

[Second Reprint]

**SENATE, No. 315**

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**STATE OF NEW JERSEY**  
**220th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

**Sponsored by:**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**Senator RICHARD J. CODEY**

**District 27 (Essex and Morris)**

**Assemblyman WAYNE P. DEANGELO**

**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

**Senators Diegnan, Gopal, Stack, Ruiz and Assemblywoman Tucker-**

**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 amended by the Senate on March 24, 2022.



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

1 AN ACT concerning <sup>1</sup>changes in control of<sup>1</sup> health care entities  
 2 <sup>1</sup>**[and collective bargaining]**<sup>1</sup> and supplementing <sup>1</sup>**[chapter 12 of**  
 3 **Title 34 of the Revised Statutes]** P.L.1965, c.173 (C.34:11-4.1 et  
 4 seq.)<sup>1</sup>.

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

8  
 9 1. a. <sup>1</sup>**[As used in this section, "health care entity" means a**  
 10 **health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-**  
 11 **1 et seq.), a staffing registry, or a home care services agency as**  
 12 **defined in section 1 of P.L.1947, c.262 (C.45:11-23)]** Not less than  
 13 30 days before a change in control, a former health care entity  
 14 employer shall: provide the successor health care entity employer,  
 15 and any collective bargaining representative the employees may  
 16 have, a list containing the name, address, date of hire, phone  
 17 number, wage rate, and employment classification of each eligible  
 18 employee employed at the affected health care entity; inform all  
 19 eligible employees of their rights provided by this section; and post,  
 20 in a conspicuous location or locations accessible to all employees, a  
 21 notice setting forth the rights provided by this section<sup>1</sup>.

22 b. <sup>1</sup>**[Any contract or agreement that provides for the sale or**  
 23 **transfer of ownership or]** No change in<sup>1</sup> control of a health care  
 24 entity shall <sup>1</sup>**[provide]** be made without a contract or agreement  
 25 between the former health care entity employer and the successor  
 26 health care entity employer which provides that<sup>1</sup>:

27 (1) <sup>1</sup>**[if employees of the health care entity are covered by an**  
 28 **unexpired collective bargaining agreement, that the provisions of**  
 29 **the collective bargaining agreement shall remain in effect until the**  
 30 **existing expiration date of the agreement or a date six months after**  
 31 **the full effectuation of the sale or transfer, whichever is later; and**

32 (2) that wages and benefits, including health care, paid time off,  
 33 retirement, and education benefits, of all eligible employees of the  
 34 health care entity who are not covered by an unexpired collective  
 35 bargaining agreement shall not be reduced or diminished during the  
 36 transitional period ending six months after the full effectuation of  
 37 the sale or transfer] the successor health care entity employer shall  
 38 offer employment during a transitional period of not less than  
 39 <sup>2</sup>**[six]** <sup>2</sup>four months following the change in control to each eligible  
 40 employee, with no reduction of wages or paid time off, and no  
 41 reduction of the total value of benefits, including health care,  
 42 retirement, and education benefits, provided that:

**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:

<sup>1</sup>Senate SHH committee amendments adopted February 3, 2022.

<sup>2</sup>Senate floor amendments adopted March 24, 2022.

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

3       (b) during the transition period, the successor health care entity  
4 shall offer all available employment positions to eligible employees  
5 who had previously held the positions until the available  
6 employment positions are filled or until no more eligible employees  
7 are available; and

8       (c) if, at the time of the change in control and throughout the  
9 transition period, the total number of employment positions is less  
10 than the total number of eligible employees, the choice of  
11 employees to be employed shall be based on seniority and  
12 experience;

13       (2) an eligible employee retained pursuant to this section shall  
14 not be discharged without cause during the transitional period,  
15 except that a successor employer may lay off eligible employees if  
16 the employer reduces the total number of employees, including at  
17 the time of the change in control, but only if the choice of  
18 employees to be retained is based on seniority and experience, and  
19 the laid off employees are offered any positions they had previously  
20 held that are subsequently restored during the transitional period;

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

25       (4) a successor employer shall retain, and provide to the  
26 employee or representative of the employee upon request, a written  
27 record of each offer of employment and each evaluation made  
28 pursuant to this subsection, for not less than three years from the  
29 date of the offer or evaluation, with each record including the name,  
30 address, date of hire, phone number, wage rate, and employment  
31 classification of the employee<sup>1</sup>.

32       c. All parties to a contract or agreement covered by this  
33 section, and all health care entities <sup>1</sup>**【sold or transferred】** subject to  
34 a change in control<sup>1</sup> pursuant to a contract or agreement covered by  
35 this section, shall comply with all provisions that are required by  
36 this section to be included in the contract or agreement pursuant to  
37 subsection b. of this section, regardless of whether those provisions  
38 are expressly included in the contract or agreement.

39       d. Notwithstanding the foregoing, <sup>1</sup>no<sup>1</sup> action taken pursuant to  
40 and in compliance with a collective bargaining agreement entered  
41 into by an exclusive representative of employees of a health care  
42 entity <sup>1</sup>**【sold or transferred】** subject to a change in control<sup>1</sup> pursuant  
43 to a contract or agreement covered by this section shall <sup>1</sup>**【not】**<sup>1</sup> be  
44 considered a violation of this section. <sup>1</sup>Nothing in this section shall  
45 be construed as limiting, delaying, or preventing, including during  
46 the transitional period: the recognition of a collective bargaining  
47 representative of the employees by a successor health care entity

1 employer; or collective bargaining between the successor health  
2 care entity employer and the collective bargaining representative.<sup>1</sup>

3 e. <sup>1</sup>【An employee who has been affected by a violation of this  
4 section may bring an action in any court of competent jurisdiction  
5 against any party to a contract or agreement covered by this section  
6 and any health care entity sold or transferred pursuant to a contract  
7 or agreement covered by this section for violation of any obligation  
8 imposed by this section. The court shall have authority to order  
9 injunctive relief to prevent or remedy a violation of any obligation  
10 imposed by this section. If the court finds that, by reason of a  
11 violation of any obligation imposed by this section, a plaintiff has  
12 suffered a loss of wages or benefits, the court shall award back pay  
13 for all losses of wages and benefits, the costs of benefits the health  
14 care entity or other defendant would have incurred for benefits lost  
15 by the plaintiff, expenses incurred by the plaintiff as a result of the  
16 lost benefits, and an amount equal to back pay as liquidated  
17 damages.

18 f. The court shall award a plaintiff prevailing in an action  
19 brought pursuant to subsection e. of this section reasonable  
20 attorneys' fees. 】 An employer who violates the provisions of this  
21 section shall be subject to the sanctions, and an employee affected  
22 by the violation shall have the remedies, provided by law for  
23 violations of P.L.1965, c.173 (C.34:11-4.1 et seq.). <sup>2</sup>For the  
24 purposes of determining penalties and remedies imposed pursuant  
25 to section 10 of P.L.1965, c.173 (C.34:11-4.10) for violations of  
26 this section:

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

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

38 (3) in a civil action brought before a court by the employee, the  
39 court shall have authority to order injunctive or other permanent  
40 equitable relief, including, but not limited to, immediate  
41 reinstatement of any employee discharged or not retained in  
42 violation of this section.<sup>2</sup>

43 f. As used in this section:

44 “Change in control” means: any sale, assignment, transfer,  
45 contribution or other disposition of all or substantially all of the  
46 assets used in a health care entity’s operations; or any sale,  
47 assignment, transfer, contribution or other disposition of a

1 controlling interest in the health care entity, including by  
2 consolidation, merger, or reorganization, of the health care entity or  
3 any person who controls the health care entity; or any event or  
4 sequence of events, including a purchase, sale, or termination of a  
5 management contract or lease, that causes the identity of the health  
6 care entity employer to change, but shall not include a change in  
7 control in which both the former health care entity employer and the  
8 successor health care employer are government entities. A change  
9 in control shall be defined to occur on the date of execution of the  
10 document effectuating the change.

11 “Eligible employee” means: any person employed at an affected  
12 health care entity during the 90-day period immediately preceding a  
13 change in control of a health care entity; or any person formerly  
14 employed at the health care entity who retains recall rights under an  
15 agreement with the former health care entity employer, except that  
16 an “eligible employee” shall not include any managerial employee,  
17 and shall not include any person who was discharged with cause by  
18 the former health care entity or successor health care entity during  
19 that 90-day period.

20 “Former health care entity employer” means any employer of  
21 eligible employees who owns, controls, or operates a health care  
22 entity where the eligible employees are employed prior to a change  
23 in control of the entity.

24 “Government entity” means the State of New Jersey, any of its  
25 political subdivisions, any authority created by the Legislature of  
26 the State of New Jersey, and any instrumentality or agency of the  
27 State of New Jersey or of any of its political subdivisions.

28 “Health care entity” means a health care facility licensed  
29 pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a staffing registry,  
30 or a home care services agency as defined in section 1 of P.L.1947,  
31 c.262 (C.45:11-23). If a health care entity is part of a larger facility  
32 which includes facilities which are not licensed pursuant to  
33 P.L.1971, c.136 (C.26:2H-1 et seq.), the portion of the facility  
34 which is not licensed shall not be regarded as a “health care entity”  
35 for the purposes of this section.

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

40 “Successor health care entity employer” means any employer of  
41 eligible employees who owns, controls, or operates a health care  
42 entity where the eligible employees are employed after a change in  
43 control of the entity.

44 g. The provisions of this section shall be deemed to be  
45 severable and if any subsection, paragraph, sentence or other  
46 portion of this section is for any reason held or declared by any  
47 court of competent jurisdiction to be unconstitutional or preempted  
48 by federal law, or the applicability of that portion to any person or

1 facility is held invalid, the remainder of this section shall not  
2 thereby be deemed to be unconstitutional, preempted, or invalid.<sup>1</sup>

3

4 2. This act shall take effect <sup>1</sup>**【immediately】** on the 90th day  
5 after enactment<sup>1</sup> and shall apply to contracts or agreements for  
6 <sup>1</sup>**【the sale or transfer】** changes in control<sup>1</sup> of health care entities  
7 entered into on or after the effective date of this act.