ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3684

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 27, 2022

The Assembly Budget Committee reports favorably and with committee amendments Assembly Bill No. 3684.

As amended by the committee, this bill requires that, not less than 30 days before a change in control, a former health care entity employer will be required to provide the successor health care entity employer, and any collective bargaining representative the employees may have, a list containing the name, address, date of hire, phone number, wage rate, and employment classification of each eligible employee employed at the affected health care entity, as well as to inform all eligible employees of their rights established under the bill and post, in a conspicuous location or locations accessible to all employees, a notice setting forth those rights.

Under the bill as amended, no change in control of a health care entity will be made without a contract or agreement between the former health care entity employer and the successor health care entity employer which provides that the successor health care entity employer will offer employment during a transitional period of not less than four months following the change in control to each eligible employee, with no reduction of wages or paid time off, and no reduction of the total value of benefits, including health care, paid time off, retirement, and education benefits, provided that: 1) the offer is to be made in writing and remain open for at least 10 business days from the date of the offer; 2) during the transition period, the successor health care entity is to offer all available employment positions to eligible employees who had previously held the positions until the available employment positions are filled or until no more eligible employees are available; and 3) if, at the time of the change in control and throughout the transition period, the total number of employment positions is less than the total number of eligible employees, the choice of employees to be employed is to be based on seniority and experience.

An eligible employee retained under the bill may not be discharged without cause during the transitional period, except that a successor employer may lay off eligible employees if the employer reduces the total number of employees, including at the time of the change in control, but only if the choice of employees to be retained is based on seniority and experience, and laid off employees are offered any positions they had previously held that are subsequently restored during the transitional period.

At the end of the transitional period, the successor employer will be required to perform a written performance evaluation for each retained eligible employee, and offer the employee continued employment if an employee's performance during that period was satisfactory. The successor employer will be required to retain, and provide to the employee or representative of the employee upon request, a written record of each offer of employment and each evaluation made, for not less than three years from the date of the offer or evaluation, with each record including the name, address, date of hire, phone number, wage rate, and employment classification of the employee.

The bill specifies that all parties to a contract or agreement covered by the bill, and all health care entities subject to a change in control pursuant to a contract or agreement covered by the bill, are to comply with the requirements of the bill as they pertain to the contract or agreement, regardless of whether those provisions are expressly included in the contract or agreement. The bill further specifies that no action taken pursuant to and in compliance with a collective bargaining agreement entered into by an exclusive representative of employees of a health care entity subject to a change in control pursuant to a contract or agreement covered by the bill will be considered a violation of the bill, and nothing in the bill is to be construed as limiting, delaying, or preventing, including during the transitional period: the recognition of a collective bargaining representative of the employees by a successor health care entity employer; or collective bargaining between the successor health care entity employer and the collective bargaining representative.

An employer who violates the provisions of the bill will be subject to the sanctions, and an employee affected by the violation shall have the remedies, provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et seq.). For the purposes of determining penalties and remedies imposed pursuant to section 10 of P.L.1965, c.173 (C.34:11-4.10) for violations of the bill:

1) a failure to pay an employee wages, paid time off, or the value of benefits will be regarded as a failure to pay the full amount of wages for the purposes of section 10 of P.L.1965, c.173 (C.34:11-4.10), and the remedies for the failure to pay paid time off or the value of benefits will be made in the same manner as remedies for unpaid wages;

2) a discharge of an employee, or failure to offer employment or retain in employment an employee, will be regarded as retaliation against the employee for the purposes of section 10 of P.L.1965, c.173 (C.34:11-4.10); and

3) in a civil action brought before a court by the employee, the court will have authority to order injunctive or other permanent equitable relief, including, but not limited to, immediate reinstatement of any employee discharged or not retained in violation of this section.

The bill defines “change in control” to mean: any sale, assignment, transfer, contribution or other disposition of all or substantially all of the assets used in a health care entity’s operations; or any sale, assignment, transfer, contribution or other disposition of a controlling interest in the health care entity, including by consolidation, merger, or reorganization, of the health care entity or any person who controls the health care entity; or any other event or sequence of events, including a purchase, sale, or termination of a management contract or lease, that causes the identity of the health care entity employer to change, but shall not include a change in control in which both the former health care entity employer and the successor health care employer are government entities. A change in control shall be defined to occur on the date of execution of the document effectuating the change.

The bill defines “eligible employee” to mean: any person employed at an affected health care entity during the 90-day period immediately preceding a change in control of a health care entity; or any person formerly employed at the health care entity who retains recall rights under an agreement with the former health care entity employer, except that an “eligible employee” does not include a managerial employee and does not include any person who was discharged with cause by the former health care entity or successor health care entity during that 90-day period.

The bill specifies that its provisions are to be deemed to be severable, and if any subsection, paragraph, sentence or other portion of the bill is for any reason held or declared by any court of competent jurisdiction to be unconstitutional or preempted by federal law, or the applicability of that portion to any person or facility is held invalid, the remainder of the bill will not thereby be deemed to be unconstitutional, preempted, or invalid.

As amended and reported by the committee, Assembly Bill No. 3684 is identical to Senate Bill No. 315 (2R), which was amended reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments revise the bill to provide that it supplement P.L.1965, c.173 (C.34:11-4.1 et seq.), which sets forth requirements employer pay practices, rather than the P.L.1966, c.113 (C.34:11-56a et seq.), the “New Jersey State Wage and Hour Law.”

The committee amendments reduce the transitional period under the bill from six months following a change in control to four months.

The committee amendments establish certain criteria for successor employers to offer employment to eligible employees, including requiring the offer be in writing and remain open for at least 10 days, to restrict offers to eligible employees until all previously-held positions are filled or no more eligible employees are available, and to require the selection of employees to be employed to be based on seniority and experience.

The committee amendments revise the standard for when a successor employer may lay off eligible employees, from when fewer employees are needed to when the employer reduces the total number of employees.

The committee amendments replace the penalties that apply for a violation of the bill from a general action for civil relief to various actions that apply under current law with regard to unpaid wages and retaliation.

The committee amendments revise the definition of "eligible employee" to provide that the term does not apply to any employee discharged with cause within 90 days before the change in control.

The committee amendments revise the definition of "health care entity" to provide that, if the entity is part of a larger facility, the bill only applies to those portions of the facility that are licensed by the Department of Health as a health care facility.

The committee amendments make various technical changes involving grammar and syntax.

The committee amendments revise the synopsis to reflect the changes made by the committee.

FISCAL IMPACT:

Fiscal information on this bill is currently unavailable.