

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~~ *notice of*
13 *potential layoffs*

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

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

16 ~~Subchapter 3A. Worker Adjustment and Retraining Notification Act~~

17 ~~§ 411. DEFINITIONS~~

18 ~~As used in this subchapter:~~

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

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

9 ~~(3) "Commissioner" means the Commissioner of Labor.~~

10 ~~(4) "Department" means the Department of Labor.~~

11 ~~(5) "Employer" means any business enterprise that employs 20 or more~~
12 ~~employees or 20 or more employees that work in the aggregate at least 1,040~~
13 ~~hours per week.~~

14 ~~(6)(A) "Employment loss" means:~~

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

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

19 ~~(B) Employment loss shall not result under circumstances where a~~
20 ~~business closing or mass layoff is the result of the relocation or consolidation~~

1 ~~of part or all of the employer's business and before the closing or mass layoff,~~

2 the employer offers to:

3 (i) transfer the employee to a different site of employment
4 within 35 miles with no more than a one-month break in employment and the
5 employee accepts within 30 days of the offer or of the closing or mass layoff,
6 whichever is later; or

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

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

14 (8) "Relocation" means the removal of all or substantially all of the
15 industrial or commercial operations of an employer to a different location 35
16 miles or more away.

17 (9) "Representative" means an exclusive representative within the
18 meaning of section 9(a) or 8(f) of the National Labor Relations Act (29 U.S.C.
19 §§ 159(a), 158(f)) or section 2 of the Railway labor Act (45 U.S.C. § 152).

20 § 412. NOTICE

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

4 ~~(1) the Commissioner of Labor;~~

5 ~~(2) the Workforce Development Council, established under 10 V.S.A.~~
6 ~~§ 543, which is established pursuant to the federal Workforce Investment Act~~
7 ~~(P.L. 105-220); and~~

8 ~~(3) affected employees and the bargaining agent or agents of affected~~
9 ~~employees.~~

10 ~~(b) An employer required to give notice of any mass layoff, relocation, or~~
11 ~~employment loss under this subchapter shall include in its notice the elements~~
12 ~~required by the federal Worker Adjustment and Retraining Notification Act~~
13 ~~(29 U.S.C. § 2101 et seq.).~~

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

1 ~~to each affected employee under this subchapter. The employer must send to~~

2 the Department the following information:

3 (1) the employee's name;

4 (2) the employee's home address;

5 (3) the employee's Social Security number;

6 (4) the employee's job title;

7 (5) the employee's wage;

8 (6) the employee's severance pay, if any;

9 (7) the employee's pension information;

10 (8) the employee's workstation location; and

11 (9) any other information related to the employment separation as

12 requested by the Commissioner.

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

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

1 ~~(c) Nothing in this subchapter shall abridge, abrogate, or restrict the right of~~
2 the State to require an employer that is receiving State or local economic
3 development incentives for doing or continuing to do business in this State
4 from being required to provide additional or earlier notice as a condition for
5 the receipt of such incentives.

6 § 413. EXCEPTIONS

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

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

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

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

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

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

11 ~~§ 414. EXTENSION OF MASS LAYOFF PERIOD~~

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

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

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

20 ~~§ 415. DETERMINATIONS WITH RESPECT TO EMPLOYMENT LOSS~~

1 ~~In determining whether a business closing or mass layoff has occurred or~~
2 ~~will occur, employment losses for two or more groups of employees at a single~~
3 ~~site of employment, each of which is less than the minimum number of~~
4 ~~employees specified in subdivision 411(5) or (6) of this subchapter but which~~
5 ~~in the aggregate meet or exceed that minimum number set forth in such~~
6 ~~subsections and which occur within any 90-day period, shall be considered to~~
7 ~~be a business closing or mass layoff.~~

8 § 416. POWERS OF THE COMMISSIONER

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

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

18 (c) Except as provided in this section, information obtained through
19 administration of this subchapter from an employer which is not otherwise
20 obtainable by the Commissioner under this chapter shall be confidential. The
21 Department may provide the information collected pursuant to section 412(c)

1 ~~of this title to the U.S. Department of Labor and any other governmental~~
2 ~~entities for the purposes of securing benefits for the affected employees.~~
3 ~~Information to be kept confidential from the general public includes~~
4 ~~employees' specific names, Social Security numbers, and wage information,~~
5 ~~but the Department may report to the public the number of layoffs, job titles,~~
6 ~~and workstation locations affected.~~

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

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

18 ~~(f) If, after an administrative hearing, the Commissioner determines that an~~
19 ~~employer has violated any of the requirements of this subchapter, the~~
20 ~~Commissioner shall issue an order which shall include any penalties assessed~~
21 ~~by the Commissioner under sections 417 and 418 of this subchapter. The~~

1 ~~employer may appeal a decision of the Commissioner to the Supreme Court~~
2 ~~within 30 days of the date of the Commissioner's order.~~

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

5 § 417. VIOLATION; LIABILITY

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

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

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

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

17 (c) Payments to an employee under this section by an employer who has
18 failed to provide the advance notice of a facility closure required by this
19 subchapter shall not be construed as remuneration under chapter 17 of this title.
20 Unemployment insurance benefits under chapter 17 of this title may not be

1 ~~denied or reduced because of the receipt of payments related to an employer's~~
2 ~~violation of this subchapter.~~

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

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

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

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

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

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

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

1 ~~(c) Any liability incurred by an employer under subsection (a) of this~~
2 ~~section with respect to a defined benefit pension plan may be reduced by~~
3 ~~crediting the employee with service for all purposes under such a plan for the~~
4 ~~period of the violation. However, if an employee gains no benefit from the~~
5 ~~additional service credit, then the employer is liable for the payment to the~~
6 ~~employee's defined benefit plan.~~

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

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

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

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

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

17 § 418. CIVIL PENALTY

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

1 ~~amounts for which the employer is liable under section 417 of this title within~~
2 three weeks from the date the employer orders the mass layoff, relocation, or
3 employment loss.

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

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

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

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

12 § 419. OTHER RIGHTS

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

19 Sec. 2. EFFECTIVE DATE

20 ~~This act shall take effect on passage.~~

Sec. 1. FINDINGS

The General Assembly finds:

(1) The 21st century workplace is fundamentally different from the 20th century workplace. Along with a changing workplace comes a different workforce. Policies and resources must be updated to reflect the changing workplace and workforce.

(2) Businesses retain sensitive information for proprietary and competitive reasons.

(3) When the State requires this information, the sensitivity of this information must be respected.

(4) The Department, as well as other agencies, are able to access federal and State resources to mitigate adverse employment impacts affecting employers, employees, communities, and the Unemployment Insurance Trust Fund.

(5) The Department and the Agency of Commerce and Community Development, as well as other agencies, must be able to respond to and assist with economic and workforce training and retention initiatives in a timely fashion.

(6) Municipalities, school districts, and local for-profit and nonprofit businesses are all affected by plant closings and mass layoffs. In order to mitigate adverse impacts, communities and stakeholders need timely information pertaining to plant closings and mass layoffs. Private and public

sectors need to work together to reduce the volatility and disruptions that come with layoffs.

Sec. 2. 21 V.S.A. chapter 5, subchapter 3A is added to read:

Subchapter 3A. Notice of Potential Layoffs Act

§ 411. DEFINITIONS

As used in this subchapter:

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

(2) "Business closing" means the permanent shutdown of a facility or operations, or the cessation of work or operations not scheduled to resume within 90 days. A temporary shutdown of a seasonal employer that does not extend beyond 20 weeks is not a business closing.

(3) "Commissioner" means the Commissioner of Labor.

(4) "Department" means the Department of Labor.

(5) "Employer" means any business enterprise that employs 50 or more full-time employees or 50 or more part-time employees that work at least 1,040 hours per employee per year.

(6) "Employment loss" means the result of a business closing or mass layoff. An employee will not be considered to have suffered an employment

loss if the employee is offered a transfer to a different site of employment within 35 miles.

(7) "Mass layoff" means the permanent employment reduction at a single site of at least 50 employees over a 90-day period.

(8) "Representative" means an exclusive bargaining agent as legally recognized under State or federal labor laws.

§ 412. EDUCATION AND OUTREACH

The Department and the Agency of Commerce and Community Development shall prepare information and materials for the purpose of informing and educating Vermont employers with regard to programs and resources that are available to assist with economic and workforce retention initiatives in order to avoid business closings and mass layoffs. The Department and the Agency of Commerce and Community Development shall also inform Vermont employers of the employers' obligations that will be required for proper notice under the provisions of this Act.

§ 413. NOTICE AND WAGE PAYMENT OBLIGATIONS

(a) An employer who will engage in a closing or mass layoff shall provide notice to the Secretary of Commerce and Community Development and the Commissioner as soon as practical to enable the State to present information on potential support and alternatives to the proposed closing or mass layoff.

(b) Notwithstanding subsection (a) of this section, an employer who will engage in a closing or mass layoff shall provide notice to the Secretary of Commerce and Community Development and the Commissioner 60 days prior to the effective date of the closing or layoffs, and shall provide 45-days' notice to the local chief elected official or administrative officer of the municipality, affected employees, and bargaining agent, if any. If the employer is actively attempting to secure capital or investments in order to avoid closing or mass layoffs, the notice to the Secretary of Commerce and Community Development the Commissioner may be delayed to 45 days prior to the effective date of closing or layoff and 30-days' notice to the local chief elected official or administrative officer of the municipality, affected employees, and bargaining agent, if any.

(c) The employer shall send to the Commissioner such information as the Commissioner deems necessary for the purposes of unemployment insurance benefit processing and for accessing federal and State resources to mitigate adverse employment impacts affecting employers, employees, and communities within the time allotted for notice to the Commissioner under subsection 413(b) or 414(b) of this subchapter.

(d) In the case of a sale of part or all of an employer's business where mass layoffs will occur, the seller and the purchaser are still required to comply with the notice requirements under subsection (b) of this section.

(e) Nothing in this subchapter shall abridge, abrogate, or restrict the right of the State to require an employer that is receiving State economic development funds or incentives from being required to provide additional or earlier notice as a condition for the receipt of such funds or incentives.

(f) An employer is required to pay all unpaid wage and compensation owed to any laid-off worker, as required under this title.

§ 414. EXCEPTIONS

(a) In the case of a business closing or mass layoff, an employer is not required to comply with the notice requirement in subsection 413(a) of this subchapter and may delay notification to the Department if:

(1) the business closing or the mass layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility or project or undertaking;

(2) the business closing or mass layoff is due to a disaster beyond the control of the employer;

(3) the business closing or mass layoff results from a strike or a lockout;
or

(4) the business closing or mass layoff is caused by business circumstances that were not reasonably foreseeable at the time the 60-day notice would have been required.

(b) An employer that is unable to provide the notice otherwise required by this subchapter as a result of circumstances described in subsection (a) of this section shall provide as much notice as is practicable and at that time shall provide a brief statement to the Commissioner regarding the basis for failure to meet the notification period. In such situations, the mailing of the notice by certified mail or other method approved by the Commissioner shall be considered acceptable in the fulfillment of the employer's obligation to give notice to each affected employee under this subchapter. At the time of notice to the Commissioner, the employer shall provide the required information under subdivisions 413(c) of this subchapter.

§ 415. VIOLATIONS

(a) An employer who violates subsection 413(b) or 414(b) of this subchapter is liable to each employee who lost his or her employment for:

(1) ten days severance pay; and

(2) the health care premium costs or the cost of any medical or dental expenses that would have been covered under an employee benefit plan for one month after the employment loss.

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

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

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

(3) any liability paid by the employer under any applicable federal law governing notification of mass layoffs, business closings, or relocations.

(c) If an employer proves to the satisfaction of the Commissioner that the act or omission that violated this subchapter was in good faith, the Commissioner may reduce the amount of liability provided for in this section. In determining the amount of such a reduction, the Commissioner shall consider any efforts by the employer to mitigate the violation.

(d) If, after an administrative hearing, the Commissioner determines that an employer has violated any of the requirements of this subchapter, the Commissioner shall issue an order including any penalties assessed by the Commissioner under sections 415 and 417 of this subchapter. The employer may appeal a decision of the Commissioner to the Superior Court within 30 days of the date of the Commissioner's order.

§ 416. POWERS OF THE COMMISSIONER

(a) The Commissioner may adopt rules as necessary, pursuant to 3 V.S.A. chapter 25, to carry out this subchapter. The rules shall include provisions

that allow the parties access to administrative hearings for any actions of the Department under this subchapter.

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

(c) Information obtained through administration of this subchapter by the Commissioner shall be confidential, except for the number of layoffs, job titles, and workstation locations affected. The Department may provide the information collected pursuant to subsection 413(c) of this title to the U.S. Department of Labor and any other governmental entities for the purposes of securing benefits for the affected employees.

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

§ 417. ADMINISTRATIVE PENALTY

An employer who fails to give notice as required by subsection 413(b) or 414(b) of this subchapter shall be subject to an administrative penalty of \$500.00 for each day that the employer was deficient in the notice to the Department. The Commissioner may waive the administrative penalty if the employer:

(1) demonstrates good cause under subsection 414(b) of this subchapter;

(2) pays to all affected employees the amounts for which the employer is liable under section 415 of this title within 30 days from the date the employer enacts the business closing or mass layoff; and

(3) pays to all affected employees any unpaid wage and compensation owed to any laid-off worker, as required under this title.

§ 418. OTHER RIGHTS

The rights and remedies provided to employees by this subchapter do not infringe upon or alter any other contractual or statutory rights and remedies of the employees.

Sec. 3. EFFECTIVE DATES

(a) This section and in Sec. 2, 21 V.S.A. §§ 412 (education and outreach) and 416(a) shall take effect on passage.

(b) Secs. 1 and 2, except for 21 V.S.A. §§ 412 and 416(a), shall take effect on January 15, 2015.