

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; requiring certain grocery stores to provide written notice of a change in control of the grocery store to certain grocery workers; 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:

1 **Section 10** of this bill requires, upon a change in control of a grocery store, that
2 the incumbent grocery employer prepare a list of eligible grocery workers. **Section**
3 **10** further requires the successor grocery employer to extend offers of employment
4 and, if such offers are accepted by eligible grocery workers, hire eligible grocery
5 workers from this list during a 60-day transition period. **Section 11** of this bill
6 requires the successor grocery employer to retain those eligible grocery workers for
7 a 60-day period, during which time an employee may only be discharged for cause.
8 **Section 11** further requires, upon the close of this 60-day period, the successor
9 grocery employer to consider offering continued employment to the eligible
10 grocery workers retained for the 60-day period.
11 **Section 12** of this bill requires an incumbent grocery employer to post public
12 notice of the change in control at the location of the affected grocery store within 5
13 business days after the execution of the transfer document for the change in control.
14 **Section 12** additionally requires an incumbent grocery employer to provide written
15 notice of the change in control to all eligible grocery workers within 10 business
16 days after the execution of the transfer document. **Section 12** requires such notices
17 to satisfy certain requirements.



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19 superseded by a collective bargaining agreement.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

21 **Section 16** of this bill clarifies that the provisions of this bill do not limit the
22 right of an eligible grocery worker to bring legal action for breach of contract.
23 **Section 17** of this bill provides that the provisions of this bill do not preempt any
24 ordinance adopted or implemented by any local government that provides equal or
25 greater protection to eligible grocery workers.

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

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

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

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

18
19 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
20 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
21

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

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

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

32 *(a) The incumbent grocery employer;*

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

34 *or*

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

36 *(1) The incumbent grocery employer; or*



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

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

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

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

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

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

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

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

23 1. Is more than 15,000 square feet in size; and

24 2. Sells primarily household foodstuffs for off-site
25 consumption, including, without limitation, the sale of fresh
26 produce, meats, poultry, fish, deli products, dairy products, canned
27 foods, dry foods, beverages, baked foods or prepared foods. Other
28 household supplies or other products are secondary to the primary
29 purpose of selling foodstuffs for off-site consumption.

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

33 **Sec. 8. "Successor grocery employer" means the person that**
34 **owns, controls or operates a grocery store within 3 months of the**
35 **change in control of the grocery store.**

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

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

44 2. The successor grocery employer shall:



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

4 (b) Extend offers of employment and, if such offers are
5 accepted by eligible grocery workers, hire eligible grocery workers
6 from that list for a period beginning upon the execution of the
7 transfer document and continuing for 60 days after the grocery
8 store is fully operational and open to the public under the
9 successor grocery employer.

10 3. If the successor grocery employer extends an offer of
11 employment to an eligible grocery worker pursuant to sections 2 to
12 17, inclusive, of this act, the successor grocery employer shall
13 retain written verification of that offer for at least 1 year after the
14 date of the offer. The verification must include the name, address,
15 date of hire and employment occupation classification of each
16 eligible grocery worker to whom an offer of employment was
17 extended.

18 **Sec. 11.** 1. A successor grocery employer shall retain each
19 eligible grocery worker hired pursuant to sections 2 to 17,
20 inclusive, of this act for at least 60 days after the employment
21 commencement date of the eligible grocery worker. During this
22 60-day transition employment period, eligible grocery workers who
23 are retained must be employed under the terms and conditions
24 established by the successor grocery employer.

25 2. If, within the period established in paragraph (b) of
26 subsection 2 of section 10 of this act, the successor grocery
27 employer determines that it requires fewer eligible grocery workers
28 than were required by the incumbent grocery employer, the
29 successor grocery employer shall retain eligible grocery workers
30 by seniority within each job classification to the extent that
31 comparable job classifications exist. The successor grocery
32 employer shall retain nonclassified eligible grocery workers by
33 seniority and according to experience.

34 3. During the 60-day transition employment period
35 established pursuant to subsection 1, the successor grocery
36 employer shall not discharge without cause an eligible grocery
37 worker retained pursuant to sections 2 to 17, inclusive, of this act.

38 4. At the end of the 60-day transition employment period
39 established pursuant to subsection 1, the successor grocery
40 employer shall make a written performance evaluation for each
41 eligible grocery worker retained pursuant to sections 2 to 17,
42 inclusive, of this act. If the performance of the eligible grocery
43 worker during the 60-day transition employment period is
44 satisfactory, the successor grocery employer shall consider
45 offering the eligible grocery worker continued employment under



1 *the terms and conditions established by the successor grocery*
2 *employer and as required by law. The successor grocery employer*
3 *shall retain a record of the written performance evaluation for at*
4 *least 1 year.*

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

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

14 (a) *The name and contact information of the incumbent*
15 *grocery employer;*

16 (b) *The name and contact information of the successor*
17 *grocery employer; and*

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

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

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

23 (b) *Customers; and*

24 (c) *Members of the public.*

25 4. *The incumbent grocery employer shall provide written*
26 *notice of the change in control to all eligible grocery workers*
27 *within 10 business days after the execution of the transfer*
28 *document. Such notice must include, without limitation, the*
29 *information required pursuant to subsection 2.*

30 **Sec. 13.** (Deleted by amendment.)

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

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

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

44 2. *The grocery store stocks and, during normal business*
45 *hours, sells fresh fruit and vegetables in amounts and of a quality*



1 *that is comparable to what the grocery store sells in its three*
2 *geographically closest grocery stores which are located outside of*
3 *the food desert.*

4 **Sec. 16.** *Sections 2 to 17, inclusive, of this act shall not be*
5 *construed to limit the right of an eligible grocery worker to bring*
6 *legal action for breach of contract.*

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

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

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

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



