

## Union Calendar No. 258

110TH CONGRESS  
1ST SESSION

# H. R. 3796

[Report No. 110–410]

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. SHEA-PORTER, 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

OCTOBER 25, 2007

Additional sponsors: Mr. HARE, Mr. SARBANES, Ms. LINDA T. SÁNCHEZ of California, and Ms. HIRONO

OCTOBER 25, 2007

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on October 10, 2007]

---

## 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.—*

8               (1) *EMPLOYER, PLANT CLOSING, AND MASS LAY-*  
 9       *OFF.—Paragraphs (1) through (3) of section 2(a) of*  
 10       *the Worker Adjustment and Retraining Notification*  
 11       *Act (29 U.S.C. 2101(a)(1)–(3)) are amended to read*  
 12       *as follows:*

13               “(1) the term ‘employer’ means any business en-  
 14       terprise that employs 100 or more employees;

15               “(2) the term ‘plant closing’ means the perma-  
 16       nent or temporary shutdown of a single site of em-  
 17       ployment, or of one or more facilities or operating  
 18       units within a single site of employment, which re-  
 19       sults in an employment loss at such site, during any  
 20       30-day period, for 25 or more employees;

21               “(3) the term ‘mass layoff’ means a reduction in  
 22       force at a single site of employment which results in  
 23       an employment loss at such site, during any 30-day  
 24       period, for 25 or more employees.”.

25               (2) *SECRETARY OF LABOR.—*

1 (A) *DEFINITION.*—Paragraph (8) of such  
 2 section is amended to read as follows:

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

5 (B) *REGULATIONS.*—Section 8(a) of such  
 6 Act (29 U.S.C. 2107(a)) is amended by striking  
 7 “of Labor”.

8 (3) *CONFORMING AMENDMENTS.*—

9 (A) *NOTICE.*—Section 3(d) of such Act (29  
 10 U.S.C. 2102(d)) is amended by striking out “,  
 11 each of which is less than the minimum number  
 12 of employees specified in section 2(a)(2) or (3)  
 13 but which in the aggregate exceed that minimum  
 14 number,” and inserting “which in the aggregate  
 15 exceed the minimum number of employees speci-  
 16 fied in section 2(a)(2) or (3)”.

17 (B) *DEFINITIONS.*—Section 2(b)(1) of such  
 18 Act (29 U.S.C. 2101(b)(1)) is amended by strik-  
 19 ing “(other than a part-time employee)”.

20 (b) *NOTICE.*—

21 (1) *NOTICE PERIOD.*—

22 (A) *IN GENERAL.*—Section 3 of the Worker  
 23 Adjustment and Retraining Notification Act (29  
 24 U.S.C. 2102) is amended by striking “60-day pe-

1            *riod” and inserting “90-day period” each place*  
 2            *it appears.*

3            (B) *CONFORMING AMENDMENT.—Section*  
 4            *5(a)(1) of such Act (29 U.S.C. 2104(a)(1)) is*  
 5            *amended in the matter following subparagraph*  
 6            *(B), by striking “60 days” and inserting “90*  
 7            *days”.*

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

10            (A) *in paragraph (1), by striking “or, if*  
 11            *there is no such representative at that time, to*  
 12            *each affected employee; and” and inserting “and*  
 13            *to each affected employee;”; and*

14            (B) *by redesignating paragraph (2) as*  
 15            *paragraph (3) and inserting after paragraph (1)*  
 16            *the following:*

17            *“(2) to the Secretary; and”.*

18            (3) *INFORMATION REGARDING BENEFITS AND*  
 19            *SERVICES AVAILABLE TO WORKERS AND DOL NOTICE*  
 20            *TO CONGRESS.—Section 3 of such Act (29 U.S.C.*  
 21            *2102) is further amended by adding at the end the*  
 22            *following:*

23            *“(e) INFORMATION REGARDING BENEFITS AND SERV-*  
 24            *ICES AVAILABLE TO EMPLOYEES.—Concurrent with or im-*  
 25            *mediately after providing the notice required under sub-*

1 *section (a)(1), an employer shall provide affected employees*  
2 *with information regarding the benefits and services avail-*  
3 *able to such employees, as described in the guide compiled*  
4 *by the Secretary under section 12.*

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

11 *(c) ENFORCEMENT.*—

12 *(1) AMOUNT.*—Section 5(a)(1) of the Worker Ad-  
13 *justment and Retraining Notification Act (29 U.S.C.*  
14 *2104(a)(1)) is amended—*

15 *(A) in subparagraph (A)—*

16 *(i) by striking “back pay for each day*  
17 *of violation” and inserting “two days’ pay*  
18 *multiplied by the number of calendar days*  
19 *short of 90 that the employer provided no-*  
20 *tice before such closing or layoff”; and*

21 *(ii) in clause (ii), by striking “and” at*  
22 *the end thereof;*

23 *(B) by redesignating subparagraph (B) as*  
24 *subparagraph (C);*

1                   (C) by inserting after subparagraph (A) the  
2                   following:

3                   “(B) interest on the amount described in sub-  
4                   paragraph (A) calculated at the prevailing rate;  
5                   and”; and

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

8                   (2) *EXEMPTION.*—Section 5(a)(4) of such Act  
9                   (29 U.S.C. 2104(a)(4)) is amended by striking “re-  
10                  duce the amount of the liability or penalty provided  
11                  for in this section” and inserting “reduce the amount  
12                  of the liability under subparagraph (C) of paragraph  
13                  (1) and reduce the amount of the penalty provided for  
14                  in paragraph (3)”.

15                  (3) *ADMINISTRATIVE COMPLAINT.*—Section  
16                  5(a)(5) of such Act (29 U.S.C. 2104(a)(5)) is amend-  
17                  ed—

18                         (A) by striking “may sue” and inserting  
19                         “may,”;

20                         (B) by inserting after “both,” the following:

21                                 “(A) file a complaint with the Secretary alleging  
22                                 a violation of section 3, or (B) bring suit”; and

23                                 (C) by adding at the end thereof the fol-  
24                                 lowing new sentence: “A person seeking to en-  
25                                 force such liability may use one or both of the

1           *enforcement mechanisms described in subpara-*  
 2           *graphs (A) and (B).”.*

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

5                     *(A) by redesignating subsection (b) as sub-*  
 6                     *section (d); and*

7                     *(B) by inserting after subsection (a) the fol-*  
 8                     *lowing new subsections:*

9           “(b) *ACTION BY THE SECRETARY.*—

10                   “(1) *ADMINISTRATIVE ACTION.*—*The Secretary*  
 11                   *shall receive, investigate, and attempt to resolve com-*  
 12                   *plaints of violations of section 3 by an employer in*  
 13                   *the same manner that the Secretary receives, inves-*  
 14                   *tigates, and attempts to resolve complaints of viola-*  
 15                   *tions of sections 6 and 7 of the Fair Labor Standards*  
 16                   *Act of 1938 (29 U.S.C. 206 and 207).*

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

22                   “(3) *CIVIL ACTION.*—*The Secretary may bring*  
 23                   *an action in any court of competent jurisdiction to*  
 24                   *recover on behalf of an employee the backpay, interest,*

1       *benefits, and liquidated damages described in sub-*  
2       *section (a).*

3               “(4) *SUMS RECOVERED.*—*Any sums recovered by*  
4       *the Secretary on behalf of an employee under sub-*  
5       *paragraphs (A), (B), and (D) of section 5(a)(1) shall*  
6       *be held in a special deposit account and shall be paid,*  
7       *on order of the Secretary, directly to each employee*  
8       *affected. Any such sums not paid to an employee be-*  
9       *cause of inability to do so within a period of 3 years,*  
10       *and any sums recovered by the Secretary under sub-*  
11       *paragraph (C) of section 5(a)(1), shall be credited as*  
12       *an offsetting collection to the appropriations account*  
13       *of the Secretary of Labor for expenses for the admin-*  
14       *istration of this Act and shall remain available to the*  
15       *Secretary until expended.*

16               “(5) *ACTION TO COMPEL RELIEF BY SEC-*  
17       *RETARY.*—*The district courts of the United States*  
18       *shall have jurisdiction, for cause shown, over an ac-*  
19       *tion brought by the Secretary to restrain the with-*  
20       *holding of payment of back pay, interest, benefits, or*  
21       *other compensation, plus interest, found by the court*  
22       *to be due to employees under this Act.*

23               “(c) *LIMITATIONS.*—

24               “(1) *LIMITATIONS PERIOD.*—*An action may be*  
25       *brought under this section not later than 2 years after*



1       *the date of the last event constituting the alleged vio-*  
2       *lation for which the action is brought.*

3               “(2) *COMMENCEMENT.*—*In determining when an*  
4       *action is commenced under this section for the pur-*  
5       *poses of paragraph (1), it shall be considered to be*  
6       *commenced on the date on which the complaint is*  
7       *filed.*

8               “(3) *LIMITATION ON PRIVATE ACTION WHILE AC-*  
9       *TION OF SECRETARY IS PENDING.*—*If the Secretary*  
10       *has instituted an enforcement action or proceeding*  
11       *under subsection (b), an individual employee may not*  
12       *bring an action under subsection (a) during the pend-*  
13       *ency of the proceeding against any person with re-*  
14       *spect to whom the Secretary has instituted the pro-*  
15       *ceeding.”.*

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

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

20               “(a) *POSTING OF NOTICES.*—*Each employer shall post*  
21       *and keep posted in conspicuous places upon its premises*  
22       *where notices to employees are customarily posted a notice*  
23       *to be prepared or approved by the Secretary setting forth*  
24       *excerpts from, or summaries of, the pertinent provisions of*

1 *this chapter and information pertinent to the filing of a*  
 2 *complaint.*

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

6 (e) *NON-WAIVER OF RIGHTS AND REMEDIES; INFOR-*  
 7 *MATION REGARDING BENEFITS AND SERVICES AVAILABLE*  
 8 *TO EMPLOYEES.*—*Such Act is further amended by adding*  
 9 *at the end the following:*

10 **“SEC. 12. RIGHTS AND REMEDIES NOT SUBJECT TO WAIVER.**

11 “(a) *IN GENERAL.*—*The rights and remedies provided*  
 12 *under this Act (including the right to maintain a civil ac-*  
 13 *tion) may not be waived, deferred, or lost pursuant to any*  
 14 *agreement or settlement other than an agreement or settle-*  
 15 *ment described in subsection (b).*

16 “(b) *AGREEMENT OR SETTLEMENT.*—*An agreement or*  
 17 *settlement referred to in subsection (a) is an agreement or*  
 18 *settlement negotiated by the Secretary, an attorney general*  
 19 *of any State, or a private attorney on behalf of affected*  
 20 *employees.*

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

23 “*The Secretary of Labor shall maintain a guide of ben-*  
 24 *efits and services which may be available to affected em-*  
 25 *ployees, including unemployment compensation, trade ad-*

1 *justment assistance, COBRA benefits, and early access to*  
 2 *training and other services, including counseling services,*  
 3 *available under the Workforce Investment Act of 1998. Such*  
 4 *guide shall be available on the Internet website of the De-*  
 5 *partment of Labor and shall include a description of the*  
 6 *benefits and services, the eligibility requirements, and the*  
 7 *means of obtaining such benefits and services. Upon receiv-*  
 8 *ing notice from an employer under section 3(a)(2), the Sec-*  
 9 *retary shall immediately transmit such guide to such em-*  
 10 *ployer.”.*

11 *(e) NOTICE EXCUSED WHERE CAUSED BY TERRORIST*  
 12 *ATTACK.—Section 3(b)(2) of the Worker Adjustment and*  
 13 *Retraining Notification Act (29 U.S.C. 2102(b)(2)) is*  
 14 *amended by adding at the end the following new subpara-*  
 15 *graph:*

16 *“(C) No notice under this Act shall be required if the*  
 17 *plant closing or mass layoff is due directly or indirectly*  
 18 *to a terrorist attack on the United States.”.*

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

21 *(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT*  
 22 *INCOME SECURITY ACT OF 1974.—*

23 *(1) SPECIAL RULE FOR QUALIFIED TAA ELIGIBLE*  
 24 *EMPLOYEES.—*

1           (A) *IN GENERAL.*—Section 602(2)(A) of the  
 2           *Employee Retirement Income Security Act of*  
 3           1974 (29 U.S.C. 1162(2)(A)) is amended—

4                   (i) by moving clause (v) to after clause  
 5                   (iv) and before the flush left sentence begin-  
 6                   ning with “In the case of a qualified bene-  
 7                   ficiary”; and

8                   (ii) by inserting after clause (v) the  
 9                   following new clause:

10                   “(vi) *SPECIAL RULE FOR QUALIFIED*  
 11                   *TAA ELIGIBLE EMPLOYEES.*—In the case of  
 12                   a qualifying event described in section  
 13                   603(2), clauses (i) and (ii) shall not apply  
 14                   to a qualified TAA eligible employee (as de-  
 15                   fined in section 607(6)).”.

16           (B) *QUALIFIED TAA ELIGIBLE EMPLOYEE*  
 17           *DEFINED.*—Section 607 of such Act (29 U.S.C.  
 18           1167) is amended by adding at the end the fol-  
 19           lowing new paragraph:

20                   “(6) *QUALIFIED TAA ELIGIBLE EMPLOYEE.*—The  
 21                   term ‘qualified TAA eligible employee’ means a cov-  
 22                   ered employee, with respect to a qualifying event, if—

23                           “(A) the qualifying event is attributable to  
 24                           the conditions specified in section 222 of the  
 25                           Trade Act of 1974 (19 U.S.C. 2272) based on

1        *which the Secretary of Labor has certified a*  
 2        *group of workers as eligible to apply for adjust-*  
 3        *ment assistance under subchapter A of chapter 2*  
 4        *of title II of such Act;*

5            *“(B) such certification applies to the cov-*  
 6        *ered employee; and*

7            *“(C) as of the date of such qualifying event*  
 8        *the covered employee has attained age 55 or has*  
 9        *completed 10 or more years of service with the*  
 10       *employer.”.*

11        (2) *CONFORMING AMENDMENTS.—Section*  
 12        *602(2)(A) of such Act (29 U.S.C. 1162(2)(A)) is fur-*  
 13        *ther amended—*

14            (A) *in clause (i), by striking “In the case*  
 15        *of” and inserting “Subject to clause (vi), in the*  
 16        *case of”;* and

17            (B) *in clause (ii), by striking “If a quali-*  
 18        *fying event” and inserting “Subject to clause*  
 19        *(vi), if a qualifying event”.*

20        (b) *EFFECTIVE DATE.—*

21            (1) *GENERAL RULE.—The amendments made by*  
 22        *this section shall apply for plan years beginning on*  
 23        *or after January 1, 2008.*

24            (2) *SPECIAL RULE FOR COLLECTIVE BARGAINING*  
 25        *AGREEMENTS.—In the case of a group health plan*

1       *maintained pursuant to one or more collective bar-*  
2       *gaining agreements between employee representatives*  
3       *and one or more employers ratified before the date of*  
4       *the enactment of this Act, the amendments made by*  
5       *this section shall not apply to plan years beginning*  
6       *before the earlier of—*

7               *(A) the later of—*

8                       *(i) the date on which the last of the col-*  
9                       *lective bargaining agreements relating to*  
10                      *the plan terminates (determined without re-*  
11                      *gard to any extension thereof agreed to after*  
12                      *the date of the enactment of this Act), or*

13                      *(ii) July 1, 2008, or*

14               *(B) the date which is 3 years after the date*  
15       *of the enactment of this Act.*

16   **SEC. 4. EFFECTIVE DATE.**

17       *Except as otherwise provided in this Act, the provi-*  
18       *sions of this Act, and the amendments made by this Act,*  
19       *shall take effect on the date of the enactment of this Act.*



Union Calendar No. 258

110TH CONGRESS  
1ST Session

H. R. 3796

[Report No. 110-410]

A BILL

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

OCTOBER 25, 2007

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed