

[First Reprint]

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STATE OF NEW JERSEY
219th LEGISLATURE

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Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Concerns changes in control of hotels and disruptions of hotel services.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on January 6, 2022, with amendments.



1 AN ACT concerning changes in control of hotels and disruptions of
2 hotel services and supplementing Title 29 of the Revised
3 Statutes.

4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7

8 1. a. (1) Not less than 30 days before a change in control or
9 change in controlling interest or identity, a former hotel employer shall
10 provide the successor hotel employer with a full and accurate list
11 containing the name, address, date of hire, phone number, wage rate,
12 and employment classification of each hotel service employee
13 employed at an affected hotel. At the same time that the former hotel
14 employer provides the list, the former hotel employer shall post the list
15 in a notice to the hotel service employees that also sets forth the rights
16 provided by this section, in the same location and manner that other
17 statutorily required notices to the employees are posted at the affected
18 hotel; provided that if the hotel is not open to the public, the notice
19 shall be transmitted in the same manner as any offer of employment
20 made pursuant to paragraph (2) of this subsection a. The notice shall
21 also be provided to the employees' collective bargaining
22 representative, if any.

23 (2) A successor hotel employer shall, during the hotel service
24 employee retention period, offer each eligible hotel service employee
25 employment for no less than 90 working days under the terms and
26 conditions established by the successor hotel employer, with no
27 reduction of wages or benefits, except that the wage and benefit rates
28 offered and paid for the period may be higher than the rates last paid to
29 the employee by the former hotel employer, and shall not be lower
30 than any rate required by law. The offers shall be made in writing and
31 shall remain open for at least 10 business days from the date of the
32 offer.

33 (3) Except as provided in paragraph (4) of this subsection, an
34 eligible hotel service employee retained pursuant to this section shall
35 not be discharged without cause during the hotel service employee
36 retention period.

37 (4) If at any time during the hotel service employee retention
38 period the successor hotel employer determines that fewer hotel
39 service employees are required than were employed by the former
40 hotel employer, the successor hotel employer shall retain eligible hotel
41 service employees by seniority and experience within each job
42 classification, to the extent the classification exists, and offer to rehire
43 the laid-off employees if the positions are subsequently restored.

44 (5) A successor hotel employer shall retain written verification of
45 each offer of employment made pursuant to paragraph (2) of this

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted January 6, 2022.

1 subsection. The verification shall include the name, address, date of
2 hire, phone number, wage rate, and employment classification of the
3 eligible hotel service employee to whom the offer was made. A
4 successor hotel employer shall retain the verification for no less than
5 three years from the date the offer is made.

6 (6) At the end of the hotel service employee retention period, the
7 successor hotel employer shall perform a written performance
8 evaluation for each hotel service employee retained pursuant to this
9 section. If the employee's performance during the retention period is
10 satisfactory, the successor hotel employer shall offer the employee
11 continued employment under the terms and conditions established by
12 the successor hotel employer. A successor hotel employer shall retain
13 the written performance evaluation for no less than three years from
14 the date it is issued.

15 b. A hotel service employee who has been discharged or not
16 retained in violation of this section, or a representative of the
17 employee, may bring an action in a court of competent jurisdiction
18 against a former hotel employer or successor hotel employer for any
19 violation of an obligation imposed pursuant to this section.

20 The court shall have authority to order preliminary and permanent
21 equitable relief, including, but not limited to, reinstatement of any
22 employee who has been discharged or not retained in violation of this
23 section. If the court finds that by reason of a violation of any
24 obligation imposed pursuant to subsection b. of this section, a hotel
25 service employee has been discharged or not retained in violation of
26 this section, the court shall award:

27 (1) back pay, and an equal amount as liquidated damages, for each
28 day during which the violation continues, which shall be calculated at
29 a rate of compensation not less than the higher of: the average regular
30 rate of pay received by the employee during the last three years of the
31 employee's employment in the same occupation classification; or the
32 final regular rate of pay received by the employee. Back pay shall
33 apply to the period commencing on the date of the discharge or
34 refusal-to-retain by the successor hotel employer and ending on the
35 effective date of any offer of reinstatement or reinstatement of the
36 employee;

37 (2) costs of benefits the successor hotel service employer would
38 have incurred for the employee under the employee's benefit plan; and

39 (3) the employee's reasonable attorney's fees and costs.

40 The court shall have authority to order the former or successor
41 hotel employer, as applicable, to provide any information required
42 pursuant to subsection b. of this section.

43 c. This section shall not apply to:

44 (1) any successor hotel employer who, on or before the change of
45 control or change in controlling interest or identity, agrees to assume,
46 or to be bound by, the collective bargaining agreement of the former
47 hotel employer until the end of the term of the agreement or the end of
48 hotel service employee retention period, whichever is later, provided

1 that the collective bargaining agreement includes terms and conditions
2 for the discharge or laying off of employees;

3 (2) if there was no existing collective bargaining agreement as
4 described in paragraph (1) of this subsection, any successor hotel
5 employer who agrees, on or before the change of control or change in
6 controlling interest or identity, to enter into a new collective
7 bargaining agreement covering its hotel service employees, provided
8 that the collective bargaining agreement includes terms and conditions
9 for the discharge or laying off of employees; or

10 (3) a former hotel employer who obtains a written commitment
11 from a successor hotel employer that the successor hotel employer's
12 hotel service employees will be covered by a collective bargaining
13 agreement that includes terms and conditions for the discharge or
14 laying off of employees.

15 d. Each hotel employer shall maintain for three years, for each
16 employee and former employee, by name, a record showing the
17 employee's regular hourly rate of pay for each week of the employee's
18 employment. The hotel employer shall make an employee's or former
19 employee's records available in full to the employee or former
20 employee upon request.

21 e. For the purposes of this section:

22 "Affected hotel" means a hotel or discrete portion of a hotel that
23 has been the subject of a change in control or a change in controlling
24 interest or identity.

25 "Change in control" means any sale, assignment, transfer,
26 contribution or other disposition of all or substantially all of the assets
27 used in the operation of a hotel or a discrete portion of a hotel. A
28 change in control shall be defined to occur on the date of execution of
29 the document effectuating the change.

30 "Change in controlling interest or identity" means any sale,
31 assignment, transfer, contribution or other disposition of a controlling
32 interest, including by consolidation, merger or reorganization, of a
33 hotel employer or any person who controls a hotel employer; or any
34 other event or sequence of events, including a purchase, sale or lease
35 termination of a management contract or lease, that causes the identity
36 of the hotel employer at a hotel to change. A change in controlling
37 interest or identity shall be defined to occur on the date of execution of
38 the document effectuating the change.

39 "Eligible hotel service employee" means a hotel service employee
40 employed by a hotel employer at an affected hotel.

41 "Former hotel employer" means any hotel employer who owns,
42 controls or operates a hotel prior to a change in control or change in
43 controlling interest or identity of a hotel or of a discrete portion of a
44 hotel that continues to operate as a hotel after the change.

45 "Hotel" means a hotel, apartment hotel, motel, inn, tourist camp,
46 tourist cabin, tourist home, ¹["rooming or boarding house,"]¹ club, or
47 similar establishment where sleeping accommodations are supplied for
48 pay to transient or permanent guests.

1 “Hotel employer” means any person who owns, controls or
2 operates a hotel, and includes any person or contractor who, in a
3 managerial, supervisory or confidential capacity, employs one or more
4 hotel service employees.

5 “Hotel service” means work performed in connection with the
6 operation of a hotel, including, but not limited to, letting of guest
7 rooms, letting of meeting rooms, provision of food or beverage
8 services, provision of banquet services, or provision of spa services.

9 “Hotel service employee” means: any person employed to perform
10 a hotel service at an affected hotel during the 365-day period
11 immediately preceding the change in control or change in controlling
12 interest or identity of the hotel; or any person formerly employed to
13 perform a hotel service at an affected hotel who retains recall rights
14 under the former hotel employer’s collective bargaining agreement, if
15 any, or under any comparable arrangement established by the former
16 hotel employer, on the date of the change in control or change in
17 controlling interest or identity of the hotel, except that “hotel service
18 employee” shall not include persons who are managerial, supervisory
19 or confidential employees or who otherwise exercise control over the
20 management of the hotel.

21 “Hotel service employee retention period” means the 90-day
22 period beginning on the date of a change in control or change in
23 controlling interest or identity of the hotel or of a discrete portion of
24 the hotel that continues to operate as a hotel after the change, except
25 that, if the hotel is not open to the public on the date, the 90-day period
26 shall begin on the first day that the hotel is open to the public after the
27 change.

28 “Person” means an individual, corporation, business trust, estate,
29 trust, partnership, limited liability company, association, joint venture,
30 government, governmental subdivision, agency, or instrumentality,
31 public corporation, or any other legal or commercial entity.

32 “Successor hotel employer” means a hotel employer who owns,
33 controls or operates a hotel after a change in control or change in
34 controlling interest or identity of the hotel or of a discrete portion of
35 the hotel that continues to operate as a hotel after the change.

36

37 2. a. Within 24 hours of the occurrence of a service disruption, a
38 hotel operator shall provide, in all modifiable mediums in which the
39 hotel advertises, solicits customers, or through which customers can
40 book or reserve rooms or services, notification of the service
41 disruption to each third-party vendor and each guest who is seeking, or
42 has entered into, a reservation, booking, or agreement with the hotel
43 operator or a third-party vendor for the use or occupancy of a room.
44 The notification shall also be provided immediately before accepting
45 or entering into any new reservation, booking, or agreement for the use
46 or occupancy of a room or hotel service. The notification shall also be
47 provided to any current guest. If the circumstances of the service

1 disruption make timely notification impracticable, the notification
2 shall be made as soon as practicable.

3 b. The notification shall describe: the nature of the service
4 disruption; the extent of the service disruption's effect on reservations,
5 bookings, or agreements to use or occupy the room or hotel services;
6 and the right of a guest to cancel or terminate the reservation, booking,
7 or agreement for the use or occupancy of the room or hotel services,
8 with a refund if applicable and without the imposition of any fee,
9 penalty, or other charge, as provided in subsections c. and d. of this
10 section. If the notification is included in a communication containing
11 other information, the notification shall be in a significantly larger font
12 and different color than the remainder of the communication.

13 c. A hotel operator shall not impose any fee, penalty, or other
14 charge, nor retain any deposit, in the event a guest, prior to checking
15 in, cancels a reservation, booking, or agreement with the hotel operator
16 for the use or occupancy of a room, if the guest's stay or room is, or
17 could be, ¹substantially¹ affected by a service disruption during the
18 guest's stay or use of a hotel service.

19 d. If a service disruption arises only after any guest of the room
20 has checked in, the hotel operator shall prominently and clearly notify
21 the guest of the service disruption within 24 hours of the disruption, as
22 provided in subsection a. of this section. The notification shall specify
23 the rights set forth in this subsection, pursuant to subsection b. of this
24 section. The guests of the room or hotel service may terminate any
25 reservation, booking, or agreement for the rental of the room or use of
26 a hotel service, and the hotel operator shall not impose any fee,
27 penalty, or other charge for the termination, nor retain any deposit
28 related to any unused portion of the period of the reservation, booking,
29 or agreement following the onset of the service disruption.

30 e. A hotel operator that violates or causes another person to
31 violate a provision of this section or any rule promulgated pursuant to
32 the section, shall be subject to a civil penalty collectible by the
33 ¹**[Department of Community] Division of Consumer**¹ Affairs ¹**[in a**
34 summary proceeding pursuant to the "Penalty Enforcement Law of
35 1999," P.L.1999, c.274 (C.2A:58-10 et seq.)**]** in the Department of
36 Law and Public Safety¹, as follows:

37 (1) a civil penalty of \$500 for the first violation;

38 (2) a civil penalty of \$1,000 for the second violation issued for the
39 same offense within a period of two years of the date of the first
40 violation;

41 (3) a civil penalty of \$2,500 for the third violation issued for the
42 same offense within a period of two years of the date of the first
43 violation; and

44 (4) a civil penalty of \$5,000 for the fourth and each subsequent
45 violation issued for the same offense within a period of two years of
46 the date of the first violation.

47 The continuation of a violation shall constitute a separate offense
48 for each successive day

1 f. In addition to any other penalties or remedies for violations of
2 this section, any guest or customer may also bring a private cause of
3 action in any court of competent jurisdiction to recover, in addition to
4 the remedies provided for in this act, compensatory, equitable and
5 consequential damages, and reasonable costs of the action and
6 attorney's fees.

7 g. For the purposes of this section:

8 "Hotel" means a hotel, apartment hotel, motel, inn, tourist camp,
9 tourist cabin, tourist home, ¹["rooming or boarding house,"] club, or
10 similar establishment where sleeping accommodations are supplied for
11 pay to transient or permanent guests.

12 "Hotel operator" means any person, including a contractor, who
13 owns, controls or operates a hotel.

14 "Hotel service" means work performed in connection with the
15 operation of a hotel, including, but not limited to, letting of guest
16 rooms, letting of meeting rooms, provision of food or beverage
17 services, provision of banquet services, or provision of spa services.

18 "Room" means a room available or let out for use or occupancy in
19 a hotel.

20 "Service disruption" means any of the following conditions where
21 the condition substantially affects or is likely to substantially affect
22 any guest's use of a room or utilization of a hotel service¹: provided
23 that conditions described in paragraphs (2), (6) and (7) of this
24 definition shall be presumed to substantially affect a guest's use of a
25 room or utilization of a hotel service¹:

26 (1) construction work in or directly related to the hotel that creates
27 excessive noise that is likely to substantially disturb a guest, other than
28 construction that is intended to correct an emergency condition or
29 other condition requiring immediate attention;

30 (2) conditions of which the hotel operator is aware, indicating the
31 presence in the hotel of any infestation by bed bugs, lice or other
32 insects, rodents or other vermin capable of spreading disease or being
33 carried, including on one's person, if the infestation has not been fully
34 treated by a licensed exterminator within 24 hours of identifying it;

35 (3) the unavailability, for a period of 24 hours or more, of any
36 advertised hotel amenity, including, but not limited to, a pool, spa,
37 shuttle service, internet access, or food and beverage service;

38 (4) the unavailability, for a period of 24 hours or more, of any
39 advertised room appliances or technology, including but not limited to,
40 in-room refrigerators, or internet or Wi-Fi services;

41 (5) the unavailability of any advertised or legally required
42 accessibility feature, including, but not limited to, an elevator,
43 wheelchair lift, ramp, or accessible bathroom in the room or in any
44 common area of the hotel;

45 (6) the unavailability for a period of 24 hours or more, of any
46 utility, including, but not limited to, gas, water, or electricity when the
47 unavailability affects only the location of the hotel; or

1 (7) any strike, lockout or picketing activity, or other demonstration
2 or event for a calendar day or more at or near the hotel.

3 “Third-party vendor” means a vendor with which a hotel operator
4 has an arrangement for third-party room reservations, or any other
5 entity that has reserved or entered into an agreement or booking for the
6 use or occupancy of one or more rooms in a hotel in furtherance of the
7 business of reselling the rooms to guests.

8

9 3. The provisions of this act shall be deemed to be severable
10 and if any section, subsection, paragraph, sentence or other portion
11 of this act is for any reason held or declared by any court of
12 competent jurisdiction to be unconstitutional or preempted by
13 federal law, or the applicability of that portion to any person or
14 facility is held invalid, the remainder of this act shall not thereby be
15 deemed to be unconstitutional, preempted or invalid.

16

17 4. This act shall take effect immediately and shall apply to any
18 change in control or change in controlling interest or identity of a
19 hotel occurring after the effective date.