

SENATE, No. 4295

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED DECEMBER 20, 2021

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 introduced.



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

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. a. (1) Not less than 30 days before a change in control or
8 change in controlling interest or identity, a former hotel employer
9 shall provide the successor hotel employer with a full and accurate
10 list containing the name, address, date of hire, phone number, wage
11 rate, and employment classification of each hotel service employee
12 employed at an affected hotel. At the same time that the former hotel
13 employer provides the list, the former hotel employer shall post the
14 list in a notice to the hotel service employees that also sets forth the
15 rights provided by this section, in the same location and manner that
16 other statutorily required notices to the employees are posted at the
17 affected hotel; provided that if the hotel is not open to the public, the
18 notice shall be transmitted in the same manner as any offer of
19 employment made pursuant to paragraph (2) of this subsection a. The
20 notice shall also be provided to the employees' collective bargaining
21 representative, if any.

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

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

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

44 (5) A successor hotel employer shall retain written verification of
45 each offer of employment made pursuant to paragraph (2) of this
46 subsection. The verification shall include the name, address, date of
47 hire, phone number, wage rate, and employment classification of the
48 eligible hotel service employee to whom the offer was made. A

1 successor hotel employer shall retain the verification for no less than
2 three years from the date the offer is made.

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

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

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

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

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

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

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

41 c. This section shall not apply to:

42 (1) any successor hotel employer who, on or before the change of
43 control or change in controlling interest or identity, agrees to assume,
44 or to be bound by, the collective bargaining agreement of the former
45 hotel employer until the end of the term of the agreement or the end
46 of hotel service employee retention period, whichever is later,
47 provided that the collective bargaining agreement includes terms and
48 conditions for the discharge or laying off of employees;

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

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

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

19 e. For the purposes of this section:

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

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

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

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

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

44 "Hotel" means a hotel, apartment hotel, motel, inn, tourist camp,
45 tourist cabin, tourist home, rooming or boarding house, club, or
46 similar establishment where sleeping accommodations are supplied
47 for 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
4 more 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,
15 if any, or under any comparable arrangement established by the
16 former hotel employer, on the date of the change in control or change
17 in controlling interest or identity of the hotel, except that “hotel
18 service employee” shall not include persons who are managerial,
19 supervisory or confidential employees or who otherwise exercise
20 control over the 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
26 period shall begin on the first day that the hotel is open to the public
27 after the change.

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

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

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

1 circumstances of the service disruption make timely notification
2 impracticable, the notification 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
5 reservations, bookings, or agreements to use or occupy the room or
6 hotel services; and the right of a guest to cancel or terminate the
7 reservation, booking, or agreement for the use or occupancy of the
8 room or hotel services, with a refund if applicable and without the
9 imposition of any fee, penalty, or other charge, as provided in
10 subsections c. and d. of this section. If the notification is included in
11 a communication containing other information, the notification shall
12 be in a significantly larger font and different color than the remainder
13 of the communication.

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

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

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

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

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

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

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

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

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

9 g. For the purposes of this section:

10 “Hotel” means a hotel, apartment hotel, motel, inn, tourist camp,
11 tourist cabin, tourist home, rooming or boarding house, club, or
12 similar establishment where sleeping accommodations are supplied
13 for pay to transient or permanent guests.

14 “Hotel operator” means any person, including a contractor, who
15 owns, controls or operates a hotel.

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

20 “Room” means a room available or let out for use or occupancy in
21 a hotel.

22 “Service disruption” means any of the following conditions where
23 the condition substantially affects or is likely to substantially affect
24 any guest's use of a room or utilization of a hotel service:

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

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

1 (7) any strike, lockout or picketing activity, or other
2 demonstration 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
6 the use or occupancy of one or more rooms in a hotel in furtherance
7 of the business of reselling the rooms to guests.

8
9 3. The provisions of this act shall be deemed to be severable and
10 if any section, subsection, paragraph, sentence or other portion of this
11 act is for any reason held or declared by any court of competent
12 jurisdiction to be unconstitutional or preempted by federal law, or the
13 applicability of that portion to any person or facility is held invalid,
14 the remainder of this act shall not thereby be deemed to be
15 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.

20
21
22 STATEMENT
23

24 This bill, in the case of a change in control, controlling interest, or
25 identity of a hotel, requires the successor hotel employer to offer
26 employment to each eligible hotel service employee, with no
27 reduction of wages or benefits, for a retention period of not less than
28 90 days. The former hotel employer is required to provide the
29 successor hotel employer with a full list of the identities, wage rates,
30 and classifications of the hotel's service employees, and notify the
31 employees of their rights under the bill.

32 The successor employer is not allowed to discharge the employees
33 during the retention period, except for a reduction in force in which
34 the employer retains employees on the basis of seniority and
35 experience, and offers to rehire the laid off employees if the positions
36 are subsequently restored. The employer is required, at the end of
37 the retention period, to make a performance evaluation of each
38 retained employee, and offer continued employment if the
39 employee's performance is satisfactory.

40 The provisions of the bill regarding retention of employees do not
41 apply if there is a collective bargaining agreement that includes terms
42 and conditions for the discharge or laying off of employees.

43 The bill also requires a hotel operator to provide notification to
44 third-party vendors and guests of any services disruption within 24
45 hours of becoming aware of the disruption, and provide guests the
46 right to cancel any agreement for occupancy without penalty.