

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

8 Subchapter 3A. Worker Adjustment and Retraining Notification Act

9 § 411. DEFINITIONS

10 As used in this subchapter:

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

14 (2) “Business closing” means the permanent or temporary shutdown of a
15 single site of employment, or one or more facilities or operating units within a
16 single site of employment, if the shutdown results in an employment loss at the
17 single site of employment during any 90-day period for 20 or more employees
18 other than part-time employees.

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

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

1 (5) “Employer” means any business enterprise that employs 20 or more
2 employees or 20 or more employees that work at least 1,040 hours per
3 employee per year.

4 (6)(A) “Employment loss” means:

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

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

9 (B) Employment loss shall not result under circumstances where a
10 business closing or mass layoff is the result of the relocation or consolidation
11 of part or all of the employer’s business and before the closing or mass layoff,
12 the employer offers to transfer the employee to a different site of employment
13 within 35 miles with no more than a one-month break in employment and the
14 employee accepts within 30 days of the offer or of the closing or mass layoff,
15 whichever is later.

16 (7) “Mass layoff” means the reduction in force by an employer which
17 results in an employment loss at a single site of employment during any 90-day
18 period for at least 20 employees;

19 (8) “Relocation” means the removal of all or substantially all of the
20 industrial or commercial operations of an employer to a different location 35
21 miles or more away.

1 (9) “Representative” means an exclusive representative within the
2 meaning of section 9(a) or 8(f) of the National Labor Relations Act (29 U.S.C.
3 §§ 159(a), 158(f)) or section 2 of the Railway labor Act (45 U.S.C. § 152).

4 § 412. NOTICE

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

8 (1) the Commissioner of Labor;

9 (2) the **Chair of the** Workforce Development Council, established under
10 10 V.S.A. § 543; and

11 (3) affected employees and the bargaining agent or agents of affected
12 employees.

13 (b) An employer required to give notice of any mass layoff, relocation, or
14 employment loss under this subchapter shall include in its notice the elements
15 required by the federal Worker Adjustment and Retraining Notification Act
16 (29 U.S.C. § 2101 et seq.).

17 (c) Notwithstanding the requirements of subsection (a) of this section, an
18 employer is not required to provide notice if a mass layoff, relocation, or
19 employment loss is necessitated by an immediate physical calamity or an act of
20 terrorism or war. The employer must still send the separation information as
21 determined by the Department. In such situations, the mailing of the notice to

1 an employee's last known address by either first class or certified mail or the
2 inclusion of the notice in an employee's paycheck shall be considered
3 acceptable methods for fulfillment of the employer's obligation to give notice
4 to each affected employee under this subchapter. The employer must send to
5 the Department the following information:

6 (1) the employee's name;

7 (2) the employee's home address;

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

9 (4) the employee's job title;

10 (5) the employee's wage;

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

12 (7) the employee's pension information;

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

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

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

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

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

9 § 413. EXCEPTIONS

10 (a) In the case of a business closing, an employer is not required to comply
11 with the notice requirement in subsection 412(a) of this subchapter and may
12 delay notification to the Department if:

13 (1) The employer is attempting to secure capital or investments in an
14 attempt to avoid closure or mass layoff;

15 (2) The employer has offered employment to its employees with less
16 than a one-month break and its employees have accepted so that fewer than
17 20 employees will actually experience a layoff.

18 (3) 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 (4) The business closing or mass layoff is due to any form of natural
2 disaster, such as a flood, earthquake, or drought.

3 (5) 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, but
11 in no case shall the employer provide less than 60-days' notice to the
12 Department and employees.

13 § 414. EXTENSION OF MASS LAYOFF PERIOD

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

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

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

1 **(b) When 15 days have passed beyond the one month extension, the**
2 **Commissioner may demand the required information in subdivisions**
3 **412(c)(1)–(9) of this subchapter within five business days.**

4 § 415. DETERMINATIONS WITH RESPECT TO EMPLOYMENT LOSS

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

12 § 416. POWERS OF THE COMMISSIONER

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

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

1 (c) Except as provided in this section, information obtained through
2 administration of this subchapter from an employer that is not otherwise
3 obtainable by the Commissioner under this chapter shall be confidential. The
4 Department may provide the information collected pursuant to section 412(c)
5 of this title to the U.S. Department of Labor and any other governmental
6 entities for the purposes of securing benefits for the affected employees.
7 Information to be kept confidential from the general public includes
8 employees' names, Social Security numbers, and wage information, but the
9 Department may report to the public the number of layoffs, job titles, and
10 workstation locations affected.

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

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

1 (f) If, after an administrative hearing, the Commissioner determines that an
2 employer has violated any of the requirements of this subchapter, the
3 Commissioner shall issue an order which shall include any penalties assessed
4 by the Commissioner under sections 417 and 418 of this subchapter. The
5 employer may appeal a decision of the Commissioner to the Supreme Court
6 within 30 days of the date of the Commissioner's order.

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

9 § 417. VIOLATION; LIABILITY

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

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

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

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

1 (c) Payments to an employee under this section by an employer who has
2 failed to provide the advance notice of a facility closure required by this
3 subchapter shall not be construed as remuneration under chapter 17 of this title.
4 Unemployment insurance benefits under chapter 17 of this title may not be
5 denied or reduced because of the receipt of payments related to an employer's
6 violation of this subchapter.

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

9 (1) any wages, except vacation monies accrued before the period of the
10 employer's violation, paid by the employer to the employee during the period
11 of the employer's violation;

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

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

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

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

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

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

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

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

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

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

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

3 § 418. CIVIL PENALTY

4 (a) An employer who fails to give notice as required by subdivision
5 412(a)(2) of this subchapter shall be subject to a civil penalty of not more than
6 \$5,000.00 per employee aggrieved. The employer is not subject to a civil
7 penalty under this section if the employer pays to all applicable employees the
8 amounts for which the employer is liable under section 417 of this title within
9 three weeks from the date the employer orders the mass layoff, relocation, or
10 employment loss.

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

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

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

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

19 § 419. OTHER RIGHTS

20 The rights and remedies provided to employees by this subchapter are in
21 addition to, and not in lieu of, any other contractual or statutory rights and

1 remedies of the employees, and are not intended to alter or affect such rights
2 and remedies, except that the period of notification required by this subchapter
3 shall run concurrently with any period of notification required by contract or
4 by any other statute.

5 Sec. 2. EFFECTIVE DATE

6 This act shall take effect on passage.

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9 (Committee vote: _____)

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Representative [surname]

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FOR THE COMMITTEE