

1 TO THE HONORABLE SENATE:

2 The Committee on Economic Development, Housing and General Affairs to
3 which was referred House Bill No. 758 entitled “An act relating to notice of
4 potential layoffs” respectfully reports that it has considered the same and
5 recommends that the Senate propose to the House that the bill be amended by
6 striking out all after the enacting clause and inserting in lieu thereof the
7 following:

8 Sec. 1. FINDINGS

9 The General Assembly finds:

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

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

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

18 (4) The Department, as well as other agencies, are able to access federal
19 and State resources to mitigate adverse employment impacts affecting
20 employers, employees, communities, and the Unemployment Insurance Trust
21 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)(A) “Business closing” means:

19 (i) the permanent shutdown of a facility;

1 (ii) the permanent cessation of operations at one or more worksites
2 in the State that result in the layoff of 50 or more employees over a 90-day
3 period; or

4 (iii) the cessation of work or operations not scheduled to resume
5 within 90 days, that affects 50 or more employees.

6 (B) Business closing does not mean a temporary shutdown of a
7 seasonal employer that does not extend beyond 20 weeks.

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

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

10 (5) “Employer” means any business enterprise that employs:

11 (A) 50 or more full-time employees;

12 (B) 50 or more part-time employees who work at least 1,040 hours
13 per employee per year; or

14 (C) a combination of 50 or more:

15 (i) full-time employees; and

16 (ii) part-time employees who work at least 1,040 hours per
17 employee per year.

18 (6) “Employment loss” means the termination of employment that is the
19 direct result of a business closing or mass layoff. An employee will not be
20 considered to have suffered an employment loss if the employee is offered a
21 transfer to a different site of employment within 35 miles; or if prior to the

1 layoff notice to the employee, the employee voluntarily separates or retires or
2 was separated by the employer for unsatisfactory performance or misconduct.

3 (7) “Mass layoff” means a permanent employment loss of at least
4 50 employees at one or more worksites in Vermont during any 90-day period.
5 In determining whether a mass layoff has occurred or will occur, employment
6 losses for two or more groups of employees, each of which is below this
7 threshold but which in the aggregate exceed this threshold and which occur
8 within any 90-day period shall be considered to be a mass layoff unless the
9 employer demonstrates that the employment losses are the result of separate
10 and distinct actions and causes.

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 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 and the Agency of Commerce and Community Development shall
20 also inform Vermont employers of the employers’ obligations that will be
21 required for proper notice under the provisions of this act.

1 § 413. NOTICE AND WAGE PAYMENT OBLIGATIONS

2 (a) An employer who will engage in a closing or mass layoff shall provide
3 notice to the Secretary of Commerce and Community Development and the
4 Commissioner in accordance with this section to enable the State to present
5 information on potential support for the employer and separated employees.

6 (b) Notwithstanding subsection (a) of this section, an employer who will
7 engage in a closing or mass layoff shall provide notice to the Secretary of
8 Commerce and Community Development and the Commissioner 45 days prior
9 to the effective date of the closing or layoffs that reach the thresholds defined
10 in section 411 of this subchapter, and shall provide 30-days' notice to the local
11 chief elected official or administrative officer of the municipality, affected
12 employees, and bargaining agent, if any.

13 (c) The employer shall send to the Commissioner and the Secretary the
14 approximate number and job titles of affected employees, the anticipated date
15 of the employment loss, and the affected worksites within the time allotted for
16 notice to the Commissioner and Secretary under subsection 413(b) or 414(b) of
17 this subchapter. Concurrent with the notification to the affected employees, in
18 accordance with subsection 413(b) of this subchapter, the employer shall send
19 to the Commissioner in writing the actual number of layoffs, job titles, date of
20 layoff, and other information as the Commissioner deems necessary for the
21 purposes of unemployment insurance benefit processing and for accessing

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

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

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

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

13 (g) This section shall not apply to a nursing home in situations where Rules
14 2.8 and 3.14 of the Vermont Licensing and Operating Rules for Nursing
15 Homes apply or where the CMS Requirements for Long-Term Care Facilities
16 apply, pursuant to 42 C.F.R. §§ 483.12 and 483.75.

17 § 414. EXCEPTIONS

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

21 (1) the business closing or mass layoff results from a strike or a lockout;

1 (2) the employer is actively attempting to secure capital or investments
2 in order to avoid closing or mass layoffs; and the capital or investments sought,
3 if obtained, would have enabled the employer to avoid or postpone the
4 business closing or mass layoff, and the employer reasonably and in good faith
5 believed that giving the notice would have precluded the employer from
6 securing the needed capital or investment;

7 (3) the business closing or mass layoff is caused by dramatic business
8 circumstances that were not reasonably foreseeable at the time the 45-day
9 notice would have been required;

10 (4) the business closing or mass layoff is due to a disaster beyond the
11 control of the employer; or

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

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

1 considered acceptable in the fulfillment of the employer's obligation to give
2 notice to each affected employee under this subchapter. At the time of notice
3 to the Commissioner, the employer shall provide the required information
4 under subdivisions 413(c) of this subchapter.

5 § 415. VIOLATIONS

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

8 (1) one day of severance pay for each day after the first day in the 45
9 day notice period required in subsection 413(b) of this subchapter, up to a
10 maximum of ten days severance pay; and

11 (2) the continuation, not to exceed one month after an employment loss,
12 of existing medical or dental coverage under an employment benefit plan, if
13 any, necessary to cover any delay in an employee's eligibility for obtaining
14 alternative coverage resulting directly from the employer's violation of notice
15 requirements.

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

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

20 (2) 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 (3) any liability paid by the employer under any applicable federal law
4 governing notification of mass layoffs, business closings, or relocations.

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

10 (d) If, after an administrative hearing, the Commissioner determines that an
11 employer has violated any of the requirements of this subchapter, the
12 Commissioner shall issue an order including any penalties assessed by the
13 Commissioner under sections 415 and 417 of this subchapter. The employer
14 may appeal a decision of the Commissioner to the Superior Court within
15 30 days of the date of the Commissioner's order.

16 § 416. POWERS OF THE COMMISSIONER

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

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

6 (c) Information obtained through administration of this subchapter by the
7 Commissioner and the Secretary of Commerce and Community Development
8 shall be confidential, except that the number of layoffs, the types of jobs
9 affected, and work locations affected shall cease to be confidential after local
10 government and the affected employees have been notified. The Department
11 may provide the information collected pursuant to subsection 413(c) of this
12 subchapter to the U.S. Department of Labor and any other governmental
13 entities for the purposes of securing benefits for the affected employees.

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

16 § 417. ADMINISTRATIVE PENALTY

17 An employer who fails to give notice as required by subsection 413(b) or
18 414(b) of this subchapter shall be subject to an administrative penalty of
19 \$500.00 for each day that the employer was deficient in the notice to the
20 Department. The Commissioner may waive the administrative penalty if the
21 employer:

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

2 (2) pays to all affected employees the amounts for which the employer

3 is liable under section 415 of this title within 30 days from the date the

4 employer enacts the business closing or mass layoff; and

5 (3) pays to all affected employees any unpaid wage and compensation

6 owed to any laid-off worker, as required under this title.

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. Nothing in this section is intended to alter or diminish or

11 replace any federal or State regulatory mandates for a shutdown or closure of a

12 regulated business or entity.

13 Sec. 3. EFFECTIVE DATES

14 (a) This section, Sec. 1, and in Sec. 2, 21 V.S.A. §§ 412 (education and
15 outreach) and 416(a) shall take effect on passage.

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

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20 (Committee vote: _____)

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Senator _____

FOR THE COMMITTEE