

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, as well as other agencies, are able to access federal
18 and State resources to mitigate adverse employment impacts affecting
19 employers, employees, communities, and the Unemployment Insurance Trust
20 Fund.

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

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

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

12 Subchapter 3A. Notice of Potential Layoffs Act

13 § 411. DEFINITIONS

14 As used in this subchapter:

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

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

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

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

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

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

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

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

14 § 412. EDUCATION AND OUTREACH

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

1 also inform Vermont employers of the employers' obligations that will be
2 required for proper notice under the provisions of this 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 as soon as practical to enable the State to present information
7 on potential support and alternatives to the proposed closing or mass layoff.

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

20 (c) The employer shall send to the Commissioner such information as the
21 Commissioner deems necessary for the purposes of unemployment insurance

1 benefit processing and for accessing federal and State resources to mitigate
2 adverse employment impacts affecting employers, employees, and
3 communities within the time allotted for notice to the Commissioner under
4 subsection 413(b) or 414(b) of this subchapter.

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

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

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

14 § 414. EXCEPTIONS

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

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

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

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

4 (b) An employer that is unable to provide the notice otherwise required by
5 this subchapter as a result of circumstances described in subsection (a) of this
6 section shall provide as much notice as is practicable and at that time shall
7 provide a brief statement to the Commissioner regarding the basis for failure to
8 meet the notification period. In such situations, the mailing of the notice, that
9 shall be approved by the Commissioner, to an employee's last known address
10 by certified mail shall be considered an acceptable method for fulfillment of
11 the employer's obligation to give notice to each affected employee under this
12 subchapter. At the time of notice to the Commissioner, the employer shall
13 provide the required information under subdivisions 413(c)(1)–(9) of this
14 subchapter.

15 § 415. VIOLATIONS

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

18 (1) ten days severance pay; and

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

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

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

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

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

11 (c) 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 (d) 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 may adopt rules as necessary, pursuant to 3 V.S.A.
3 chapter 25, to carry out this subchapter. The rules shall include provisions that
4 allow the parties access to administrative hearings for any actions of the
5 Department 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 shall be confidential, except for the number of layoffs, job
13 titles, and workstation locations affected. The Department may provide the
14 information collected pursuant to subsection 413(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:

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

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

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

10 § 418. OTHER RIGHTS

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

14 Sec. 3. EFFECTIVE DATES

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

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

19 and that after passage the title of the bill be amended to read: “An act relating
20 to notice of potential layoffs”.

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2 (Committee vote: _____)

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Representative

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FOR THE COMMITTEE