SENATE, No. 2644

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED MAY 16, 2022

Sponsored by:
Senator EDWARD DURR
District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Limits effects of law on changes in control of hotels and disruptions of hotel services to hotels with more than 350 rooms.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning changes in control of hotels and disruptions of hotel services and amending P.L.2021, c.496.

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

1. Section 1 of P.L.2021, c.496 (C.29:4-13) is amended to read as follows:

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

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

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

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

(5) A successor hotel employer shall retain written verification of 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 <u>thus</u> is new matter.

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

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

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

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

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

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

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

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

c. This section shall not apply to:

(1) any successor hotel employer who, on or before the change of control or change in controlling interest or identity, agrees to assume, or to be bound by, the collective bargaining agreement of the former hotel employer until the end of the term of the agreement

or the end of hotel service employee retention period, whichever is later, provided that the collective bargaining agreement includes terms and conditions for the discharge or laying off of employees;

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

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

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

e. For the purposes of this section:

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

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

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

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

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

"Hotel" means a hotel, apartment hotel, motel, inn, tourist camp, tourist cabin, tourist home, club, or similar establishment where

sleeping accommodations are supplied for pay to transient or permanent guests, that has more than 350 rooms.

"Hotel employer" means any person who owns, controls or operates a hotel, and includes any person or contractor who, in a managerial, supervisory or confidential capacity, employs one or more hotel service employees.

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

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

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

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

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

(cf: P.L.2021, c.496, s.1)

2. Section 2 of P. L.2021, c.496 (C.29:4-14) is amended to read as follows:

2. a. Within 24 hours of the occurrence of a service disruption, a hotel operator shall provide, in all modifiable mediums in which the hotel advertises, solicits customers, or through which customers can book or reserve rooms or services, notification of the service disruption to each third-party vendor and each guest who is seeking, or has entered into, a reservation, booking, or agreement with the

hotel operator or a third-party vendor for the use or occupancy of a room. The notification shall also be provided immediately before accepting or entering into any new reservation, booking, or agreement for the use or occupancy of a room or hotel service. The notification shall also be provided to any current guest. If the circumstances of the service disruption make timely notification impracticable, the notification shall be made as soon as practicable.

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

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

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

e. A hotel operator that violates or causes another person to violate a provision of this section or any rule promulgated pursuant to the section, shall be subject to a civil penalty collectible by the Division of Consumer Affairs in the Department of Law and Public Safety, as follows:

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

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

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

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

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

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

g. For the purposes of this section:

"Hotel" means a hotel, apartment hotel, motel, inn, tourist camp, tourist cabin, tourist home, club, or similar establishment where sleeping accommodations are supplied for pay to transient or permanent guests<u>, that has more than 350 rooms</u>.

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

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

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

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

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

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

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

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

(5) the unavailability of any advertised or legally required accessibility feature, including, but not limited to, an elevator,

wheelchair lift, ramp, or accessible bathroom in the room or in any common area of the hotel;

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

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

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

(cf: P.L.2021, c.496, s.2)

3. This act shall take effect immediately.

STATEMENT

This bill limits the effects of the law on changes in control of hotels and disruptions of hotel services to hotels with more than 350 rooms.

Current law requires, in the case of a change in control, controlling interest, or identity of a hotel, the successor hotel employer to offer employment to each eligible hotel service employee, with no reduction of wages or benefits, for a retention period of not less than 90 days.

Current law also requires also requires a hotel operator to provide notification to third-party vendors and guests of any services disruption within 24 hours of becoming aware of the disruption, and, in the case of a substantial disruption, to provide guests the right to cancel any agreement for occupancy without penalty.

The bill maintains these requirements, but limits the scope of the requirements to hotels with more than 350 rooms.