

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;

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

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

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

18           § 415. VIOLATIONS

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

21           (1) ten days severance pay; and

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

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

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

8           (2) 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; and

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

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

19           (d) If, after an administrative hearing, the Commissioner determines that an  
20           employer has violated any of the requirements of this subchapter, the  
21           Commissioner shall issue an order including any penalties assessed by the

1 Commissioner under sections 415 and 417 of this subchapter. The employer  
2 may appeal a decision of the Commissioner to the Superior Court within 30  
3 days of the date of the Commissioner's order.

4 § 416. POWERS OF THE COMMISSIONER

5 (a) The Commissioner may adopt rules as necessary, pursuant to 3 V.S.A.  
6 chapter 25, to carry out this subchapter. The rules shall include provisions that  
7 allow the parties access to administrative hearings for any actions of the  
8 Department under this subchapter.

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

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

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

1     § 417. ADMINISTRATIVE PENALTY

2             An employer who fails to give notice as required by subsection 413(b) or  
3     414(b) of this subchapter shall be subject to an administrative penalty of  
4     \$500.00 for each day that the employer was deficient in the notice to the  
5     Department. The Commissioner may waive the administrative penalty if the  
6     employer:

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

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

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

13     § 418. OTHER RIGHTS

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

17     Sec. 3. EFFECTIVE DATES

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

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

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

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5 (Committee vote: \_\_\_\_\_)

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Representative

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FOR THE COMMITTEE