

103^D CONGRESS
1ST SESSION

H. R. 2345

To provide assistance to employees who are subject to a plant closing or mass layoff because their work is transferred to a foreign country that has low wages or unhealthy working conditions.

IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 1993

Mr. FORD of Michigan introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To provide assistance to employees who are subject to a plant closing or mass layoff because their work is transferred to a foreign country that has low wages or unhealthy working conditions.

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 “American Jobs Protec-
5 tion Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Findings and purposes.

- Sec. 4. Definitions.
- Sec. 5. Limitation on work transfer to low wage foreign countries.
- Sec. 6. Notice requirements.
- Sec. 7. Employee benefits.
- Sec. 8. Restriction on employer to enter into contract with the United States for failure to provide notice or benefits.
- Sec. 9. Investigative authority.
- Sec. 10. Enforcement.
- Sec. 11. Procedures in addition to other rights of employees.
- Sec. 12. Requirement of posting of notice by employer at site of employment.
- Sec. 13. Effective date.

1 **SEC. 3. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) During the last 2 decades millions of jobs
4 in the United States have been transferred by busi-
5 nesses to foreign countries to take advantage of the
6 low wages and lack of labor standards in those coun-
7 tries.

8 (2) Millions of additional jobs in the United
9 States are at risk of such a transfer during the
10 1990's, particularly if the North American Free
11 Trade Agreement is approved by the Congress.

12 (3) The threat of the transfer of work to low
13 wage foreign countries suppresses wages and bene-
14 fits to workers in the United States and thereby
15 lessens the purchasing power of middle class families
16 in the United States.

17 (4) The transfer of jobs to low wage foreign
18 countries imposes a severe burden upon the individ-
19 ual workers who are dislocated by such transfers

1 and the communities which are affected by such
2 transfers.

3 (5) The provision of income, continued health
4 and pension benefits, and job training assistance to
5 such dislocated workers would significantly ease the
6 burdens caused by the transfer of jobs to low wage
7 foreign countries.

8 (6) The transfer of jobs to take advantage of
9 the low wages and lack of labor standards in foreign
10 countries is detrimental to the interests of the Unit-
11 ed States because such transfers are based on the
12 incorrect premise that the employees of businesses
13 constitute a cost to be lowered and not an asset
14 which should be developed and utilized.

15 (7) The best chance for the United States to
16 meet international competition in the future is to
17 focus on a competitive strategy that emphasizes
18 high-wage, high-skill employment as opposed to em-
19 ployment that competes internationally on the basis
20 of low wages.

21 (b) PURPOSES.—The purposes of this Act are—

22 (1) to discourage the transfer of work to low
23 wage foreign countries; and

24 (2) to require businesses that transfer work to
25 low wage foreign countries to mitigate the costs of

1 the dislocation to workers and communities subject
2 to that dislocation.

3 **SEC. 4. DEFINITIONS.**

4 For purposes of this Act, the following definitions
5 apply:

6 (1) **AFFECTED EMPLOYEES.**—The term “af-
7 fected employees” means employees who may rea-
8 sonably be expected to experience an employment
9 loss as a consequence of a proposed plant closing or
10 mass layoff.

11 (2) **EMPLOYER.**—The term “employer” means
12 any business enterprise that employs—

13 (A) 25 or more employees, excluding part-
14 time employment; or

15 (B) 25 or more employees who in the ag-
16 gregate work at least 1,000 hours per week.

17 Such term includes all business entities which have
18 substantial ownership interest, substantial manage-
19 ment authority or substantial control over the terms
20 and conditions of employment of employees at a site
21 of employment subject to an employment loss.

22 (3) **EMPLOYMENT LOSS.**—The term “employ-
23 ment loss” means—

1 (A) an employment termination, other than
2 a discharge for cause, voluntary departure, or
3 retirement;

4 (B) a layoff exceeding 6 months;

5 (C) a reduction in hours of work of more
6 than 50 percent during each month of any 6-
7 month period; or

8 (D) a reduction in salary of more than 33
9 percent during each month of any 6-month pe-
10 riod.

11 (4) GROUP HEALTH PLAN.—The term “group
12 health plan” means an employee welfare benefit plan
13 providing medical care (as defined in section 213(d)
14 of the Internal Revenue Code of 1986) to partici-
15 pants or beneficiaries or dependents, directly or
16 through insurance, reimbursement, or otherwise.

17 (5) LOCATION ASSISTANCE.—The term “loca-
18 tion assistance” includes any subsidy, infrastructure
19 development or improvement, tax relief, site prepara-
20 tion assistance, hiring and training assistance, or
21 other economic benefit offered by a State or unit of
22 local government to induce an employer to locate at,
23 remain at, or expand its operations at a site of em-
24 ployment within the jurisdiction of such State or po-
25 litical subdivision.

1 (6) MASS LAYOFF.—The term “mass layoff”
2 means a reduction in force which—

3 (A) is not the result of a plant closing; and

4 (B) results in an employment loss at the
5 single site of employment, or 1 or more facili-
6 ties or operating units within a single site of
7 employment, during any 30-day period for at
8 least 12 employees (excluding any part-time
9 employees).

10 (7) PART-TIME EMPLOYEE.—The term “part-
11 time employee” means an employee who is employed
12 for an average of fewer than 20 hours per week or
13 who has been employed for fewer than 6 of the 12
14 months preceding the date on which notice is
15 required.

16 (8) PLANT CLOSING.—The term “plant closing”
17 means the permanent or temporary shutdown of a
18 single site of employment, or 1 or more facilities or
19 operating units within a single site of employment,
20 if the shutdown results in an employment loss at the
21 single site of employment during any 30-day period
22 for 12 or more employees, excluding part-time
23 employees.

24 (9) SECRETARY.—The term “Secretary” means
25 the Secretary of Labor.

1 (10) SITE OF EMPLOYMENT.—The term “site
2 of employment” means any factory, mine, business
3 office, facility, or other operating unit, or the func-
4 tional equivalent thereof.

5 **SEC. 5. LIMITATION ON WORK TRANSFER TO LOW WAGE**
6 **FOREIGN COUNTRIES.**

7 (a) IN GENERAL.—An employer may not implement
8 a plant closing or mass layoff at a site of employment due
9 to a transfer of work to a low wage foreign country which
10 occurs 1 year before or after such closing or mass layoff
11 (as described in subsection (b)) unless the employer pro-
12 vides notice at least 180 days before such closing or mass
13 layoff in accordance with section 6 and provides benefits
14 to employees in accordance with section 7.

15 (b) TRANSFER OF WORK DESCRIBED.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), work shall be considered to be transferred
18 to a low wage foreign country for purposes of sub-
19 section (a) if the employer—

20 (A) increases the amount of work per-
21 formed at 1 or more sites of employment in 1
22 or more low wage foreign countries and such
23 work is substantially similar to the work per-
24 formed at the site of employment referred to in
25 subsection (a); or

1 (B) increases the amount of products or
2 services which are imported from 1 or more low
3 wage foreign countries and such products or
4 services are substantially similar to the prod-
5 ucts or services produced or provided at the site
6 of employment referred to in subsection (a).

7 (2) EXCEPTION.—If an employer who orders a
8 plant closing or mass layoff at a site of employment
9 referred to in subsection (a) proves that the increase
10 in—

11 (A) work described in paragraph (1)(A)
12 which is performed in a low wage foreign coun-
13 try; or

14 (B) products or services described in para-
15 graph (1)(B) which are imported to the United
16 States from a low wage foreign country,

17 is not related to the plant closing or mass layoff at
18 such site of employment, the employer shall not be
19 required to provide notice in accordance with section
20 6 or benefits to the employees in accordance with
21 section 7.

22 (3) CONSTRUCTION.—For purposes of para-
23 graph (1), if an increase described in such para-
24 graph is carried out by any person which owns at
25 least 10 percent of an employer described in sub-

1 section (a) or by any person, 10 percent of which is
2 owned by such employer, such employer shall be con-
3 sidered to have carried out such increase.

4 (c) PUBLICATION IN THE FEDERAL REGISTER.—The
5 Secretary shall publish annually in the Federal Register
6 the name of each low wage foreign country as defined in
7 subsection (d), as determined under regulations developed
8 by the Secretary.

9 (d) LOW WAGE FOREIGN COUNTRY DEFINED.—For
10 purposes of this section, the term “low wage foreign coun-
11 try” means—

12 (1) a country in which the average wage is less
13 than 50 percent of the average wage in the United
14 States, as determined by the Secretary; or

15 (2) a country in which the employment stand-
16 ards relating to the payment of overtime compensa-
17 tion, child labor, or employee safety and health
18 which are in effect and enforced in such country are
19 substantially less effective than the standards under
20 the Fair Labor Standards Act of 1938 (29 U.S.C.
21 201 et seq.) and the Occupational Safety and Health
22 Act of 1970 (29 U.S.C. 651 et seq.), as determined
23 by the Secretary.

1 **SEC. 6. NOTICE REQUIREMENTS.**

2 (a) IN GENERAL.—(1) An employer who implements
3 a plant closing or mass layoff subject to section 5 shall
4 provide written notice of such closing or mass layoff—

5 (A) to each representative of the affected em-
6 ployees as of the time of the notice or, if there is
7 no such representative at that time, to each affected
8 employee; and

9 (B) to the State dislocated worker unit (des-
10 ignated or created under title III of the Job Train-
11 ing Partnership Act (29 U.S.C. 1651 et seq.)) and
12 the chief elected official of the unit of local govern-
13 ment within which such closing or layoff is to occur.

14 (2) If there is more than 1 such unit of local govern-
15 ment, the unit of local government which the employer
16 shall notify is the unit of local government to which the
17 employer pays the highest taxes for the year preceding the
18 year for which the determination is made.

19 (b) CONTENTS OF NOTICE.—The notice required
20 under subsection (a) shall include a statement of—

21 (1) the nature of the site of employment at
22 which the plant closing or mass layoff is to be un-
23 dertaken;

24 (2) the reasons for undertaking such plant clos-
25 ing or mass layoff;

1 (3) any alternative to undertaking such plant
2 closing or mass layoff;

3 (4) any request made by the employer to a
4 State or unit of general local government for loca-
5 tion assistance to avoid such plant closing or mass
6 layoff with respect to such site of employment;

7 (5) the estimated extent of the employment loss
8 within the employer which will result from such
9 plant closing or mass layoff;

10 (6) any plan to minimize the effects of such
11 plant closing or mass layoff on employees at such
12 site of employment and on any unit of local govern-
13 ment having jurisdiction over the geographical area
14 in which the site of employment is located;

15 (7) the economic circumstances of such site of
16 employment, including the level of profitability of op-
17 erations at the site of employment, and any plans
18 for future investment, employment, and production
19 at the site of employment;

20 (8) the economic circumstances of the employer
21 and the feasibility of transferring employees affected
22 by such plant closing or mass layoff to other sites
23 of employment of the employer; and

1 (9) the names and addresses of all employees
2 who will suffer an employment loss as a result of
3 such plant closing or mass layoff.

4 **SEC. 7. EMPLOYEE BENEFITS.**

5 (a) IN GENERAL.—An employer shall provide the fol-
6 lowing benefits to each employee who suffers an employ-
7 ment loss due to a plant closing or mass layoff subject
8 to section 5:

9 (1) SEVERANCE PAY.—Severance pay equal to
10 the product of—

11 (A) the amount equal to 4 weeks wages of
12 the employee, calculated at the average wage
13 which the employee received in the final 26
14 weeks of employment with the employer; and

15 (B) the number of years the employee was
16 employed by the employer.

17 (2) HEALTH CARE BENEFITS.—Continuation of
18 benefits under the same terms and conditions of a
19 group health plan previously provided to the em-
20 ployee for the period ending 18 months after the
21 date of the plant closing or mass layoff.

22 (3) REIMBURSEMENT FOR RETRAINING AND
23 RELATED EXPENSES.—Reimbursement (not to ex-
24 ceed \$10,000) for retraining, job search, and reloca-
25 tion expenses incurred during the period ending 2

1 years after the date of the notice of the plant closing
2 or mass layoff.

3 (4) TRAINING INCENTIVE PAYMENTS.—Incen-
4 tive payments equal to 25 percent of 1 week’s wages
5 of the employee (calculated in accordance with para-
6 graph (1)(A)) for each week during which the em-
7 ployee participates in a job training program during
8 the period ending 2 years after the date of the notice
9 of the plant closing or mass layoff.

10 (5) RETIREMENT BENEFITS.—In any case in
11 which, as of the date of the plant closing or mass
12 layoff, the employee is a participant in an employee
13 pension benefit plan (as defined in section 3(2) of
14 the Employee Retirement Income Security Act of
15 1974 (29 U.S.C. 1002(2))) and has attained an age
16 which is at or above 5 years before early or normal
17 retirement age (as defined in section 3(24) of such
18 Act (29 U.S.C. 1002(24))) under the plan, benefits
19 which are the actuarial equivalent of benefit accruals
20 which would occur under the plan if the employee
21 had continued in full-time service under the plan for
22 5 years after such date at the same rate of pay and
23 had made all required contributions for such period.

24 (b) ESTABLISHMENT OF EMPLOYEE ACCOUNT.—

1 (1) IN GENERAL.—An employer who imple-
2 ments a plant closing or mass layoff subject to sec-
3 tion 5 shall establish an employee benefit account
4 into which the employer shall make payments suffi-
5 cient to fund the amount of the benefits to be pro-
6 vided under subsection (a).

7 (2) MANAGEMENT OF ACCOUNT.—The account
8 established under paragraph (1) shall be managed
9 by 5 individuals, of whom—

10 (A) 2 individuals shall be selected by the
11 employer;

12 (B) 2 individuals shall be selected by the
13 affected employees; and

14 (C) 1 individual shall be selected by the 4
15 individuals referred to in subparagraphs (A)
16 and (B).

17 (3) REGULATIONS.—The Secretary shall pro-
18 mulgate regulations with respect to the establish-
19 ment and management of accounts under this sub-
20 section.

21 **SEC. 8. RESTRICTION ON EMPLOYER TO ENTER INTO CON-**
22 **TRACT WITH THE UNITED STATES FOR FAIL-**
23 **URE TO PROVIDE NOTICE OR BENEFITS.**

24 An employer who implements a plant closing or mass
25 layoff subject to section 5 and does not provide the notice

1 or benefits in accordance with sections 6 or 7, respectively,
2 may not enter into a contract with the United States for
3 the provision of products or services which were involved
4 in the work transfer described in section 5 or which are
5 substantially similar to such products or services.

6 **SEC. 9. INVESTIGATIVE AUTHORITY.**

7 (a) IN GENERAL.—To ensure compliance with this
8 title, or any regulation issued under this title, the Sec-
9 retary, subject to subsection (c), shall have the investiga-
10 tive authority provided under section 11(a) of the Fair
11 Labor Standards Act of 1938 (29 U.S.C. 211(a)).

12 (b) OBLIGATION TO KEEP AND PRESERVE
13 RECORDS.—An employer shall keep and preserve records
14 in accordance with section 11(c) of the Fair Labor Stand-
15 ards Act of 1938 (29 U.S.C. 211(c)) and in accordance
16 with regulations issued by the Secretary.

17 (c) SUBPOENA POWER.—For the purposes of any in-
18 vestigation provided for in this section, the Secretary shall
19 have the subpoena authority provided for under section
20 9 of the Fair Labor Standards Act of 1938 (29 U.S.C.
21 209).

22 **SEC. 10. ENFORCEMENT.**

23 (a) CIVIL ACTION BY EMPLOYEES.—

24 (1) LIABILITY.—An employer who implements
25 a plant closing or mass layoff in violation of section

1 5 shall be liable to each employee who suffers an
2 employment loss due to such closing or mass lay-
3 off—

4 (A) for damages equal to—

5 (i) the amount of any wages, salary,
6 employment benefits, or other compensa-
7 tion denied or lost to such employee by
8 reason of the violation;

9 (ii) the interest on the amount de-
10 scribed in clause (i) calculated at the pre-
11 vailing rate; and

12 (iii) an additional amount as liq-
13 uidated damages equal to the sum of the
14 amount described in clause (i) and the in-
15 terest described in clause (ii), except that
16 if the employer proves to the satisfaction
17 of the court that the act or omission which
18 violated section 5 was in good faith and
19 that the employer had reasonable grounds
20 for believing that the act or omission was
21 not a violation of such section, such court
22 may, in the discretion of the court, reduce
23 the amount of the liability to the amount
24 and interest determined under clauses (i)
25 and (ii), respectively;

1 (B) for damages equal to any actual mone-
2 tary loss sustained by the employee as a direct
3 result of the violation, such as the cost of pro-
4 viding health care; and

5 (C) for such equitable relief as may be ap-
6 propriate, including, employment, reinstatement,
7 and promotion.

8 (2) STANDING.—An action to recover the dam-
9 ages or equitable relief described in paragraph (1)
10 may be maintained against an employer in any Fed-
11 eral or State court of competent jurisdiction by any
12 1 or more employees who suffer an employment loss
13 due to the closing or mass layoff for and in behalf
14 of—

15 (A) such employees; or

16 (B) such employees and other employees
17 similarly situated under the provisions of Fed-
18 eral Rule of Civil Procedure 23.

19 (3) FEES AND COSTS.—The court in such an
20 action shall, in addition to any judgment awarded to
21 the plaintiff, allow a reasonable attorney's fee, rea-
22 sonable expert witness fees, and other costs of the
23 action to be paid by the defendant.

24 (b) ACTION BY STATE AND UNIT OF LOCAL GOVERN-
25 MENT.—

1 (1) LIABILITY.—An employer who implements
2 a plant closing or mass layoff in violation of section
3 5 shall be liable to the State or unit of local govern-
4 ment in which the employer is located for damages
5 equal to the difference of—

6 (A) the location assistance provided to the
7 employer by the State or unit of local govern-
8 ment; and

9 (B) the amount of the benefit, if any,
10 which the State or unit of local government will
11 continue to receive as a result of the provision
12 of such assistance to the employer.

13 (2) STANDING.—An action to recover the dam-
14 ages described in paragraph (1) may be maintained
15 against any employer in any Federal or State court
16 of competent jurisdiction by the State or unit of
17 local government described in paragraph (1).

18 (3) FEES AND COSTS.—The court in such an
19 action shall, in addition to any judgment awarded to
20 the plaintiff, allow a reasonable attorney's fee, rea-
21 sonable expert witness fees, and other costs of the
22 action to be paid by the defendant.

23 (c) ACTION BY THE SECRETARY.—

24 (1) ADMINISTRATIVE ACTION.—The Secretary
25 shall receive, investigate, and attempt to resolve

1 complaints of violations of section 5 in the same
2 manner that the Secretary receives, investigates, and
3 attempts to resolve complaints of violations of sec-
4 tions 6 and 7 of the Fair Labor Standards Act of
5 1938 (29 U.S.C. 206 and 207).

6 (2) CIVIL ACTION.—The Secretary may bring
7 an action in any court of competent jurisdiction to
8 recover the damages described in subsection
9 (a)(1)(A) on behalf of each employee who suffers an
10 employment loss due to a plant closing or mass lay-
11 off in violation of section 5.

12 (3) SUMS RECOVERED.—(A) Any sums recov-
13 ered by the Secretary on behalf of an employee
14 under paragraph (2) shall be held in a special de-
15 posit account and shall be paid, on order of the Sec-
16 retary, directly to such employee.

17 (B) Any such sums not paid to an employee be-
18 cause of inability to do so within a period of 3 years
19 from the date of recovery by the Secretary shall be
20 credited as an offsetting collection to the appropria-
21 tions account of the Secretary of Labor for expenses
22 for the administration of this title and shall remain
23 available to the Secretary until expended.

24 (d) LIMITATION.—

1 (1) IN GENERAL.—An action may be brought
2 under subsection (a), (b), or (c) not later than 3
3 years after the date of the last event constituting the
4 alleged violation for which the action is brought.

5 (2) COMMENCEMENT WITH RESPECT TO ACTION
6 BY SECRETARY.—In determining when an action is
7 commenced by the Secretary under subsection (c)
8 for purposes of paragraph (1), such action shall be
9 considered to be commenced on the date when the
10 complaint is filed.

11 (e) ACTION FOR INJUNCTION BY SECRETARY.—The
12 district courts of the United States shall have jurisdiction,
13 for cause shown, over an action brought by the Secretary
14 to restrain violations of section 5, including actions to re-
15 strain the withholding of payment of wages, salary, em-
16 ployment benefits, or other compensation, plus interest,
17 found by the court to be due to employees who suffer an
18 employment loss due to a plant closing or mass layoff in
19 violation of such section.

20 **SEC. 11. PROCEDURES IN ADDITION TO OTHER RIGHTS OF**
21 **EMPLOYEES.**

22 The rights and remedies provided to employees under
23 this Act are in addition to, and not in lieu of, any other
24 contractual or statutory rights and remedies of the em-
25 ployees, and are not intended to alter or affect such rights

1 and remedies, except that the period of notification re-
2 quired by section 5(a) shall run concurrently with any pe-
3 riod of notification required by contract or by any other
4 law.

5 **SEC. 12. REQUIREMENT OF POSTING OF NOTICE BY EM-**
6 **PLOYER AT SITE OF EMPLOYMENT.**

7 (a) IN GENERAL.—Each employer shall post and
8 keep posted, in conspicuous places at the site of employ-
9 ment of the employer where notices to employees and ap-
10 plicants for employment are customarily posted, a notice,
11 to be prepared or approved by the Secretary, setting forth
12 excerpts from, or summaries of, the pertinent provisions
13 of this Act and information pertaining to the filing of a
14 charge.

15 (b) PENALTY.—Any employer that willfully violates
16 the requirements described in subsection (a) may be as-
17 sessed a civil money penalty not to exceed \$100 for each
18 separate offense.

19 **SEC. 13. EFFECTIVE DATE.**

20 This Act shall take effect on the date which is 6
21 months after the date of the enactment of this Act.

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