

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred House Bill No. 758 entitled “An act relating to Worker Adjustment
4 and Retraining Notification” respectfully reports that it has considered the
5 same and recommends that the bill be amended by striking out all after the
6 enacting clause and inserting in lieu thereof the following:

7 Sec. 1. FINDINGS

8 The General Assembly finds:

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

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

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

17 (4) The Department of Labor, as well as other agencies, are able to
18 marshal federal and State resources to mitigate adverse employment impacts
19 affecting employees and the Unemployment Insurance Trust Fund.

20 (5) The Department of Labor and the Agency of Commerce and
21 Community Development, as well as other agencies, must be able to respond

1 to and assist with economic and workforce training and retention initiatives in
2 a timely fashion.

3 (6) Municipalities, school districts, and local for-profit and nonprofit
4 businesses are all affected by plant closings and mass layoffs. In order to
5 mitigate adverse impacts, communities and stakeholders need timely
6 information pertaining to plant closings and mass layoffs. Private and public
7 sectors need to work together to reduce the volatility and disruptions that come
8 with layoffs.

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

10 Subchapter 3A. Notice of Potential Layoffs Act

11 § 411. DEFINITIONS

12 As used in this subchapter:

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

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

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

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

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

4 (6) “Employment loss” means the result of a business closing or mass
5 layoff. An employee will not be considered to have suffered an employment
6 loss if the employee is offered a transfer to a different site of employment
7 within 35 miles and the employee accepts the offer before the closing or layoff
8 is enacted.

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

11 (8) “Representative” means an exclusive bargaining agent as legally
12 recognized under State or federal labor laws.

13 § 412. EDUCATION AND OUTREACH

14 The Department of Labor and the Agency of Commerce and Community
15 Development shall prepare information and materials for the purpose of
16 informing and educating Vermont employers with regard to programs and
17 resources that are available to assist with economic and workforce retention
18 initiatives in order to avoid business closings and mass layoffs. The
19 Department of Labor and the Agency of Commerce and Community
20 Development shall also inform Vermont employers of the employers’

1 obligations that will be required for proper notice under the provisions of this
2 Act.

3 § 413. NOTICE AND WAGE PAYMENT OBLIGATIONS

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

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

1 (c) The employer shall send to the Department, within the time allotted
2 under subsection 413(b) or 414(b) of this subchapter, the following
3 information:

4 (1) the employee's name;

5 (2) the employee's home address;

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

7 (4) the employee's job title;

8 (5) the employee's wage;

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

10 (7) the employee's pension information;

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

12 (9) any other information related to the employment separation as
13 requested by the Commissioner.

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

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

1 (f) An employer is required to pay all unpaid wage and compensation owed
2 to any laid-off worker, as required under 21 V.S.A. § 342(b)(2).

3 § 414. EXCEPTIONS

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

7 (1) the employer has offered employment to its employees with less than
8 a one-month break and its employees have accepted so that fewer than
9 50 employees will actually experience a layoff;

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

14 (3) the business closing or mass layoff is due to any form of natural
15 disaster, such as a flood, earthquake, or drought; or

16 (4) the business closing or mass layoff results from a strike or a lockout.

17 (b) An employer that is unable to provide the notice otherwise required by
18 this subchapter as a result of circumstances described in subsection (a) of this
19 section shall provide as much notice as is practicable and at that time shall
20 provide a brief statement to the Commissioner of Labor regarding the basis for
21 failure to meet the notification period. In such situations, the mailing of the

1 notice to an employee's last known address by certified mail or the inclusion of
2 the notice in an employee's paycheck shall be considered acceptable methods
3 for fulfillment of the employer's obligation to give notice to each affected
4 employee under this subchapter. At the time of notice to the Commissioner,
5 the employer shall provide the required information under subdivisions
6 413(c)(1)–(9) of this subchapter.

7 § 415. VIOLATIONS

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

10 (1) ten days severance pay; and

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

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

16 (1) any wages paid by the employer to the employee during the period
17 of the employer's violation;

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

20 (3) any payments by the employer to a third party or trustee, such as
21 premiums for health benefits or payments to a defined contribution pension

1 plan, on behalf of and attributable to the employee for the period of the
2 violation; and

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

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

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

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

1 § 416. POWERS OF THE COMMISSIONER

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

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

11 (c) Information obtained through administration of this subchapter by the
12 Commissioner of Labor shall be confidential, except for the number of layoffs,
13 job titles, and workstation locations affected. The Department may provide the
14 information collected pursuant to subsection 412(c) of this title to the
15 U.S. Department of Labor and any other governmental entities for the purposes
16 of securing benefits for the affected employees.

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

19 § 417. ADMINISTRATIVE PENALTY

20 An employer who fails to give notice as required by subsection 413(b) or
21 414(b) of this subchapter shall be subject to an administrative penalty of

1 \$500.00 for each day that the employer was deficient in the notice to the
2 Department. The Commissioner may waive the administrative penalty if the
3 employer demonstrates good cause under subsection 414(b) of this subchapter
4 and if the employer pays to all affected employees the amounts for which the
5 employer is liable under section 415 of this title within 30 days from the date
6 the employer enacts the business closing or mass layoff.

7 § 418. OTHER RIGHTS

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

11 Sec. 3. EFFECTIVE DATE

12 This act shall take effect on passage.
13 and that after passage the title of the bill be amended to read: “An act relating
14 to notice of potential layoffs”.

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16
17 (Committee vote: _____)

18 _____

19 Representative

20 FOR THE COMMITTEE