

[First Reprint]

ASSEMBLY, No. 3684

STATE OF NEW JERSEY
220th LEGISLATURE

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Sponsored by:

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District 14 (Mercer and Middlesex)

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SYNOPSIS

Requires contracts for sale of certain health care entities to preserve employee wages and benefits and to honor collective bargaining agreements.

CURRENT VERSION OF TEXT

As reported by the Assembly Budget Committee on June 27, 2022, with amendments.



(Sponsorship Updated As Of: 6/29/2022)

1 AN ACT concerning changes in control of health care entities and
 2 supplementing ¹~~【P.L.1966, c.113 (C.34:11-56a et seq.)】~~ P.L.1965,
 3 c.173 (C.34:11-4.1 et seq.)¹ .
 4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
 6 of New Jersey:
 7

8 1. a. Not less than 30 days before a change in control, a former
 9 health care entity employer shall: provide the successor health care
 10 entity employer, and any collective bargaining representative the
 11 employees may have, a list containing the name, address, date of
 12 hire, phone number, wage rate, and employment classification of
 13 each eligible employee employed at the affected health care entity;
 14 inform all eligible employees of their rights provided by this
 15 section; and post, in a conspicuous location or locations accessible
 16 to all employees, a notice setting forth the rights provided by this
 17 section.

18 b. ¹~~【Any contract or agreement that provides for a】~~ No¹
 19 change in control of a health care entity shall ¹~~【provide】~~ be made
 20 without a contract or agreement between the former health care
 21 entity employer and the successor health care entity employer
 22 which provides¹ that:

23 (1) the successor health care entity employer shall ¹~~【,】~~ offer
 24 employment¹ during a transitional period of not less than ¹~~【six】~~ four¹
 25 months following the change in control ¹~~【, offer】~~ to¹ each
 26 eligible employee ¹~~【employment during the transitional period with~~
 27 no reduction of wages and】¹ with no reduction of ¹~~【wages or paid~~
 28 time off, and no reduction of¹ the total value of benefits, including
 29 health care, paid time off, retirement, and education benefits, ¹~~【with~~
 30 the offer being made in writing and remaining open for at least 10
 31 business days from the date of the offer】 provided that:

32 (a) the offer shall be made in writing and remain open for at
 33 least 10 business days from the date of the offer;

34 (b) during the transition period, the successor health care entity
 35 shall offer all available employment positions to eligible employees
 36 who had previously held the positions until the available
 37 employment positions are filled or until no more eligible employees
 38 are available; and

39 (c) if, at the time of the change in control and throughout the
 40 transition period, the total number of employment positions is less
 41 than the total number of eligible employees, the choice of
 42 employees to be employed shall be based on seniority and
 43 experience¹ ;

44 (2) an eligible employee retained pursuant to this section shall
 45 not be discharged without cause during the transitional period,

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:

¹Assembly ABU committee amendments adopted June 27, 2022.

1 except that a successor employer may lay off eligible employees if
2 the employer ¹ **【finds that fewer employees are needed】** reduces the
3 total number of employees, including at the time of the change in
4 control¹ , but only if the choice of employees to be retained is based
5 on seniority and experience, and laid off employees are offered any
6 positions ¹ they had previously held¹ that are subsequently restored
7 ¹ during the transitional period¹ ;

8 (3) at the end of the transitional period, the successor employer
9 shall perform a written performance evaluation for each retained
10 eligible employee, and offer the employee continued employment if
11 an employee's performance during that period was satisfactory; and

12 (4) a successor employer shall retain ¹ , and provide to the
13 employee or representative of the employee upon request,¹ a written
14 record of each offer of employment and each evaluation made
15 pursuant to this subsection, for not less than three years from the
16 date of the offer or evaluation, with each record including the name,
17 address, date of hire, phone number, wage rate, and employment
18 classification of the employee ¹ **【, and provided to the employee or**
19 **representative of the employee upon request】**¹ .

20 c. All parties to a contract or agreement covered by this
21 section, and all health care entities subject to a change in control
22 pursuant to a contract or agreement covered by this section, shall
23 comply with all provisions that are required by this section to be
24 included in the contract or agreement pursuant to subsection b. of
25 this section, regardless of whether those provisions are expressly
26 included in the contract or agreement.

27 d. Notwithstanding the foregoing, no action taken pursuant to
28 and in compliance with a collective bargaining agreement entered
29 into by an exclusive representative of employees of a health care
30 entity subject to a change in control pursuant to a contract or
31 agreement covered by this section shall be considered a violation of
32 this section. Nothing in this section shall be construed as limiting,
33 delaying, or preventing, including during the transitional period: the
34 recognition of a collective bargaining representative of the
35 employees by a successor health care entity employer; or collective
36 bargaining between the successor health care entity employer and
37 the collective bargaining representative.

38 e. ¹ **【An eligible employee who has been affected by a violation**
39 **of this section may bring an action in any court of competent**
40 **jurisdiction against any party to a contract or agreement covered by**
41 **this section and any health care entity subject to a change in control**
42 **pursuant to a contract or agreement covered by this section for**
43 **violation of any obligation imposed by this section. The court shall**
44 **have authority to order injunctive relief to prevent or remedy a**
45 **violation of any obligation imposed by this section, including, if an**
46 **eligible employee is discharged in violation of the provisions of this**
47 **section, the ordering that the employee be reinstated. If the court**
48 **finds that, by reason of a violation of any obligation imposed by**

1 this section, a plaintiff has suffered a loss of wages or benefits, the
2 court shall award back pay for all losses of wages and benefits, the
3 costs of benefits the health care entity or other defendant would
4 have incurred for benefits lost by the plaintiff, expenses incurred by
5 the plaintiff as a result of the lost benefits, and an amount equal to
6 back pay as liquidated damages.

7 f. The court shall award a plaintiff prevailing in an action
8 brought pursuant to subsection e. of this section reasonable
9 attorneys' fees.

10 g. An employer who violates the provisions of this section
11 shall be subject to the sanctions, and an employee affected by the
12 violation shall have the remedies, provided by law for violations of
13 P.L.1965, c.173 (C.34:11-4.1 et seq.). For the purposes of
14 determining penalties and remedies imposed pursuant to section 10
15 of P.L.1965, c.173 (C.34:11-4.10) for violations of this section:

16 (1) a failure to pay an employee wages, paid time off, or the
17 value of benefits, as required by subsection b. of this section, shall
18 be regarded as a failure to pay the full amount of wages for the
19 purposes of section 10 of P.L.1965, c.173 (C.34:11-4.10), and the
20 remedies for the failure to pay paid time off or the value of benefits
21 shall be made in the same manner as remedies for unpaid wages;

22 (2) a discharge of an employee, or failure to offer employment
23 or retain in employment an employee, in violation of subsection b.
24 of this section shall be regarded as retaliation against the employee
25 for the purposes of section 10 of P.L.1965, c.173 (C.34:11-4.10);
26 and

27 (3) in a civil action brought before a court by the employee, the
28 court shall have authority to order injunctive or other permanent
29 equitable relief, including, but not limited to, immediate
30 reinstatement of any employee discharged or not retained in
31 violation of this section.

32 f.¹ As used in this section:

33 "Change in control" means: any sale, assignment, transfer,
34 contribution or other disposition of all or substantially all of the
35 assets used in a health care entity's operations; or any sale,
36 assignment, transfer, contribution or other disposition of a
37 controlling interest in the health care entity, including by
38 consolidation, merger, or reorganization, of the health care entity or
39 any person who controls the health care entity; or any other event or
40 sequence of events, including a purchase, sale, or termination of a
41 management contract or lease, that causes the identity of the health
42 care entity employer to change, but shall not include a change in
43 control in which both the former health care entity employer and the
44 successor health care employer are government entities. A change
45 in control shall be defined to occur on the date of execution of the
46 document effectuating the change.

47 "Eligible employee" means: any person employed at an affected
48 health care entity during the 90-day period immediately preceding a

1 change in control of a health care entity; or any person formerly
2 employed at the health care entity who retains recall rights under an
3 agreement with the former health care entity employer, except that
4 an “eligible employee” shall not include a managerial employee ¹,
5 and shall not include any person who was discharged with cause by
6 the former health care entity or successor health care entity during
7 that 90-day period¹ .

8 “Former health care entity employer” means any ¹health care
9 entity¹ employer ¹of eligible employees¹ who owns, controls, or
10 operates a health care entity ¹where the eligible employees are
11 employed¹ prior to a change in control of the entity.

12 “Government entity” means the State of New Jersey, any of its
13 political subdivisions, any authority created by the Legislature of
14 the State of New Jersey and any instrumentality or agency of the
15 State of New Jersey or of any of its political subdivisions.

16 “Health care entity” means a health care facility licensed
17 pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a staffing registry,
18 or a home care services agency as defined in section 1 of P.L.1947,
19 c.262 (C.45:11-23).

20 ¹“Health care entity employer” means any person who owns,
21 controls or operates a health care entity that has one or more
22 eligible employees. ¹ If a health care entity is part of a larger
23 facility which includes facilities which are not licensed pursuant to
24 P.L.1971, c.136 (C.26:2H-1 et seq.), the portion of the facility
25 which is not licensed shall not be regarded as a “health care entity”
26 for the purposes of this section.¹

27 “Managerial employee” means an employee who is exempt from
28 the overtime requirements of the New Jersey State Wage and Hour
29 Law, P.L.1966, c.113 (C.34:11-56a et seq.), because the employee
30 is an executive employee.

31 “Successor health care entity employer” ¹or “successor
32 employer”¹ means ¹a health care entity ¹any¹ employer ¹of
33 eligible employees¹ who owns, controls or operates a health care
34 entity ¹where eligible employees are employed¹ after a change in
35 control of the entity.

36 ¹h. ¹g. ¹ The provisions of this section shall be deemed to be
37 severable and if any subsection, paragraph, sentence or other
38 portion of this section is for any reason held or declared by any
39 court of competent jurisdiction to be unconstitutional or preempted
40 by federal law, or the applicability of that portion to any person or
41 facility is held invalid, the remainder of this section shall not
42 thereby be deemed to be unconstitutional, preempted, or invalid.

43
44 2. This act shall take effect on the 90th day after enactment and
45 shall apply to contracts or agreements for ¹the sale or transfer¹
46 changes in control¹ of health care entities entered into on or after
47 the effective date of this act.