

116TH CONGRESS  
1ST SESSION

# S. 2938

To amend the Worker Adjustment and Retraining Notification Act to support workers who are subject to an employment loss, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 21, 2019

Mr. BROWN (for himself, Mr. SCHUMER, and Mrs. MURRAY) 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 support workers who are subject to an employment loss, 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 “Fair Warning Act of  
5 2019”.

1 **SEC. 2. DEFINITIONS; PROVISION OF NOTICE OF SITE CLOS-**  
 2 **INGS AND MASS LAYOFFS.**

3 (a) WARN ACT AMENDMENTS.—Sections 2 and 3 of  
 4 the Worker Adjustment and Retraining Notification Act  
 5 (29 U.S.C. 2101; 2102) are amended to read as follows:

6 **“SEC. 2. DEFINITIONS; EXCLUSIONS FROM DEFINITION OF**  
 7 **LOSS OF EMPLOYMENT.**

8 “(a) DEFINITIONS.—As used in this Act:

9 “(1) AFFECTED EMPLOYEE.—The term ‘af-  
 10 fected employee’ means a full-time or part-time em-  
 11 ployee who may reasonably be expected to experience  
 12 an employment loss as a consequence of a proposed  
 13 site closing or mass layoff by the employee’s em-  
 14 ployer.

15 “(2) EMPLOYER.—

16 “(A) IN GENERAL.—The term ‘employer’  
 17 means any business enterprise that—

18 “(i) employs 50 or more employees,  
 19 including part-time employees and includ-  
 20 ing employees of the nominal employer and  
 21 any entity that is the nominal employer’s  
 22 direct or indirect parent or is integrated  
 23 with the nominal employer; or

24 “(ii) has an annual payroll of at least  
 25 \$2,000,000.

1           “(B) DEFINITIONS.—For the purposes of  
2 this paragraph:

3           “(i) INTEGRATED.—The term ‘inte-  
4 grated’, when used with respect to a busi-  
5 ness enterprise, means an entity whose re-  
6 lationship with another business enterprise  
7 include—

8           “(I) common ownership;

9           “(II) common directors or offi-  
10 cers;

11           “(III) de facto exercise of con-  
12 trol;

13           “(IV) unity of personnel policies  
14 emanating from a common source; or

15           “(V) dependency of operations.

16           “(ii) PARENT.—The term ‘parent’  
17 means an entity, regardless of its financial  
18 interest in the nominal employer, that par-  
19 ticipates directly or indirectly in making  
20 decisions that affect the employees of the  
21 nominal employer or of multiple entities  
22 controlled by 1 person for a common busi-  
23 ness purpose.

24           “(iii) CONSIDERATION.—In deter-  
25 mining whether an entity is integrated

1 with or a direct or indirect parent of a  
2 business enterprise that is the nominal em-  
3 ployer, substantial weight shall be given to  
4 any decision-making responsibility the enti-  
5 ty had for the practice that gave rise to  
6 the violation of this Act.

7 “(3) EMPLOYMENT LOSS.—Subject to sub-  
8 section (b), the term ‘employment loss’ means—

9 “(A) an employment termination, other  
10 than a discharge for cause, voluntary departure,  
11 or retirement;

12 “(B) a layoff exceeding 3 months; or

13 “(C) a reduction in hours of work of more  
14 than 50 percent during each month of any 3-  
15 month period.

16 “(4) MASS LAYOFF.—

17 “(A) IN GENERAL.—The term ‘mass lay-  
18 off’ means a reduction in force that results in  
19 an employment loss during any 90-day period—

20 “(i) for 10 or more employees of an  
21 employer at a single site of employment, as  
22 calculated under subparagraph (B); or

23 “(ii) for 250 or more employees of an  
24 employer, irrespective of employment site.

“(B) CALCULATION.—The number of employees at a single site who suffer an employment loss shall be calculated in a manner that includes—

“(i) all such employees who work at the physical location of the site; and

“(ii) all such employees who work remotely and—

“(I) are assigned to or otherwise associated with the site;

“(II) receive assignments or training from the site;

“(III) report to a manager associated with the site; or

“(IV) whose job loss was a foreseeable consequence of a reduction in force at the site.

“(5) REPRESENTATIVE.—The term ‘representative’ means an exclusive representative of employees within the meaning of section 8(f) or 9(a) of the National Labor Relations Act (29 U.S.C. 158(f); 159(a)) or section 2 of the Railway Labor Act (45 U.S.C. 152).

“(6) SECRETARY.—The term ‘Secretary’ means the Secretary of Labor.

1           “(7) SITE CLOSING.—The term ‘site closing’  
 2           means the permanent or temporary shutdown of a  
 3           single site of employment, or one or more facilities  
 4           or operating units within a single site of employ-  
 5           ment, that results in an employment loss at the sin-  
 6           gle site of employment during any 30-day period for  
 7           5 or more employees, calculated in the same manner  
 8           as described in paragraph (4)(B).

9           “(8) UNIT OF LOCAL GOVERNMENT.—The term  
 10          ‘unit of local government’ means any general pur-  
 11          pose political subdivision of a State which has the  
 12          power to levy taxes and spend funds, as well as gen-  
 13          eral corporate and police powers.

14          “(b) EXCLUSIONS FROM EMPLOYMENT LOSS DUE  
 15          TO A SITE CLOSING OR MASS LAYOFF.—An employee  
 16          shall not be considered to have experienced an employment  
 17          loss due to a site closing or mass layoff if the site closing  
 18          or mass layoff is the result of the relocation or consolida-  
 19          tion of part or all of the employer’s business and, prior  
 20          to the site closing or mass layoff—

21                 “(1) the employer offers to transfer the em-  
 22                 ployee to a different site of employment within a  
 23                 reasonable commuting distance with no more than a  
 24                 3-month break in employment; or

1           “(2) the employer offers to transfer the em-  
 2           ployee to any other site of employment regardless of  
 3           distance with no more than a 3-month break in em-  
 4           ployment, and the employee accepts within 30 days  
 5           of the offer or of the site closing or mass layoff,  
 6           whichever is later.

7   **“SEC. 3. NOTICE REQUIRED BEFORE SITE CLOSINGS AND**  
 8           **MASS LAYOFFS.**

9           “(a) NOTICE TO EMPLOYEES, STATE DISLOCATED  
 10   WORKER UNITS, AND LOCAL GOVERNMENTS.—An em-  
 11   ployer shall not order a site closing or mass layoff until  
 12   90 calendar days after the date on which the employer  
 13   has served written notice of such an order to—

14           “(1)(A) each representative of the affected em-  
 15           ployees as of the time of the notice; or

16           “(B) each affected employee;

17           “(2) the Secretary and the Governor of the  
 18           State where the site closing or mass layoff is to  
 19           occur; and

20           “(3) the State or entity designated by the State  
 21           to carry out rapid response activities under section  
 22           134(a)(2)(A) of the Workforce Innovation and Op-  
 23           portunity Act (29 U.S.C. 3174(a)(2)(A)).

1       “(b) DUTIES UPON RECEIPT OF NOTICE.—A State  
 2 or designated entity that receives a notice under sub-  
 3 section (a)(3) shall—

4               “(1) make the information in the notice publicly  
 5 available within the jurisdiction of the local govern-  
 6 ment involved;

7               “(2) transmit a copy of the notice to each af-  
 8 fected local area (as defined in section 3 of the  
 9 Workforce Innovation and Opportunity Act (29  
 10 U.S.C. 3102)), so that the information in the notice  
 11 can be distributed through activities under section  
 12 134(c)(2)(A)(iv)(I)(aa) of that Act (29 U.S.C.  
 13 3174(c)(2)(A)(iv)(I)(aa)); and

14               “(3) ensure that—

15                       “(A) an appropriate labor-management  
 16 committee described in section 3(51)(C) of the  
 17 Workforce Innovation and Opportunity Act (29  
 18 U.S.C. 3102(51)(C)) has been established or is  
 19 established not later than 20 days after receipt  
 20 of the notice; and

21                       “(B) an individual is designated, by not  
 22 later than 20 days after receipt of such notice,  
 23 to coordinate rapid response activities described  
 24 in section 134(a)(2)(A)(i) of such Act, in con-



1           sultation with the labor-management com-  
2           mittee.

3           “(c) REDUCTION OF NOTIFICATION PERIOD.—

4           “(1) POTENTIAL NEW BUSINESS OR FINANC-  
5           ING.—An employer may order the site closing of a  
6           single site of employment before the conclusion of  
7           the 90-day period described in subsection (a) if—

8                   “(A) as of the date that notice would have  
9                   been required the employer had been offered, on  
10                  acceptable terms, new business or financing in  
11                  an amount which, if obtained, would have en-  
12                  abled the employer to avoid the site closing; and

13                  “(B) the employer can demonstrate that,  
14                  had notice been given, the notice would have  
15                  precluded the new business or financing.

16           “(2) UNFORESEEN CIRCUMSTANCES.—

17                  “(A) NATURAL DISASTERS.—No notice  
18                  under this Act shall be required if the site clos-  
19                  ing or mass layoff is due to any form of natural  
20                  disaster, such as a flood, earthquake, or a  
21                  drought ravaging the farmlands of the United  
22                  States.

23                  “(B) TERRORIST ATTACKS.—No notice  
24                  under this Act shall be required if the site clos-

1           ing or mass layoff is due directly to a terrorist  
2           attack that affects the operation of the site.

3           “(3) PROVISION OF NOTICE.—An employer re-  
4           lying on this subsection shall give as much notice as  
5           is practicable and at that time shall give a brief  
6           statement of the basis for reducing the notification  
7           period.

8           “(d) EXTENSION OF TEMPORARY LAYOFF.—A tem-  
9           porary layoff of more than 3 months that, at its outset,  
10          was announced to be a temporary layoff of 3 months or  
11          less, shall be treated as an employment loss under this  
12          Act unless—

13               “(1) a written notice, as required under sub-  
14               section (a), is provided at the commencement of the  
15               temporary layoff stating the date on which the em-  
16               ployer expects to recall the employees to work, and  
17               such date is less than 3 months after the date of the  
18               layoff; and

19               “(2) notice is given to all parties described in  
20               subsection (a) at the time it becomes reasonable to  
21               contemplate that the temporary layoff will be ex-  
22               tended beyond the 90-day period.

23           “(e) DETERMINATIONS WITH RESPECT TO EMPLOY-  
24          MENT LOSS.—

1           “(1) MULTIPLE GROUPS.—For purposes of this  
2           section, in determining whether a site closing or  
3           mass layoff at a single site of employment has oc-  
4           curred or will occur, employment losses for 2 or  
5           more groups at the single site of employment, each  
6           of which is less than the minimum number of em-  
7           ployees specified in paragraph (4) or (7) of section  
8           2(a) but which in the aggregate exceed that min-  
9           imum number, and which occur within any 90-day  
10          period, shall be considered to be a site closing or  
11          mass layoff unless the employer demonstrates that  
12          the employment losses are the result of separate and  
13          distinct actions and causes and are not an attempt  
14          by the employer to evade the requirements of this  
15          Act.

16          “(2) TREATMENT OF BUSINESS SALES.—

17                 “(A) IN GENERAL.—In the case of a sale  
18                 of part or all of an employer’s business, the  
19                 seller shall be responsible for providing notice  
20                 for any site closing or mass layoff in accordance  
21                 with this section up to and including the effec-  
22                 tive date of the sale. After the effective date of  
23                 the sale of part or all of an employer’s business,  
24                 the purchaser shall be responsible for providing

1 notice for any site closing or mass layoff in ac-  
2 cordance with this section.

3 “(B) TRANSFER OF EMPLOYEES.—In the  
4 case of a sale of part or all of an employer’s  
5 business, and notwithstanding any other provi-  
6 sion of this Act, any person who is an employee  
7 of the seller as of the effective date of the sale  
8 shall be considered an employee of the pur-  
9 chaser immediately after the effective date of  
10 the sale.

11 “(f) CONTENT OF NOTICES.—An employer who is re-  
12 quired to provide notice as required under subsection (a)  
13 shall include—

14 “(1) in each notice required under such sub-  
15 section—

16 “(A) a statement of the number of affected  
17 employees;

18 “(B) the reason for the site closing or  
19 mass layoff;

20 “(C) whether the layoff is permanent or  
21 temporary and, if temporary, the date on which  
22 the employer expects to recall the affected em-  
23 ployees to work;

24 “(D) the availability of employment at  
25 other establishments owned by the employer;

1           “(E) a statement of each employee’s rights  
2           with respect to wages and severance and em-  
3           ployee benefits; and

4           “(F) a statement of the available employ-  
5           ment and training services provided by the De-  
6           partment of Labor; and

7           “(2) in each notice required under such sub-  
8           section (except for paragraph (1)(B) of such sub-  
9           section), the names, addresses, and occupations of  
10          the affected employees.

11          “(g) INFORMATION REGARDING BENEFITS AND  
12          SERVICES AVAILABLE TO EMPLOYEES.—Concurrent with  
13          or immediately after providing the notice required under  
14          subsection (a)(1), an employer shall provide affected em-  
15          ployees with information regarding the benefits and serv-  
16          ices available to such employees, as described in the guide  
17          compiled by the Secretary under section 13.

18          “(h) ACCESS OF RAPID RESPONSE TEAMS.—An em-  
19          ployer who is required to provide notice under subsection  
20          (a) shall permit, during work hours, reasonable on-site ac-  
21          cess to any Federal, State, or local rapid response team  
22          under section 134(a)(2)(A) of the Workforce Innovation  
23          and Opportunity Act (29 U.S.C. 3174(a)(2)(A)) respon-  
24          sible for providing reemployment, training services, and  
25          related services to affected employees.

1       “(i) DOL NOTICE TO CONGRESS.—As soon as prac-  
 2 ticable and not later than 15 days after receiving notice  
 3 under subsection (a)(2), the Secretary of Labor shall no-  
 4 tify the appropriate Senators and Members of the House  
 5 of Representatives who represent the area or areas where  
 6 the site closing or mass layoff is to occur.”.

7       (b) WIOA AMENDMENT REGARDING THE PROVISION  
 8 INFORMATION THROUGH LOCAL EMPLOYMENT AND  
 9 TRAINING ACTIVITIES.—Section 134(c)(2)(A)(iv)(I)(aa)  
 10 of the Workforce Innovation and Opportunity Act (29  
 11 U.S.C. 3174(c)(2)(A)(iv)(I)(aa)) is amended by inserting  
 12 before the semicolon the following: “and of information in  
 13 notices described in section 3(a), and of access to the data-  
 14 base established under section 5(e), of the Worker Adjust-  
 15 ment and Retraining Notification Act (29 U.S.C. 2102(a);  
 16 2104(e))”.

17 **SEC. 3. EXEMPTIONS.**

18       Section 4 of the Worker Adjustment and Retraining  
 19 Notification Act (29 U.S.C. 2103) is amended to read as  
 20 follows:

21 **“SEC. 4. EXEMPTIONS.**

22       “‘This Act shall not apply to a plant closing or mass  
 23 layoff if the closing is of a temporary facility or the closing  
 24 or layoff is the result of the completion of a particular  
 25 project or undertaking, and the affected employees were

1 hired with the understanding that their employment was  
 2 limited to the duration of the facility or the project or un-  
 3 dertaking.”.

4 **SEC. 4. ADMINISTRATION AND ENFORCEMENT OF RE-**  
 5 **QUIREMENTS.**

6 Section 5 of the Worker Adjustment and Retraining  
 7 Notification Act (29 U.S.C. 2104) is amended—

8 (1) in subsection (a)—

9 (A) in paragraph (1)—

10 (i) in subparagraph (A)—

11 (I) in the matter preceding clause

12 (i), by striking “each day” and insert-  
 13 ing “each calendar day”; and

14 (II) in clause (ii), by striking  
 15 “and” after the semicolon;

16 (ii) in subparagraph (B), by striking  
 17 the period at the end and inserting “;  
 18 and”;

19 (iii) by inserting after subparagraph  
 20 (B) the following:

21 “(C) liquidated damages in an amount equal to  
 22 30 days of back pay, at the rate of compensation  
 23 calculated under subparagraph (A).”; and

24 (iv) in the flush text following sub-  
 25 paragraph (C) (as added by clause (iii)),

1 by striking “60 days” and inserting “90  
2 days”;

3 (B) in paragraph (2)(A), by inserting “,  
4 which begins on the date of the employment  
5 loss” after “the violation”;

6 (C) in paragraph (3), by inserting “the  
7 Secretary, a State, or” before “a unit of local  
8 government”;

9 (D) in paragraph (4)—

10 (i) by striking “which has violated  
11 this Act” and inserting “that has violated  
12 the provisions of section 3 with respect to  
13 the Secretary, a State, or a local govern-  
14 ment”; and

15 (ii) by striking “reduce the amount of  
16 the liability or penalty provided for in this  
17 section” and inserting “reduce the amount  
18 of the penalty under paragraph (3)”;

19 (E) by striking paragraph (5) and insert-  
20 ing the following:

21 “(5) A person (including a representative of  
22 employees or a unit of local government aggrieved  
23 under paragraph (1) or (3)) seeking to enforce the  
24 liability provided for in this section, may, either for  
25 such person, for other persons similarly situated, or



1 for both, bring suit in any district court of the  
 2 United States for any district in which the violation  
 3 is alleged to have occurred or in which the employer  
 4 transacts business.”; and

5 (F) in paragraph (6), by striking “pre-  
 6 vailing party” and inserting “prevailing plain-  
 7 tiff”;

8 (2) by redesignating subsection (b) as sub-  
 9 section (c);

10 (3) by inserting after subsection (a) the fol-  
 11 lowing:

12 “(b) LIMITATIONS.—An action shall be brought  
 13 under this section not later than 4 years after the date  
 14 of the last event constituting the alleged violation for  
 15 which the action is brought.”; and

16 (4) by adding at the end the following:

17 “(d) EXEMPTION FROM LIQUIDATED DAMAGES.—  
 18 Notwithstanding subsection (a)(1)(C), an employer is not  
 19 liable for the liquidated damages described in such sub-  
 20 section if—

21 “(1) the employee alleges a site closing and—

22 “(A) the employer can establish that cir-  
 23 cumstances described in section 3(c)(1) existed  
 24 on the 60th and 30th days before the site clos-  
 25 ing; or

1           “(B) the site closing is due to any form of  
2           natural disaster or directly due to a terrorist at-  
3           tack; or

4           “(2) the alleged site closing or mass layoff is  
5           caused by business circumstances (other than a fin-  
6           ancier’s decision) that were not contemplated nor  
7           should reasonably have been contemplated as of the  
8           30th day before the site closing or mass layoff.

9           “(e) DATABASE.—

10           “(1) TRANSMITTALS.—A State or designated  
11           entity that receives a notice under section 3(a) shall  
12           transmit a copy of the notice to the Secretary.

13           “(2) DATABASE.—The Secretary shall create  
14           and maintain a publicly available database that pro-  
15           vides information from notices transmitted under  
16           paragraph (1).

17           “(3) CONTENTS OF DATABASE.—The database  
18           under paragraph (2) shall include—

19           “(A) for each notice transmitted under  
20           paragraph (1), a copy of the notice, the date of  
21           the notice, the name of the employer involved,  
22           the unit of local government affected by the  
23           closing or layoff involved, the number of em-  
24           ployees so affected, the sector in which the lay-  
25           off occurred (as identified by the North Amer-

1           ican Industry Classification System code), and  
 2           the type of the closing or layoff;

3           “(B) a search function that allows users to  
 4           identify the geographic, annual, and sectoral  
 5           breakdown of the notices; and

6           “(C) a function that allows the data to be  
 7           downloaded in a user-friendly format.

8           “(4) ACCESS THROUGH WEBSITE.—The Sec-  
 9           retary shall provide a link to the database through  
 10          the Internet website of the Department of Labor.”.

11 **SEC. 5. POSTING OF NOTICES.**

12          Section 11 of the Worker Adjustment and Retraining  
 13          Notification Act (29 U.S.C. 2101 note) is amended to read  
 14          as follows:

15 **“SEC. 11. POSTING OF NOTICES.**

16          “(a) POSTING OF NOTICES.—Each employer shall  
 17          post and keep posted, in conspicuous places upon its prem-  
 18          ises where notices to employees are customarily posted, a  
 19          notice to be prepared or approved by the Secretary setting  
 20          forth excerpts from, or summaries of, the pertinent provi-  
 21          sions of this Act and information pertinent to the filing  
 22          of a complaint under this Act.

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

1 **SEC. 6. NON-WAIVER OF RIGHTS AND REMEDIES; INFORMA-**  
 2 **TION REGARDING BENEFITS AND SERVICES**  
 3 **AVAILABLE TO EMPLOYEES.**

4 The Worker Adjustment and Retraining Notification  
 5 Act (29 U.S.C. 2101 et seq.) is further amended by adding  
 6 at the end the following:

7 **“SEC. 12. RIGHTS AND REMEDIES NOT SUBJECT TO WAIV-**  
 8 **ER.**

9 “(a) IN GENERAL.—The rights and remedies pro-  
 10 vided under this Act (including the right to file or partici-  
 11 pate in a class action under rule 23 of the Federal Rules  
 12 of Civil Procedure in Federal court) are substantive and  
 13 may not be waived, deferred, or lost pursuant to any  
 14 agreement or settlement other than an agreement or set-  
 15 tlement described in subsection (b).

16 “(b) AGREEMENT OR SETTLEMENT.—An agreement  
 17 or settlement referred to in subsection (a) is an agreement  
 18 or settlement negotiated by—

19 “(1) a private attorney on behalf of affected  
 20 employees; or

21 “(2) a designated representative of affected em-  
 22 ployees under the National Labor Relations Act (29  
 23 U.S.C. 151 et seq.) or the Railway Labor Act (45  
 24 U.S.C. 151 et seq.).

1   **“SEC. 13. INFORMATION REGARDING BENEFITS AND SERV-**  
2                   **ICES AVAILABLE TO WORKERS.**

3           “(a) IN GENERAL.—The Secretary of Labor shall  
4 maintain a guide of benefits and services that may be  
5 available to affected employees, including unemployment  
6 compensation, trade adjustment assistance, COBRA con-  
7 tinuation coverage, and early access to training services  
8 and other services, including counseling services, available  
9 under title I of the Workforce Innovation and Opportunity  
10 Act (29 U.S.C. 3111 et seq.).

11          “(b) AVAILABILITY OF GUIDE.—The guide main-  
12 tained under subsection (a) shall be available on the Inter-  
13 net website of the Department of Labor and shall include  
14 a description of the benefits and services, the eligibility  
15 requirements, and the means of obtaining such benefits  
16 and services.

17          “(c) TRANSMISSION TO EMPLOYERS.—Upon receiv-  
18 ing notice from an employer under section 3(a)(2), the  
19 Secretary shall immediately transmit such guide to such  
20 employer.”.

○