

1 H.312

2 Introduced by Representatives Young of Glover and Patt of Worcester

3 Referred to Committee on

4 Date:

5 Subject: Commerce and trade; taxation; employment; jurisdiction; disaster
6 response

7 Statement of purpose of bill as introduced: This bill proposes to facilitate the
8 rapid response by business to declared State disasters by clarifying business
9 nexus and residency thresholds for businesses with a temporary presence in the
10 State during a disaster.

11 An act relating to facilitating business rapid response to a declared State
12 disaster

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

14 Sec. 1. SHORT TITLE

15 This act may be cited as the “Facilitating Business Rapid Response to
16 Declared State Disasters Act of 2014.”

17 Sec. 2. FINDINGS

18 The General Assembly finds:

19 (1) During times of storm, flood, fire, earthquake, hurricane, or other
20 disaster or emergency, many businesses bring in resources and personnel from

1 other states throughout the United States on a temporary basis to expedite the
2 often enormous and overwhelming task of cleaning up, restoring, and repairing
3 damaged buildings, equipment, and property or even deploying or building
4 new replacement facilities in the State.

5 (2) This may involve the need for out-of-state businesses, including
6 out-of-state affiliates of businesses based in the State to bring in resources,
7 property, or personnel that previously have had no connection to the State, to
8 perform activity in the State including repairing, renovating, installing,
9 building, rendering services, or other business activities and for which
10 personnel may be located in the State for extended periods of time to perform
11 these activities.

12 (3) During the time of operating in the State on a temporary basis solely
13 for purposes of helping the State recover from the disaster or emergency, these
14 businesses and individual employees should not be burdened by any
15 requirements for business and employee taxes as a result of such activities in
16 the State for a temporary period.

17 (4) The State's nexus and residency thresholds are intended for
18 businesses and individuals in the State as part of the conduct of regular
19 business operations or who intend to reside in the State and should not be
20 directed at businesses and individuals coming into the State on a temporary

1 basis to provide help and assistance in response to a declared State disaster or
2 emergency.

3 (5) To ensure that businesses may focus on quick response to the needs
4 of the State and its citizens during a declared State disaster or emergency it is
5 appropriate for the General Assembly to deem that such activity for a
6 reasonable period of time before, during, and after the disaster or emergency
7 for repairing and restoration of the often devastating damage to critical
8 property and infrastructure in the State as defined in this act shall not establish
9 presence, residency, nor doing business in the State nor any other criteria for
10 purposes of State and local taxes, licensing, and regulatory requirements.

11 Sec. 3. 11 V.S.A. chapter 16 is added to read:

12 CHAPTER 16. BUSINESS RAPID RESPONSE TO
13 DECLARED STATE DISASTERS

14 § 1701. DEFINITIONS

15 In this chapter:

16 (1) “Critical infrastructure” means property and equipment owned or
17 used by communications networks, electric generation, transmission and
18 distribution systems, gas distribution systems, water pipelines, and related
19 support facilities that services multiple customers or citizens including real and
20 personal property such as buildings, offices, lines, poles, pipes, structures, and
21 equipment.

1 (2) “Declared State disaster or emergency” means a disaster or
2 emergency event:

3 (A) for which a Governor’s state of emergency proclamation has
4 been issued;

5 (B) for which a Presidential declaration of a federal major disaster or
6 emergency has been issued; or

7 (C) other disaster or emergency event within the State for which a
8 good faith response effort is required, and for which another authorized official
9 of the State is given notification from the registered business and the official
10 designates the event as a disaster or emergency thereby invoking the provisions
11 of this chapter.

12 (3) “Disaster response period” means a period that begins ten days prior
13 to the first day of the Governor’s proclamation, the President’s declaration, or
14 designation by another authorized official of the State as set forth in this
15 chapter, whichever occurs first, and that extends 60 calendar days after the
16 declared State disaster or emergency, or any longer period authorized by the
17 Governor.

18 (4) “Disaster- or emergency-related work” means repairing, renovating,
19 installing, building, rendering services, or other business activities that relate to
20 critical infrastructure that has been damaged impaired or destroyed by the
21 declared State disaster or emergency.

1 (5)(A) “Out-of-state business” means a business entity that, except for
2 disaster- or emergency-related work, has no presence in the State and conducts
3 no business in the State whose services are requested by a registered business
4 or by a State or local government for purposes of performing disaster- or
5 emergency-related work in the State.

6 (B) “Out-of-state-business” also includes a business entity that is
7 affiliated with the registered business in the State solely through common
8 ownership.

9 (C) An out-of-state business has no registrations or tax filings or
10 nexus in the State other than disaster- or emergency-related work during the
11 tax year immediately preceding the declared State disaster or emergency.

12 (6) “Out-of-state employee” means an employee who does not work in
13 the State, except for disaster- or emergency-related work during the disaster
14 response period.

15 (7) “Registered business in the State” or “registered business” means a
16 business entity that is currently registered with the Secretary of State to do
17 business in the State prior to the declared State disaster or emergency.

18 § 1702. OBLIGATIONS AFTER DISASTER RESPONSE PERIOD

19 (a) Business and employee status during disaster response period.

20 (1)(A) An out-of-state business that conducts operations within the State
21 for purposes of performing work or services related to a declared State disaster

1 or emergency during the disaster response period shall not be considered to
2 have established a level of presence that would require that business to register,
3 file, or remit State or local taxes or that would require that business or its
4 out-of-state employees to be subject to any State licensing or registration
5 requirements.

6 (B) This includes any State or local business licensing or registration
7 requirements or State and local taxes or fees, including unemployment
8 insurance, State or local occupational licensing fees, sales and use tax,
9 ad valorem tax on equipment brought into the State temporarily for use during
10 the disaster response period and subsequently removed from the State, and
11 Public Service Board or Secretary of State licensing and regulatory
12 requirements.

13 (C) For purposes of any State or local tax on or measured by, in
14 whole or in part, net or gross income or receipts, all activity of the out-of-state
15 business that is conducted in this State pursuant to this chapter shall be
16 disregarded with respect to any filing requirements for such tax, including the
17 filing required for a unitary or combined group of which the out-of-state
18 business may be a part.

19 (D) For the purpose of apportioning income, revenue, or receipts, the
20 performance by an out-of-state business of any work in accordance with this

1 section shall not be sourced to or shall not otherwise impact or increase the
2 amount of income, revenue, or receipts apportioned to this State.

3 (2)(A) An out-of-state employee shall not be considered to have
4 established residency or a presence in the State that would require that person
5 or that person's employer to file and pay income taxes or to be subjected to tax
6 withholdings or to file and pay any other State or local tax or fee during the
7 disaster response period.

8 (B) This includes any related State or local employer withholding and
9 remittance obligations, but does not include any transaction taxes or fees as
10 described in subsection (b) of this section.

11 (b) Transaction taxes and fees. An out-of-state business and an out-of-state
12 employee shall be required to pay transaction taxes and fees including fuel tax,
13 sales and use tax on materials or services consumed or used in the State subject
14 to sales and use tax, rooms and meals tax, car rental taxes or fees that the
15 out-of-state affiliated business or out-of-state employee purchases for use or
16 consumption in the State during the disaster response period, unless such taxes
17 are otherwise exempted during a disaster response period.

18 (c) Business or employee activity after disaster response period. An
19 out-of-state business or out-of-state employee that remains in the State after the
20 disaster response period will become subject to the State's normal standards
21 for establishing presence, residency, or doing business in the State and will

1 therefore become responsible for any business or employee tax requirements
2 that ensue.

3 § 1703. ADMINISTRATION

4 (a) Notification of out-of-state business during disaster response period.

5 (1) The out-of-state business that enters the State shall, upon request,
6 provide to the Secretary of State a statement that it is in the State for purposes
7 of responding to the disaster or emergency, which statement shall include the
8 business's name, state of domicile, principal business address, federal tax
9 identification number, date of entry, and contact information.

10 (2) A registered business in the State shall, upon request, provide the
11 information required in subdivision (1) of this subsection for any affiliate that
12 enters the State that is an out-of-state business.

13 (3) The notification shall also include contact information for the
14 registered business in the State.

15 (b) Notification of intent to remain in State. An out-of-state business or an
16 out-of-state employee that remains in the State after the disaster response
17 period shall complete State and local registration, licensing, and filing
18 requirements that ensue as a result of establishing the requisite business
19 presence or residency in the State applicable under the existing law.

20 (c) Procedures. The Secretary of State may adopt necessary rules, develop
21 and issue forms or online processes, and maintain and make available an

1 annual record of any designations pursuant to this chapter to carry out these
2 administrative procedures.

3 Sec. 4. EFFECTIVE DATE

4 This act shall take effect on July 1, 2015.