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ASSEMBLY, No. 6015

STATE OF NEW JERSEY
219th LEGISLATURE

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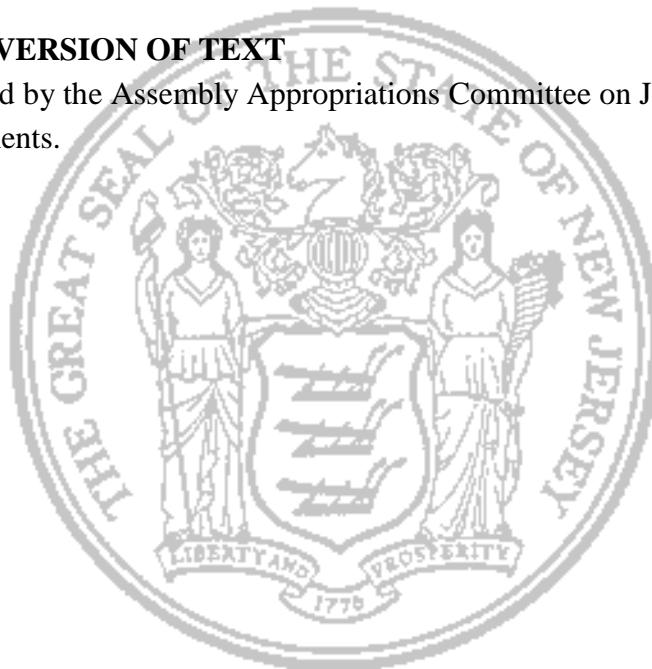
Assemblymen Zwicker and Holley

SYNOPSIS

Concerns employment security during changes in control of health care entities.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on January 6, 2022, with amendments.



(Sponsorship Updated As Of: 12/9/2021)

1 AN ACT concerning ¹changes in control of¹ health care entities
 2 ¹**[and collective bargaining]**¹ and supplementing ¹**[chapter 12 of**
 3 **Title 34 of the Revised Statutes]** P.L.1966, c.113 (C.34:11-56a et
 4 seq.)¹.

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

8
 9 1. a. ¹**[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-1**
 11 **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.¹

22 b. Any contract or agreement that provides for ¹**[the sale or**
 23 **transfer of ownership or]** a change in¹ control of a health care entity
 24 shall provide ¹that¹:

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

30 (2) that wages and benefits, including health care, paid time off,
 31 retirement, and education benefits, of all eligible employees of the
 32 health care entity who are not covered by an unexpired collective
 33 bargaining agreement shall not be reduced or diminished during the
 34 transitional period ending six months after the full effectuation of
 35 the sale or transfer.] the successor health care entity employer shall,
 36 during a transitional period of not less than six months following
 37 the change in control, offer each eligible employee employment
 38 during the transitional period with no reduction of wages and with
 39 no reduction of the total value of benefits, including health care,
 40 paid time off, retirement, and education benefits, with the offer
 41 being made in writing and remaining open for at least 10 business
 42 days from the date of the offer;

43 (2) an eligible employee retained pursuant to this section shall
 44 not be discharged without cause during the transitional period,
 45 except that a successor employer may lay off eligible employees if

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 AAP committee amendments adopted January 6, 2022.

1 the employer finds that fewer employees are needed, but only if the
2 choice of employees to be retained is based on seniority and
3 experience, and laid off employees are offered any positions that are
4 subsequently restored;

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

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

16 c. All parties to a contract or agreement covered by this
17 section, and all health care entities ¹**["sold or transferred"]** subject to
18 a change in control¹ pursuant to a contract or agreement covered by
19 this section, shall comply with all provisions that are required by
20 this section to be included in the contract or agreement pursuant to
21 subsection b. of this section, regardless of whether those provisions
22 are expressly included in the contract or agreement.

23 d. Notwithstanding the foregoing, ¹no¹ action taken pursuant to
24 and in compliance with a collective bargaining agreement entered
25 into by an exclusive representative of employees of a health care
26 entity ¹**["sold or transferred"]** subject to a change in control¹ pursuant
27 to a contract or agreement covered by this section shall ¹**["not"]**¹ be
28 considered a violation of this section. ¹Nothing in this section shall
29 be construed as limiting, delaying, or preventing, including during
30 the transitional period: the recognition of a collective bargaining
31 representative of the employees by a successor health care entity
32 employer; or collective bargaining between the successor health
33 care entity employer and the collective bargaining representative.¹

34 e. An ¹eligible¹ employee who has been affected by a violation
35 of this section may bring an action in any court of competent
36 jurisdiction against any party to a contract or agreement covered by
37 this section and any health care entity ¹**["sold or transferred"]** subject
38 to a change in control¹ pursuant to a contract or agreement covered
39 by this section for violation of any obligation imposed by this
40 section. The court shall have authority to order injunctive relief to
41 prevent or remedy a violation of any obligation imposed by this
42 section¹, including, if an eligible employee is discharged in
43 violation of the provisions of this section, the ordering that the
44 employee be reinstated¹. If the court finds that, by reason of a
45 violation of any obligation imposed by this section, a plaintiff has
46 suffered a loss of wages or benefits, the court shall award back pay
47 for all losses of wages and benefits, the costs of benefits the health

1 care entity or other defendant would have incurred for benefits lost
2 by the plaintiff, expenses incurred by the plaintiff as a result of the
3 lost benefits, and an amount equal to back pay as liquidated
4 damages.

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

8 ¹g. As used in this section:

9 "Change in control" means: any sale, assignment, transfer,
10 contribution or other disposition of all or substantially all of the
11 assets used in a health care entity's operations; or any sale,
12 assignment, transfer, contribution or other disposition of a
13 controlling interest in the health care entity, including by
14 consolidation, merger, or reorganization, of the health care entity or
15 any person who controls the health care entity; or any other event or
16 sequence of events, including a purchase, sale, or termination of a
17 management contract or lease, that causes the identity of the health
18 care entity employer to change, but shall not include a change in
19 control in which both the former health care entity employer and the
20 successor health care employer are government entities. A change
21 in control shall be defined to occur on the date of execution of the
22 document effectuating the change.

23 "Eligible employee" means: any person employed at an affected
24 health care entity during the 90-day period immediately preceding a
25 change in control of a health care entity; or any person formerly
26 employed at the health care entity who retains recall rights under an
27 agreement with the former health care entity employer, except that
28 an "eligible employee" shall not include a managerial employee.

29 "Former health care entity employer" means any health care
30 entity employer who owns, controls, or operates a health care entity
31 prior to a change in control of the entity.

32 "Government entity" means the State of New Jersey, any of its
33 political subdivisions, any authority created by the Legislature of
34 the State of New Jersey and any instrumentality or agency of the
35 State of New Jersey or of any of its political subdivisions.

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

40 "Health care entity employer" means any person who owns,
41 controls or operates a health care entity that has one or more
42 eligible employees.

43 "Managerial employee" means an employee who is exempt from
44 the overtime requirements of the New Jersey State Wage and Hour
45 Law, P.L.1966, c.113 (C.34:11-56a et seq.), because the employee
46 is an executive employee.

1 "Successor health care entity employer" or "successor employer"
2 means a health care entity employer who owns, controls or operates
3 a health care entity after a change in control of the entity.

4 h. The provisions of this section shall be deemed to be
5 severable and if any subsection, paragraph, sentence or other
6 portion of this section is for any reason held or declared by any
7 court of competent jurisdiction to be unconstitutional or preempted
8 by federal law, or the applicability of that portion to any person or
9 facility is held invalid, the remainder of this section shall not
10 thereby be deemed to be unconstitutional, preempted, or invalid.¹

11
12 2. This act shall take effect ¹**[immediately]** on the 90th day
13 after enactment¹ and shall apply to contracts or agreements for the
14 sale or transfer of health care entities entered into on or after the
15 effective date of this act.