

[First Reprint]

SENATE, No. 315

STATE OF NEW JERSEY

220th LEGISLATURE

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)

Co-Sponsored by:

Senators Diegnan, Gopal, Stack and Ruiz

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 Senate Health, Human Services and Senior Citizens Committee on February 3, 2022, with amendments.



(Sponsorship Updated As Of: 2/10/2022)

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.1965, c.173 (C.34:11-4.1 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 section¹ .

22 b. ¹[Any contract or agreement that provides for the sale or
 23 transfer of ownership or] No change in¹ control of a health care
 24 entity shall ¹[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 providers that¹:

27 (1) ¹[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 six
 39 months following the change in control to each eligible employee,
 40 with no reduction of wages or paid time off, and no reduction of the
 41 total value of benefits, including health care, retirement, and
 42 education benefits, provided that:

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

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:

¹Senate SHH committee amendments adopted February 3, 2022.

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

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

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

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

23 **(4) a successor employer shall retain, and provide to the**
24 **employee or representative of the employee upon request, a written**
25 **record of each offer of employment and each evaluation made**
26 **pursuant to this subsection, for not less than three years from the**
27 **date of the offer or evaluation, with each record including the name,**
28 **address, date of hire, phone number, wage rate, and employment**
29 **classification of the employee¹.**

30 c. All parties to a contract or agreement covered by this
31 section, and all health care entities **¹["sold or transferred"] subject to**
32 **a change in control¹** pursuant to a contract or agreement covered by
33 this section, shall comply with all provisions that are required by
34 this section to be included in the contract or agreement pursuant to
35 subsection b. of this section, regardless of whether those provisions
36 are expressly included in the contract or agreement.

37 d. Notwithstanding the foregoing, **¹no¹** action taken pursuant to
38 and in compliance with a collective bargaining agreement entered
39 into by an exclusive representative of employees of a health care
40 entity **¹["sold or transferred"] subject to a change in control¹** pursuant
41 to a contract or agreement covered by this section shall **¹["not"]¹** be
42 considered a violation of this section. **¹Nothing in this section shall**
43 **be construed as limiting, delaying, or preventing, including during**
44 **the transitional period: the recognition of a collective bargaining**
45 **representative of the employees by a successor health care entity**
46 **employer; or collective bargaining between the successor health**
47 **care entity employer and the collective bargaining representative.¹**

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

16 f. The court shall award a plaintiff prevailing in an action
17 brought pursuant to subsection e. of this section reasonable
18 attorneys' fees. An employer who violates the provisions of this
19 section shall be subject to the sanctions, and an employee affected
20 by the violation shall have the remedies, provided by law for
21 violations of P.L.1965, c.173 (C.34:11-4.1 et seq.).

22 f. As used in this section:

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 a health care entity's operations; or any sale,
26 assignment, transfer, contribution or other disposition of a
27 controlling interest in the health care entity, including by
28 consolidation, merger, or reorganization, of the health care entity or
29 any person who controls the health care entity; or any event or
30 sequence of events, including a purchase, sale, or termination of a
31 management contract or lease, that causes the identity of the health
32 care entity employer to change, but shall not include a change in
33 control in which both the former health care entity employer and the
34 successor health care employer are government entities. A change
35 in control shall be defined to occur on the date of execution of the
36 document effectuating the change.

37 "Eligible employee" means: any person employed at an affected
38 health care entity during the 90-day period immediately preceding a
39 change in control of a health care entity; or any person formerly
40 employed at the health care entity who retains recall rights under an
41 agreement with the former health care entity employer, except that
42 an "eligible employee" shall not include any managerial employee,
43 and shall not include any person who was discharged with cause by
44 the former health care entity or successor health care entity during
45 that 90-day period.

46 "Former health care entity employer" means any employer of
47 eligible employees who owns, controls, or operates a health care

1 entity where the eligible employees are employed prior to a change
2 in control of the entity.

3 “Government entity” means the State of New Jersey, any of its
4 political subdivisions, any authority created by the Legislature of
5 the State of New Jersey, and any instrumentality or agency of the
6 State of New Jersey or of any of its political subdivisions.

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

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

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

23 g. The provisions of this section shall be deemed to be
24 severable and if any subsection, paragraph, sentence or other
25 portion of this section is for any reason held or declared by any
26 court of competent jurisdiction to be unconstitutional or preempted
27 by federal law, or the applicability of that portion to any person or
28 facility is held invalid, the remainder of this section shall not
29 thereby be deemed to be unconstitutional, preempted, or invalid.¹
30

31 2. This act shall take effect ¹**immediately** on the 90th day
32 after enactment¹ and shall apply to contracts or agreements for
33 ¹**the sale or transfer** changes in control¹ of health care entities
34 entered into on or after the effective date of this act.