

1 H.758

2 Introduced by Representatives Botzow of Pownal, Kitzmiller of Montpelier,
3 and Marcotte of Coventry

4 Referred to Committee on

5 Date:

6 Subject: Labor; employment practices; worker adjustment and retraining
7 notification

8 Statement of purpose of bill as introduced: This bill proposes to require
9 employers to give notice to the Department of Labor in the case of a mass
10 layoff. If employers do not give notice of a mass layoff, they are liable for
11 civil penalties.

12 An act relating to Worker Adjustment and Retraining Notification

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 21 V.S.A. chapter 5, subchapter 3A is added to read:

15 Subchapter 3A. Worker Adjustment and Retraining Notification Act

16 § 411. DEFINITIONS

17 As used in this subchapter:

18 (1) "Affected employees" means employees who reasonably may be
19 expected to experience an employment loss as a consequence of a proposed or
20 actual business closing or mass layoff by their employer.

1 (2) “Business closing” means the permanent or temporary shutdown of a
2 single site of employment, or one or more facilities or operating units within a
3 single site of employment, if the shutdown results in an employment loss at the
4 single site of employment during any 90-day period for 20 or more employees
5 other than part-time employees.

6 (3) “Commissioner” means the Commissioner of Labor.

7 (4) “Department” means the Department of Labor.

8 (5) “Employer” means any business enterprise that employs 20 or more
9 employees or 20 or more employees that work in the aggregate at least 1,040
10 hours per week.

11 (6)(A) “Employment loss” means:

12 (i) termination of employment due to a mass layoff exceeding a
13 period of six months, a business closing, or relocation; or

14 (ii) a reduction in hours of work of more than 50 percent during
15 the average of any consecutive six-month period.

16 (B) Employment loss shall not result under circumstances where a
17 business closing or mass layoff is the result of the relocation or consolidation
18 of part or all of the employer’s business and before the closing or mass layoff,
19 the employer offers to:

20 (i) transfer the employee to a different site of employment
21 within 35 miles with no more than a one-month break in employment and the

1 employee accepts within 30 days of the offer or of the closing or mass layoff,
2 whichever is later; or

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

7 (7) “Mass layoff” means the reduction in force by an employer which
8 results in an employment loss at a single site of employment during any 90-day
9 period for at least 20 employees;

10 (8) “Relocation” means the removal of all or substantially all of the
11 industrial or commercial operations of an employer to a different location 35
12 miles or more away.

13 (9) “Representative” means an exclusive representative within the
14 meaning of section 9(a) or 8(f) of the National Labor Relations Act (29 U.S.C.
15 §§ 159(a), 158(f)) or section 2 of the Railway labor Act (45 U.S.C. § 152).

16 § 412. NOTICE

17 (a) An employer may not order a mass layoff, relocation, or employment
18 loss, unless, at least 90 days before the order takes effect, the employer gives
19 written notice of the order to the following:

20 (1) the Commissioner of Labor;

1 (2) the Workforce Development Council, established under 10 V.S.A.
2 § 543, which is established pursuant to the federal Workforce Investment Act
3 (P.L. 105-220); and

4 (3) affected employees and the bargaining agent or agents of affected
5 employees.

6 (b) An employer required to give notice of any mass layoff, relocation, or
7 employment loss under this subchapter shall include in its notice the elements
8 required by the federal Worker Adjustment and Retraining Notification Act
9 (29 U.S.C. § 2101 et seq.).

10 (c) Notwithstanding the requirements of subsection (a) of this section, an
11 employer is not required to provide notice if a mass layoff, relocation, or
12 employment loss is necessitated by an immediate physical calamity or an act of
13 terrorism or war. The employer must still send the separation information as
14 determined by the Department. In such situations, the mailing of the notice to
15 an employee's last known address by either first class or certified mail or the
16 inclusion of the notice in an employee's paycheck shall be considered
17 acceptable methods for fulfillment of the employer's obligation to give notice
18 to each affected employee under this subchapter. The employer must send to
19 the Department the following information:

20 (1) the employee's name;

21 (2) the employee's home address;

- 1 (3) the employee's Social Security number;
- 2 (4) the employee's job title;
- 3 (5) the employee's wage;
- 4 (6) the employee's severance pay, if any;
- 5 (7) the employee's pension information;
- 6 (8) the employee's workstation location; and
- 7 (9) any other information related to the employment separation as
8 requested by the Commissioner.

9 (d) In the case of a sale of part or all of an employer's business, the seller
10 shall be responsible for providing notice for any business closing or mass
11 layoff in accordance with this section, up to and including the effective date of
12 the sale. After the effective date of the sale of part or all of an employer's
13 business, the purchaser shall be responsible for providing notice for any
14 business closing or mass layoff in accordance with this section.

15 Notwithstanding any other provisions of this subchapter, any person who is an
16 employee of the seller as of the effective date of the sale shall be considered an
17 employee of the purchaser immediately after the effective date of the sale.

18 (e) Nothing in this subchapter shall abridge, abrogate, or restrict the right of
19 the State to require an employer that is receiving State or local economic
20 development incentives for doing or continuing to do business in this State

1 from being required to provide additional or earlier notice as a condition for
2 the receipt of such incentives.

3 § 413. EXCEPTIONS

4 (a) In the case of a business closing, an employer is not required to comply
5 with the notice requirement in subsection 412(a) of this subchapter if:

6 (1) The employer reasonably and in good faith believed that giving the
7 notice required by subsection 412(a) of this subchapter would have precluded
8 the employer from obtaining the needed capital or business. An employer
9 must give the Department notice with the required information in subdivisions
10 412(c)(1)–(9) of this subchapter 90 days before the business closing, but if the
11 employer is working to secure capital and delays notice to the employee, then
12 the employer may give the Department notice with the required information in
13 subdivisions 412(c)(1)–(9) of this subchapter 60 days before the business
14 closing.

15 (2) The business closing or the mass layoff is the result of the
16 completion of a particular project or undertaking, and the affected employees
17 were hired with the understanding that their employment was limited to the
18 duration of the facility or project or undertaking.

19 (3) The business closing or mass layoff is due to any form of natural
20 disaster, such as a flood, earthquake, or drought.

1 (4) The business closing or mass layoff results from a strike or a
2 lockout. However, the employer must provide the Commissioner with the
3 required information in subdivisions 412(c)(1)–(9) of this subchapter within
4 five business days.

5 (b) An employer that is unable to provide the notice otherwise required by
6 this subchapter as a result of circumstances described in subsection (a) of this
7 section shall provide as much notice as is practicable and at that time shall
8 provide a brief statement of the basis for reducing the notification period.

9 § 414. EXTENSION OF MASS LAYOFF PERIOD

10 A mass layoff of more than one month which, at its outset, was announced
11 to be a mass layoff of one month or less shall be treated as an employment loss
12 under this subchapter unless:

13 (1) the extension beyond one month is caused by business
14 circumstances, including unforeseeable changes in price or cost not reasonably
15 foreseeable at the time of the initial mass layoff; and

16 (2) notice is given at the time it becomes reasonably foreseeable that the
17 extension beyond one month will be required.

18 § 415. DETERMINATIONS WITH RESPECT TO EMPLOYMENT LOSS

19 In determining whether a business closing or mass layoff has occurred or
20 will occur, employment losses for two or more groups of employees at a single
21 site of employment, each of which is less than the minimum number of

1 employees specified in subdivision 411(5) or (6) of this subchapter but which
2 in the aggregate meet or exceed that minimum number set forth in such
3 subsections and which occur within any 90-day period, shall be considered to
4 be a business closing or mass layoff.

5 § 416. POWERS OF THE COMMISSIONER

6 (a) The Commissioner shall prescribe such rules as may be necessary to
7 carry out this subchapter. The rules shall include provisions that allow the
8 parties access to administrative hearings for any actions of the Department
9 under this subchapter.

10 (b) In any investigation or proceeding under this subchapter, the
11 Commissioner has, in addition to all other powers granted by law, the authority
12 to subpoena and examine any information of an employer necessary to
13 determine whether a violation of this subchapter has occurred, including to
14 determine the validity of any defense.

15 (c) Except as provided in this section, information obtained through
16 administration of this subchapter from an employer which is not otherwise
17 obtainable by the Commissioner under this chapter shall be confidential. The
18 Department may provide the information collected pursuant to section 412(c)
19 of this title to the U.S. Department of Labor and any other governmental
20 entities for the purposes of securing benefits for the affected employees.
21 Information to be kept confidential from the general public includes

1 employees' specific names, Social Security numbers, and wage information,
2 but the Department may report to the public the number of layoffs, job titles,
3 and workstation locations affected.

4 (d) Any officer or employer of the State, any officer or employee of any
5 entity authorized to obtain information pursuant to this section, and any agent
6 to this State or of such entity who, except with authority of the Commissioner
7 under this section, discloses information will be assessed an administrative
8 penalty of not more than \$5,000.00 as determined by the Commissioner of
9 Labor.

10 (e) No decision or order issued pursuant to this subchapter shall be
11 admissible or used in evidence in any subsequent court proceeding except in an
12 action by the Commissioner or the employer to implement, enforce, or
13 challenge a determination made by the Commissioner pursuant to this
14 subchapter.

15 (f) If, after an administrative hearing, the Commissioner determines that an
16 employer has violated any of the requirements of this subchapter, the
17 Commissioner shall issue an order which shall include any penalties assessed
18 by the Commissioner under sections 417 and 418 of this subchapter. The
19 employer may appeal a decision of the Commissioner to the Supreme Court
20 within 30 days of the date of the Commissioner's order.

1 (g) The Commissioner shall distribute any back pay and the value of any
2 benefits recovered to any employees subject to the violation.

3 § 417. VIOLATION; LIABILITY

4 (a) An employer who violates subsection 412(a) of this subchapter is liable
5 to each employee entitled to notice who lost his or her employment for:

6 (1) back pay at the employee's final rate of compensation; and

7 (2) the value of the cost of any benefits to which the employee would
8 have been entitled had his or her employment not been lost, including the cost
9 of any medical or dental expenses incurred by the employee that would have
10 been covered under an employee benefit plan.

11 (b) Back pay and other liability under this section is calculated for the
12 period of the employer's violation, up to a maximum of 60 days, or one-half
13 the number of days that the employee was employed by the employer,
14 whichever period is shorter.

15 (c) Payments to an employee under this section by an employer who has
16 failed to provide the advance notice of a facility closure required by this
17 subchapter shall not be construed as remuneration under chapter 17 of this title.
18 Unemployment insurance benefits under chapter 17 of this title may not be
19 denied or reduced because of the receipt of payments related to an employer's
20 violation of this subchapter.

1 (d) The amount of an employer's liability under subsection (a) of this
2 section shall be reduced by the following:

3 (1) any wages, except vacation monies accrued before the period of the
4 employer's violation, paid by the employer to the employee during the period
5 of the employer's violation;

6 (2) any voluntary and unconditional payments made by the employer to
7 the employee that were not required to satisfy any legal obligation;

8 (3) any payments by the employer to a third party or trustee, such as
9 premiums for health benefits or payments to a defined contribution pension
10 plan, on behalf of and attributable to the employee for the period of the
11 violation;

12 (4) any liability paid by the employer under any applicable federal law
13 governing notification of mass layoffs, business closings, or relocations; and

14 (5) in an administrative proceeding by the Commissioner, any liability
15 paid by the employer prior to the Commissioner's determination as the result
16 of a private action brought under this subchapter; and

17 (6) in a private action brought under this subchapter, any liability paid
18 by the employer in an administrative proceeding by the Commissioner prior to
19 the adjudication of such private action.

20 (e) Any liability incurred by an employer under subsection (a) of this
21 section with respect to a defined benefit pension plan may be reduced by

1 crediting the employee with service for all purposes under such a plan for the
2 period of the violation. However, if an employee gains no benefit from the
3 additional service credit, then the employer is liable for the payment to the
4 employee's defined benefit plan.

5 (f) If an employer proves to the satisfaction of the Commissioner that the
6 act or omission that violated this subchapter was in good faith, the
7 Commissioner may, in his or her discretion, reduce the amount of liability
8 provided for in this section. In determining the amount of such a reduction, the
9 Commissioner shall consider:

10 (1) the number of employees who work for the employer;

11 (2) the hardships imposed on employees by the violation; and

12 (3) any efforts by the employer to mitigate the violation.

13 (g) Neither the Commissioner nor any court shall have the authority to
14 enjoin a business closing, relocation, or mass layoff under this subchapter.

15 § 418. CIVIL PENALTY

16 (a) An employer who fails to give notice as required by subdivision
17 412(a)(2) of this subchapter shall be subject to a civil penalty of not more than
18 \$5,000.00 per employee aggrieved. The employer is not subject to a civil
19 penalty under this section if the employer pays to all applicable employees the
20 amounts for which the employer is liable under section 417 of this title within

1 three weeks from the date the employer orders the mass layoff, relocation, or
2 employment loss.

3 (b) If an employer proves to the satisfaction of the Commissioner that the
4 act or omission that violated this section was in good faith, the Commissioner
5 may, in his or her discretion, reduce the amount of the penalty provided for in
6 this section. In determining the amount of such reduction, the Commissioner
7 shall consider:

8 (1) the number of employees who work for the employer;

9 (2) the hardships imposed on employees by the violations; and

10 (3) any efforts by the employer to mitigate the violation.

11 § 419. OTHER RIGHTS

12 The rights and remedies provided to employees by this subchapter are in
13 addition to, and not in lieu of, any other contractual or statutory rights and
14 remedies of the employees, and are not intended to alter or affect such rights
15 and remedies, except that the period of notification required by this subchapter
16 shall run concurrently with any period of notification required by contract or
17 by any other statute.

18 Sec. 2. EFFECTIVE DATE

19 This act shall take effect on passage.