

ASSEMBLY BILL NO. 355—ASSEMBLYWOMAN MARTINEZ

MARCH 19, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Establishing provisions governing the retention of certain workers. (BDR 52-967)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to employment; requiring certain grocery employers to hire and retain certain grocery workers for a certain period of time upon a change in control of such grocery stores; requiring certain grocery stores to post public notice of a change in control of the grocery store; providing that certain grocery employees have a cause of action for recovery if certain grocery employers violate the provisions of this act; providing that certain groups are exempt from the provisions of this act in certain situations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 10 of this bill requires, upon a change in control of a grocery store, that the incumbent grocery employer prepare a list of eligible grocery workers. **Section 10** further requires the successor grocery employer to hire eligible grocery workers from this list during a 90-day transition period. **Section 11** of this bill requires the successor grocery employer to retain those eligible grocery workers for a 90-day period, during which time an employee may only be discharged for cause. **Section 11** further requires, upon the close of this 90-day period, the successor grocery employer to consider offering continued employment to the eligible grocery workers retained for the 90-day period.

Section 12 of this bill requires an incumbent grocery employer to post public notice of the change in control at the location of the affected grocery store within 5 business days after the execution of the transfer document for the change in control. **Section 12** requires such a notice to satisfy certain requirements.

Section 13 of this bill provides that an eligible grocery worker shall have a cause of action for recovery against an incumbent or successor grocery employer for a violation of this bill. **Section 13** further specifies the award an eligible grocery worker may recover under such a cause of action.



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Section 14 of this bill provides that the provisions of this bill may be superseded by a collective bargaining agreement. **Section 15** of this bill exempts a grocery store located in a food desert from the provisions of this bill.

Section 16 of this bill clarifies that the provisions of this bill do not limit the right of an eligible grocery worker to bring legal action for wrongful termination.

Section 17 of this bill provides that the provisions of this bill do not preempt any ordinance adopted or implemented by any local government that provides equal or greater protection to eligible grocery workers.

WHEREAS, Supermarkets and other grocery retailers are the primary points of distribution for food and other daily necessities for the residents of Nevada and are therefore essential to the vitality of every Nevada community; and

WHEREAS, This State has a compelling interest in ensuring the welfare of the residents of its communities through the maintenance of health and safety standards in grocery stores; and

WHEREAS, Experienced grocery retail workers with knowledge of proper sanitation procedures, health regulations and laws, and an experience-based understanding of the clientele and communities in which the grocery store is located are essential in furthering this interest and the State's investments in health and safety; and

WHEREAS, A transitional retention period for grocery retail workers upon change of ownership, control or operation of grocery stores ensures stability throughout this State for these vital workers, which, in turn, results in the preservation of health and safety standards; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 597 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this act.

Sec. 2. *As used in sections 2 to 17, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. 1. *"Change in control" means any sale, assignment, transfer, contribution or other disposition of all or substantially all of the assets or a controlling interest of:*

(a) The incumbent grocery employer;

(b) Any person who controls the incumbent grocery employer;

or

(c) Any grocery store under the operation or control of:

(1) The incumbent grocery employer; or



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(2) Any person who controls the incumbent grocery employer.

2. The term includes, without limitation, any sale, assignment, transfer, contribution or other disposition of all or substantially all of the assets or a controlling interest by consolidation, merger or reorganization.

Sec. 4. 1. "Eligible grocery worker" means any natural person:

(a) Whose primary place of employment is at the grocery store subject to a change in control; and

(b) Who has worked for the incumbent grocery employer for at least 6 months before the execution of the transfer document.

2. The term does not include a managerial, supervisory or confidential employee.

Sec. 5. "Employment commencement date" means the date on which an eligible grocery worker retained by the successor grocery employer pursuant to sections 2 to 17, inclusive, of this act commences work for the successor grocery employer in exchange for benefits and compensation under the terms and conditions established by the successor grocery employer and as required by law.

Sec. 6. "Grocery store" means a retail store in this State that:

1. Is more than 15,000 square feet in size; and
2. Sells primarily household foodstuffs for off-site consumption, including, without limitation, the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods or prepared foods. Other household supplies or other products are secondary to the primary purpose of selling foodstuffs for off-site consumption.

Sec. 7. "Incumbent grocery employer" means the person that owns, controls or operates a grocery store before a change in control of the grocery store.

Sec. 8. "Successor grocery employer" means the person that owns, controls or operates a grocery store after the change in control of the grocery store.

Sec. 9. "Transfer document" means the purchase agreement or other document effecting the change in control of a grocery store.

Sec. 10. 1. An incumbent grocery employer shall, within 15 days after the execution of a transfer document, provide to the successor grocery employer the name, address, date of hire and employment occupation classification of each eligible grocery worker.

2. The successor grocery employer shall:



(a) Maintain a preferential hiring list of eligible grocery workers identified by the incumbent grocery employer pursuant to subsection 1; and

(b) Hire from that list for a period beginning upon the execution of the transfer document and continuing for 90 days after the grocery store is fully operational and open to the public under the successor grocery employer.

3. If the successor grocery employer extends an offer of employment to an eligible grocery worker pursuant to sections 2 to 17, inclusive, of this act, the successor grocery employer shall retain written verification of that offer for at least 3 years after the date of the offer. The verification must include the name, address, date of hire and employment occupation classification of each eligible grocery worker to whom an offer of employment was extended.

Sec. 11. 1. A successor grocery employer shall retain each eligible grocery worker hired pursuant to sections 2 to 17, inclusive, of this act for at least 90 days after the employment commencement date of the eligible grocery worker. During this 90-day transition employment period, eligible grocery workers must be employed:

(a) Under the terms and conditions established by the successor grocery employer; and

(b) Pursuant to the terms of a relevant collective bargaining agreement, if any.

2. If, within the period established in paragraph (b) of subsection 2 of section 10 of this act, the successor grocery employer determines that it requires fewer eligible grocery workers than were required by the incumbent grocery employer, the successor grocery employer shall retain eligible grocery workers by seniority within each job classification to the extent that comparable job classifications exist or pursuant to the terms of a relevant collective bargaining agreement, if any. The successor grocery employer shall retain nonclassified eligible grocery workers:

(a) By seniority and according to experience; or

(b) Pursuant to the terms of a relevant collective bargaining agreement, if any.

3. During the 90-day transition employment period established pursuant to subsection 1, the successor grocery employer shall not discharge without cause an eligible grocery worker retained pursuant to sections 2 to 17, inclusive, of this act.

4. At the end of the 90-day transition employment period established pursuant to subsection 1, the successor grocery employer shall make a written performance evaluation for each



1 *eligible grocery worker retained pursuant to sections 2 to 17,*
2 *inclusive, of this act. If the performance of the eligible grocery*
3 *worker during the 90-day transition employment period is*
4 *satisfactory, the successor grocery employer shall consider*
5 *offering the eligible grocery worker continued employment under*
6 *the terms and conditions established by the successor grocery*
7 *employer and as required by law. The successor grocery employer*
8 *shall retain a record of the written performance evaluation for at*
9 *least 3 years.*

10 **Sec. 12.** 1. *The incumbent grocery employer shall post*
11 *public notice of the change in control at the location of the*
12 *affected grocery store within 5 business days after the execution of*
13 *the transfer document. Notice must remain posted during any*
14 *closure of the grocery store and until the grocery store is fully*
15 *operational and open to the public under the control of the*
16 *successor grocery employer.*

17 2. *The notice required pursuant to subsection 1 must include,*
18 *without limitation:*

19 (a) *The name and contact information of the incumbent*
20 *grocery employer;*

21 (b) *The name and contact information of the successor*
22 *grocery employer; and*

23 (c) *The effective date of the change in control.*

24 3. *The incumbent grocery employer shall post the notice*
25 *required pursuant to subsection 1 in a conspicuous place at the*
26 *grocery store in a manner to be readily viewed by:*

27 (a) *Eligible grocery workers and other employees;*

28 (b) *Customers; and*

29 (c) *Members of the public.*

30 **Sec. 13.** 1. *An eligible grocery worker shall have a cause of*
31 *action for recovery against the incumbent grocery employer or the*
32 *successor grocery employer for a violation of any provision of*
33 *sections 2 to 17, inclusive, of this act and may recover any of the*
34 *following:*

35 (a) *Hiring and reinstatement rights pursuant to sections 2 to*
36 *17, inclusive, of this act. The 90-day transition employment period*
37 *established pursuant to section 11 of this act must not commence*
38 *until the employment commencement date of the eligible grocery*
39 *worker.*

40 (b) *Front pay or back pay for each day during which the*
41 *violation continues. Such front pay or back pay must be calculated*
42 *at a rate of compensation not less than the higher of:*

43 (1) *The average regular rate of pay that the eligible grocery*
44 *worker received during the last 3 years of the eligible grocery*



worker's employment in the same employment occupation classification; or

(2) The most recent regular rate of pay received by the eligible grocery worker while employed by either the incumbent grocery employer or the successor grocery employer.

(c) The value of the benefits the eligible grocery worker would have received under the benefit plan of the successor grocery employer.

2. If an eligible grocery worker brings an action pursuant to this section and is the prevailing party, the court shall award costs and reasonable attorney's fees in favor of the eligible grocery worker.

Sec. 14. Parties that are subject to sections 2 to 17, inclusive, of this act may, by a collective bargaining agreement, provide that the agreement supersedes the requirements of sections 2 to 17, inclusive, of this act.

Sec. 15. Sections 2 to 17, inclusive, of this act do not apply to any grocery store that is located in or will be located in a geographic area designated by the United States Department of Agriculture as a food desert, based on the original food desert measure contained in the Food Access Research Atlas, provided that the following apply:

1. More than 6 years have elapsed since the most recent grocery store was located in the area designated as a food desert; and

2. The grocery store stocks and, during normal business hours, sells fresh fruit and vegetables in amounts and of a quality that is comparable to what the grocery store sells in its three geographically closest grocery stores which are located outside of the food desert.

Sec. 16. Sections 2 to 17, inclusive, of this act shall not be construed to limit the right of an eligible grocery worker to bring legal action for wrongful termination.

Sec. 17. Sections 2 to 17, inclusive, of this act do not preempt any ordinance adopted or implemented by any local government that provides equal or greater protection to eligible grocery workers.

Sec. 18. 1. The provisions of this act apply only to agreements effectuated by a transfer document executed on or after July 1, 2019.

2. As used in this section, "transfer document" has the meaning ascribed to it in section 9 of this act.

Sec. 19. This act becomes effective on July 1, 2019.

