVE BAR-
9 GAINING AGREEMENTS.—In the case of a group
10 health plan maintained pursuant to one or more col-
11 lective bargaining agreements between employee rep-
12 resentatives and one or more employers ratified be-
13 fore the date of the enactment of this Act, the
14 amendments made by this section shall not apply to
15 plan years beginning before the earlier of—

16 (A) the later of—

17 (i) the date on which the last of the
18 collective bargaining agreements relating to
19 the plan terminates (determined without
20 regard to any extension thereof agreed to
21 after the date of the enactment of this
22 Act), or

23 (ii) July 1, 2008, or

24 (B) the date which is 3 years after the
25 date of the enactment of this Act.

1 **SEC. 4. EFFECTIVE DATE.**

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

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