

Testimony of Michele Evermore

National Employment Law Project

In Support of S.B. 780, The Economic Stabilization Act

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Michele Evermore

Senior Researcher and Policy Analyst

National Employment Law Project

1350 Connecticut Ave NW, Suite 1050

Washington, DC 20036

202-640-6515

mevermore@nelp.org

Thank you, Committee Chair Kelley, Vice Chair Feldman, and members of the committee for allowing me to testify on this important matter today. I strongly support the modifications to Maryland law proposed in this legislation. It represents an understanding that, if companies are going to treat workers as disposable, workers must have the power and protections to counter their actions. Maryland's current voluntary guidelines are quite good; making them mandatory would put the state at a competitive advantage in many ways.

In the late 1980s, in response to an early wave of wide-scale deindustrialization that was decimating communities and, in particular, reversing the gains of Black families and widening the racial wealth gap, Congress passed the Worker Adjustment and Retraining Notification (WARN) Act of 1988. This federal law merely requires that large companies provide workers and their local governments with 60 days' advance notice of mass layoffs, with exceptions for circumstances such as natural disasters or other unforeseen circumstances.

The WARN Act is an important tool for workers to help plan their next steps and for communities to begin to deal with the blow of major job loss. However, it is not enough. Twenty-three states have passed their own legislation that, in some way, adds to these federal minimum requirements. This includes the voluntary protections currently suggested in Maryland regulation that we are discussing making mandatory today.

Recently, largely in response to a giant private equity firm purchasing Toys "R" Us and laying off its workforce, New Jersey passed some of the most forward-thinking legislation in the nation. It requires that employers pay one week of severance to laid-off workers for every year they spent at the firm, and improves how the program works in several other ways.

As business practices evolve in the United States, worker protection statutes need to evolve along with them. The nature of employment has become more precarious every year and has dramatically changed since the passage of WARN in 1988. Rather than an era of factories shuttering due to globalization or bankruptcy, we see a new trend of large private equity firms, flush with cash, buying firms, stripping them for parts, laying off workers, and selling those parts for profit.

We know you understand that strong worker protections are essential to creating good, quality jobs that attract and retain the workforce needed to spur and sustain Maryland's economic development. It is our position that solid worker protections are a precondition to the existence of good jobs. WARN Act improvements are an incentive to prevent loss of good jobs in two ways. Making it more challenging in any way to engage in mass layoffs in a state is a good thing. But more importantly, states need to be thinking about proactively scaring "vulture capital" away from dismantling good jobs and small businesses in their communities.

This bill represents major progress in making sure that workers get adequate notice about mass layoffs. First, it would require that companies provide 90 days, rather than 60 days, of notice that the state currently recommends. It would also apply to companies that employ 50 or more employees rather than 100. Both requirements are common among state WARN Acts and are also included in proposed federal WARN Act legislation.

Requiring severance pay would do more than make our workforce less attractive for downsizing; it would put real money into the pockets of Marylanders. I reviewed every WARN notice issued in Maryland in the last decade. (In some cases, the notice did not give an exact number of layoffs, but a range. In those cases, I used the lowest end of the range.) According to that data, at least 49,259 workers were laid off in Maryland in WARN-triggering layoffs in the past decade. Had each of those

workers gotten a week of severance (averaging the Average Weekly Wage reported to the federal Employment and Training Administration in the state for the quarter in which they were laid off), that would have meant payments of \$50,921,106. If that workforce averaged just less than the average duration of employment in the U.S.—four years—that would mean that, providing a week of severance for every year worked, those workers would have netted an estimated \$203,684,424. If you are interested in what that would mean specifically in the communities you represent, I would be happy to share those breakdowns with you as well. Alternatively, Maryland could adopt a provision like the one New York State has in place, in which that severance would be levied as a penalty for failure to provide due notice, in addition to federal backpay requirements.

Moreover, if those conservatively estimated 49,259 workers all received an \$1,800 retraining allowance, that would mean \$88,666,200 in the pockets of workers who truly need it. Not only that, but guaranteeing workers have good information about retraining opportunities will help prevent wage erosion in communities experiencing mass layoffs.

Making sure that employers provide assistance in accessing unemployment insurance (UI) is important for three reasons. First, the UI system helps workers maintain attachment to the workforce when they are at their most vulnerable. Second, UI gives workers time to find a suitable replacement job, which also helps to prevent wage erosion. Perhaps most importantly, any policy levers that increase UI reciprocity also help to ensure that the UI program is truly countercyclical in the event of a recession. Economists Alan Blinder and Mark Zandi found that every dollar paid out in unemployment insurance in the last recession generated \$1.61 in local economic activity.¹ Maryland's overall UI reciprocity rate has dropped from 34 percent in 2007 to 28 percent in 2019. While that is a smaller decline than in states that have passed laws to deliberately discourage UI takeup, policymakers should be concerned that the program is in a position to provide sufficient benefits in case of another downturn.

To ensure that Maryland's WARN protections are responsive to the business climate of the 2020s, it's critical that in the event that a corporation is liquidated—for example, by a profitable private equity firm—the entity responsible is liable for severance or other remedies if found in violation of the WARN Act. Both the New Jersey law and proposed federal remedies include language that would ensure that a financing entity or parent company would be liable for severance or fines.

Maryland's voluntary guidelines are outstanding—if employers follow them. Given the evidence of how employers deal with laid-off workers, however, employees who are most in need of assistance are least likely to get it. I know from my work on unemployment insurance that workers with more education or who are in a union are more likely to apply for UI. Workers in management and professional occupations are most likely to apply, while workers in leisure and hospitality or other services are least likely to apply.² Access to information, including from employers, is invaluable, but workers in industries most in need of help are least likely to get it.

I thank the committee for the opportunity to testify today, and for its consideration of this important legislation. Speaking not just as a researcher and policy analyst on these issues, but as a resident of the state, this legislation will dramatically improve the lives of Marylanders who find themselves in one of the hardest positions they can be in. I am happy to answer questions about this now or at any point in your deliberative process.

¹ <https://www.cbpp.org/research/economy/the-financial-crisis-lessons-for-the-next-one>

² <https://www.bls.gov/news.release/uisup.nr0.htm>