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STATE OF NEW JERSEY

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Sponsored by:

Assemblyman ROBERT J. KARABINCHAK

District 18 (Middlesex)

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



(Sponsorship Updated As Of: 1/10/2022)

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

4

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

7

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

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

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

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

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 (5) A successor hotel employer shall retain written verification
2 of each offer of employment made pursuant to paragraph (2) of this
3 subsection. The verification shall include the name, address, date
4 of hire, phone number, wage rate, and employment classification of
5 the eligible hotel service employee to whom the offer was made. A
6 successor hotel employer shall retain the verification for no less
7 than three years from the date the offer is made.

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

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

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

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

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

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

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

46 c. This section shall not apply to:

47 (1) any successor hotel employer who, on or before the change
48 of control or change in controlling interest or identity, agrees to

1 assume, or to be bound by, the collective bargaining agreement of
2 the former hotel employer until the end of the term of the agreement
3 or the end of hotel service employee retention period, whichever is
4 later, provided that the collective bargaining agreement includes
5 terms and conditions for the discharge or laying off of employees;

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

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

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

24 e. For the purposes of this section:

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

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

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

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

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

1 “Hotel” means a hotel, apartment hotel, motel, inn, tourist camp,
2 tourist cabin, tourist home, ¹【rooming or boarding house,】¹ club, or
3 similar establishment where sleeping accommodations are supplied
4 for pay to transient or permanent guests.

5 “Hotel employer” means any person who owns, controls or
6 operates a hotel, and includes any person or contractor who, in a
7 managerial, supervisory or confidential capacity, employs one or
8 more hotel service employees.

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

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

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

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

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

41
42 2. a. Within 24 hours of the occurrence of a service disruption,
43 a hotel operator shall provide, in all modifiable mediums in which
44 the hotel advertises, solicits customers, or through which customers
45 can book or reserve rooms or services, notification of the service
46 disruption to each third-party vendor and each guest who is seeking,
47 or has entered into, a reservation, booking, or agreement with the
48 hotel operator or a third-party vendor for the use or occupancy of a

1 room. The notification shall also be provided immediately before
2 accepting or entering into any new reservation, booking, or
3 agreement for the use or occupancy of a room or hotel service. The
4 notification shall also be provided to any current guest. If the
5 circumstances of the service disruption make timely notification
6 impracticable, the notification shall be made as soon as practicable.

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

18 c. A hotel operator shall not impose any fee, penalty, or other
19 charge, nor retain any deposit, in the event a guest, prior to
20 checking in, cancels a reservation, booking, or agreement with the
21 hotel operator for the use or occupancy of a room, if the guest's stay
22 or room is, or could be, 'substantially'¹ affected by a service
23 disruption during the guest's stay or use of a hotel service.

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

36 e. A hotel operator that violates or causes another person to
37 violate a provision of this section or any rule promulgated pursuant
38 to the section, shall be subject to a civil penalty collectible by the
39 ¹**【Department of Community】** Division of Consumer¹ Affairs ¹**【in a**
40 summary proceeding pursuant to the "Penalty Enforcement Law of
41 1999," P.L.1999, c.274 (C.2A:58-10 et seq.)**】** in the Department of
42 Law and Public Safety¹, as follows:

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

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

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

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

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

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

15 g. For the purposes of this section:

16 "Hotel" means a hotel, apartment hotel, motel, inn, tourist camp,
17 tourist cabin, tourist home, ¹["rooming or boarding house,"]¹ club, or
18 similar establishment where sleeping accommodations are supplied
19 for pay to transient or permanent guests.

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

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

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

28 "Service disruption" means any of the following conditions
29 where the condition substantially affects or is likely to substantially
30 affect any guest's use of a room or utilization of a hotel service¹;
31 provided that conditions described in paragraphs (2), (6) and (7) of
32 this definition shall be presumed to substantially affect a guest's use
33 of a room or utilization of a hotel service¹:

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

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

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

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

4 (5) the unavailability of any advertised or legally required
5 accessibility feature, including, but not limited to, an elevator,
6 wheelchair lift, ramp, or accessible bathroom in the room or in any
7 common area of the hotel;

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

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

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

19
20 3. The provisions of this act shall be deemed to be severable
21 and if any section, subsection, paragraph, sentence or other portion
22 of this act is for any reason held or declared by any court of
23 competent jurisdiction to be unconstitutional or preempted by
24 federal law, or the applicability of that portion to any person or
25 facility is held invalid, the remainder of this act shall not thereby be
26 deemed to be unconstitutional, preempted or invalid.

27
28 4. This act shall take effect immediately and shall apply to any
29 change in control or change in controlling interest or identity of a
30 hotel occurring after the effective date.