

111TH CONGRESS  
1ST SESSION

# S. 1374

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

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## IN THE SENATE OF THE UNITED STATES

JUNE 25, 2009

Mr. BROWN (for himself, Mr. KERRY, Mr. DURBIN, Mr. HARKIN, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## 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) LIMITATIONS.—

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

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

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

9       “(b) PENALTIES.—The Secretary may impose a civil  
10 penalty on any person who willfully violates this section  
11 of not more than \$500 for each separate offense.”.

12       (e) NON-WAIVER OF RIGHTS AND REMEDIES; INFOR-  
13 MATION REGARDING BENEFITS AND SERVICES AVAIL-  
14 ABLE TO EMPLOYEES.—Such Act (29 U.S.C. 2101 et  
15 seq.) is further amended by adding at the end the fol-  
16 lowing:

17 **“SEC. 12. RIGHTS AND REMEDIES NOT SUBJECT TO WAIV-**  
18 **ER.**

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

24       “(b) AGREEMENT OR SETTLEMENT.—An agreement  
25 or settlement referred to in subsection (a) is an agreement  
26 or settlement negotiated by the Secretary, an attorney

1 general of any State, or a private attorney on behalf of  
2 affected employees.

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

5 “The Secretary of Labor shall maintain a guide of  
6 benefits and services which may be available to affected  
7 employees, including unemployment compensation, trade  
8 adjustment assistance, COBRA benefits, and early access  
9 to training services and other services, including coun-  
10 seling services, available under title I of the Workforce In-  
11 vestment Act of 1998 (29 U.S.C. 2801). Such guide shall  
12 be available on the Internet website of the Department  
13 of Labor and shall include a description of the benefits  
14 and services, the eligibility requirements, and the means  
15 of obtaining such benefits and services. Upon receiving no-  
16 tice from an employer under section 3(a)(2), the Secretary  
17 shall immediately transmit such guide to such employer.”.

18 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

19 In addition to funds authorized to be appropriated  
20 for the general enforcement of the Worker Adjustment  
21 and Retraining Notification Act (29 U.S.C. 2101 et seq.),  
22 there is authorized to be appropriated to the Secretary of  
23 Labor such additional sums as may be necessary for the

1 additional enforcement authority authorized by the  
2 amendments made by this Act.

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