

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3796
OFFERED BY MR. MILLER**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Early Warning and
3 Health Care for Workers Affected by Globalization Act”.

4 SEC. 2. AMENDMENTS TO THE WARN ACT.

5 (a) DEFINITIONS.—

6 (1) EMPLOYER, PLANT CLOSING, AND MASS
7 LAYOFF.—Paragraphs (1) through (3) of section
8 2(a) of the Worker Adjustment and Retraining Noti-
9 fication Act (29 U.S.C. 2101(a)(1)–(3)) are amend-
10 ed to read as follows:

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

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

1 “(3) the term ‘mass layoff’ means a reduction
2 in force at a single site of employment which results
3 in an employment loss at such site, during any 30-
4 day period, for 25 or more 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)—

21 (i) by striking “back pay for each day
22 of violation” and inserting “two days’ pay
23 multiplied by the number of calendar days
24 short of 90 that the employer provided no-
25 tice before such closing or layoff”

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

3 (B) by redesignating subparagraph (B) as
4 subparagraph (C);

5 (C) by inserting after subparagraph (A)
6 the following:

7 “(B) interest on the amount described in
8 subparagraph (A) calculated at the prevailing
9 rate; and”; and

10 (D) by striking the matter following sub-
11 paragraph (B).

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

19 (3) ADMINISTRATIVE COMPLAINT.—Section
20 5(a)(5) of such Act (29 U.S.C. 2104(a)(5)) is
21 amended—

22 (A) by striking “may sue,” and inserting
23 “may,”;

24 (B) by inserting after “both,” the fol-
25 lowing: “(A) file a complaint with the Secretary

1 alleging a violation of section 3, or (B) bring
2 suit”; and

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

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

10 (A) by redesignating subsection (b) as sub-
11 section (d); and

12 (B) by inserting after subsection (a) the
13 following new subsections:

14 “(b) ACTION BY THE SECRETARY.—

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

22 “(2) SUBPOENA POWERS.—For the purposes of
23 any investigation provided for in this section, the
24 Secretary shall have the subpoena authority provided

1 for under section 9 of the Fair Labor Standards Act
2 of 1938 (29 U.S.C. 209).

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

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

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

1 other compensation, plus interest, found by the court
2 to be due to employees under this Act.

3 “(c) LIMITATIONS.—

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

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

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

21 (d) POSTING OF NOTICES; PENALTIES.—Section 11
22 of the Worker Adjustment and Retraining Notification Act
23 (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) NON-WAIVER OF RIGHTS AND REMEDIES; INFOR-
13 MATION REGARDING BENEFITS AND SERVICES AVAIL-
14 ABLE TO EMPLOYEES.—Such Act is further amended by
15 adding at the end the following:

16 **“SEC. 11. RIGHTS AND REMEDIES NOT SUBJECT TO WAIV-
17 ER.**

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

23 “(b) AGREEMENT OR SETTLEMENT.—An agreement
24 or settlement referred to in subsection (a) is an agreement
25 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. 12. 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 and other services, including counseling serv-
10 ices, available under the Workforce Investment Act of
11 1998. Such guide shall be available on the Internet website
12 of the Department of Labor and shall include a descrip-
13 tion of the benefits and services, the eligibility require-
14 ments, and the means of obtaining such benefits and serv-
15 ices. Upon receiving notice from an employer under sec-
16 tion 3(a)(2), the Secretary shall immediately transmit
17 such guide to such employer.”.

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

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

22 (1) SPECIAL RULE FOR QUALIFIED TAA ELIGI-
23 BLE EMPLOYEES.—

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

4 (i) by moving clause (v) to after
5 clause (iv) and before the flush left sen-
6 tence beginning with “In the case of a
7 qualified beneficiary”; 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
15 defined 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.—
21 The term ‘qualified TAA eligible employee’ means a
22 covered employee, with respect to a qualifying event,
23 if—

24 “(A) the qualifying event is attributable to
25 the conditions specified in section 222 of the

1 Trade Act of 1974 (19 U.S.C. 2272) based on
2 which the Secretary of Labor has certified a
3 group of workers as eligible to apply for adjust-
4 ment assistance under subchapter A of chapter
5 2 of title II of such Act;

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

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

12 (C) PREMIUM ASSISTANCE IN THE CASE
13 OF QUALIFIED TAA ELIGIBLE EMPLOYEES.—
14 Section 607 of such Act (as amended by sub-
15 paragraph (B)) is further amended by adding
16 at the end the following new paragraph:

17 “(7) PREMIUM ASSISTANCE IN THE CASE OF
18 QUALIFIED TAA ELIGIBLE EMPLOYEES.—The Sec-
19 retary may use unobligated funds available under
20 section 286(s)(2) of the Immigration and Nation-
21 ality Act (8 U.S.C. 1356(s)(2)) for the purpose of
22 providing financial assistance toward the payment of
23 premiums for continuation coverage under this part
24 for individuals referred to in section 602(2)(A)(vi)
25 for fiscal year 2008 and subsequent fiscal years.

1 Such unobligated funds used for such purpose in fis-
2 cal year 2008 may not exceed \$20,000,000, and
3 such unobligated funds used for such purpose in any
4 fiscal year after fiscal year 2008 may not exceed
5 $33\frac{1}{3}$ percent of such unobligated funds.”.

6 (2) CONFORMING AMENDMENTS.—Section
7 602(2)(A) of such Act (29 U.S.C. 1162(2)(A)) is
8 further amended—

9 (A) in clause (i), by striking “In the case
10 of” and inserting “Subject to clause (vi), in the
11 case of”; and

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

15 (b) EFFECTIVE DATE.—

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

19 (2) SPECIAL RULE FOR COLLECTIVE BAR-
20 GAINING AGREEMENTS.—In the case of a group
21 health plan maintained pursuant to one or more col-
22 lective bargaining agreements between employee rep-
23 resentatives and one or more employers ratified be-
24 fore the date of the enactment of this Act, the

1 amendments made by this section shall not apply to
2 plan years beginning before the earlier of—

3 (A) the later of—

4 (i) the date on which the last of the
5 collective bargaining agreements relating to
6 the plan terminates (determined without
7 regard to any extension thereof agreed to
8 after the date of the enactment of this
9 Act), or

10 (ii) July 1, 2008, or

11 (B) the date which is 3 years after the
12 date of the enactment of this Act.

13 **SEC. 4. EFFECTIVE DATE.**

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