

113TH CONGRESS
2D SESSION

S. _____

To amend the Employee Retirement Income Security Act of 1974 to clarify the definition of substantial cessation of operations.

IN THE SENATE OF THE UNITED STATES

Mr. HARKIN (for himself and Mr. ALEXANDER) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Employee Retirement Income Security Act of 1974 to clarify the definition of substantial cessation of operations.

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. SUBSTANTIAL CESSATION OF OPERATIONS.**

4 (a) IN GENERAL.—Subsection (e) of section 4062 of
5 the Employee Retirement Income Security Act of 1974
6 (29 U.S.C. 1362) is amended by striking “If an employer”
7 and inserting “(1) IN GENERAL.—If an employer”, by
8 moving such paragraph (1) 2 ems to the right, and by
9 adding at the end the following:

1 “(2) SUBSTANTIAL CESSATION OF OPER-
2 ATIONS.—An employer shall not be treated as hav-
3 ing a cessation described in paragraph (1) unless—

4 “(A) all operations at a facility in a loca-
5 tion are ceased, and—

6 “(i) such cessation is reasonably ex-
7 pected to be permanent;

8 “(ii) no portion of such operations is
9 moved to another facility at a different lo-
10 cation;

11 “(iii) no portion of such operations is
12 assumed by or otherwise transferred to an-
13 other employer; and

14 “(iv) no other operations are reason-
15 ably expected to be maintained at such fa-
16 cility; and

17 “(B) as a result of the cessation described
18 in subparagraph (A), more than 20 percent of
19 the employees of the employer have a termi-
20 nation of employment that is reasonably ex-
21 pected to be permanent.

22 For purposes of subparagraph (B), all employees
23 treated as employed by a single employer under sec-
24 tions 210(c) and (d) shall be treated as employees
25 of the employer.”.

1 (b) DIRECTION TO THE CORPORATION.—The Pen-
2 sion Benefit Guaranty Corporation shall not take any en-
3 forcement, administrative, or other action pursuant to sec-
4 tion 4062(e) of the Employee Retirement Income Security
5 Act of 1974 that is inconsistent with subparagraph (A)
6 of section 4062(e)(2) of such Act, as added by subsection
7 (a), without regard to whether the action relates to a ces-
8 sation or other event that occurs before or after the date
9 of enactment of this Act, unless such action is in connec-
10 tion with a settlement agreement in place before June 1,
11 2014.