

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 4324

(SENATE AUTHORS: ISAACSON)

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Introduction and first reading
 Referred to Jobs and Economic Growth Finance and Policy

OFFICIAL STATUS

1.1 A bill for an act
 1.2 relating to economic development; creating a displaced grocery worker program;
 1.3 proposing coding for new law in Minnesota Statutes, chapter 116L.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. **[116L.961] DISPLACED GROCERY WORKERS.**

1.6 Subdivision 1. Definitions. (a) For purposes of this section, the following terms have
 1.7 the meanings given in this subdivision.

1.8 (b) "Change in control" means any sale, assignment, transfer, contribution, or other
 1.9 disposition of all or substantially all of the assets of, or a controlling interest in, including
 1.10 by consolidation, merger, or reorganization, a grocery establishment.

1.11 (c) "Commissioner" means the commissioner of employment and economic development.

1.12 (d) "Eligible grocery employee" means a person employed by a grocery establishment
 1.13 subject to a change in control who has been employed by the establishment on a full-time
 1.14 or part-time basis for a period of at least six months prior to the effective date of the change
 1.15 in control. Eligible grocery employee does not include persons who are managerial,
 1.16 supervisory, or confidential employees or persons who on average regularly work fewer
 1.17 than eight hours per week during the period.

1.18 (e) "Grocery establishment" means a retail store in the state in which the sale of food
 1.19 for off-site consumption comprises 50 percent or more of store sales and that exceeds 20,000
 1.20 square feet in size, exclusive of any storage space, loading dock, food preparation space,
 1.21 or eating area designated for the consumption of prepared food.

(f) "Incumbent grocery employer" means a person that owns or controls a grocery establishment prior to a change in control.

(g) "Person" means an individual, corporation, sole proprietorship, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

(h) "Successor grocery employer" means a person that owns or controls a grocery establishment after a change in control.

(i) "Transitional employment period" means a 90-day period beginning upon the latter of the effective date of a change in control of a grocery establishment or the end of any period during which the grocery establishment was not open to the public during its normal business hours.

Subd. 2. Worker retention; transitional employment period. (a) No less than 15 calendar days before the effective date of a change in control of a grocery establishment, the incumbent grocery employer must:

(1) provide to the successor grocery employer a full and accurate list containing the name, address, phone number if known by the incumbent grocery employee, e-mail address if known by the incumbent grocery employer, date of hire, and job category of each eligible grocery employee;

(2) post a notice in the same location and manner that other statutorily required notices to employees are posted at the grocery establishment, which shall include:

(i) the effective date of the change in control;

(ii) the name and contact information for the successor grocery employer;

(iii) an explanation of the rights provided under this section, in a form prescribed by the commissioner; and

(iv) the names and job categories of each eligible grocery employee; and

(3) provide the list and notice required by clauses (1) and (2) to the eligible grocery employees' collective bargaining representatives, if any.

(b) A successor grocery employer must retain each eligible grocery employee for the transitional employment period and, except as provided in paragraph (c), a successor grocery employer must not discharge an eligible grocery employee retained pursuant to this section during the transitional employment period without cause.

3.1 (c) If at any time during the transitional employment period a successor grocery employer
3.2 determines that it requires fewer eligible grocery employees than were employed by the
3.3 incumbent grocery employer, the successor grocery employer must retain the eligible grocery
3.4 employees by seniority within each job category. During the transitional employment period,
3.5 the successor grocery employer must maintain a preferential hiring list of eligible grocery
3.6 employees not retained by the successor grocery employer who must, by seniority within
3.7 their job category, be given a right of first refusal to any jobs that become available during
3.8 the period within the job category.

3.9 (d) A successor grocery employer must retain written verification of any offer of
3.10 employment made by the successor grocery employer to any eligible grocery employee for
3.11 a period of no less than three years from the date the offer was made. The verification must
3.12 include the name, address, date of offer, and job category of each eligible grocery employee.

3.13 (e) At the end of the transition employment period, a successor grocery employer must
3.14 complete a written performance evaluation for each eligible grocery employee retained
3.15 pursuant to this section and may offer the eligible grocery employee continued employment.
3.16 A successor grocery employer must retain a record of the written performance evaluation
3.17 for a period of no less than three years.

3.18 Subd. 3. **Penalties.** (a) An incumbent grocery employer who violates subdivision 2,
3.19 paragraph (a), is liable for a civil penalty of not more than \$1,000.

3.20 (b) A successor grocery employer who violates subdivision 2, paragraph (b), is liable
3.21 for a civil penalty of not more than \$750 for each employee not retained or terminated
3.22 without cause during the transitional employment period.

3.23 (c) A successor grocery employer who violates subdivision 2, paragraph (c), for failing
3.24 to maintain a preferential hiring list of eligible grocery employees not retained by the
3.25 successor grocery employer is liable for a civil penalty of not more than \$750.

3.26 (d) Any successor grocery employer who violates subdivision 2, paragraph (d), for failing
3.27 to retain written verification of an offer of employment made by the successor grocery
3.28 employer to an eligible grocery employee is liable for a civil penalty of not more than \$500.

3.29 (e) A successor grocery employer who violates subdivision 2, paragraph (e), for failing
3.30 to complete or retain written performance evaluations for each eligible grocery employee
3.31 retained during the transitional employment period is liable for a civil penalty of not more
3.32 than \$500.

4.1 Subd. 4. **Enforcement; complaint.** (a) An eligible grocery employee alleging a violation
4.2 of this section may file a complaint with the commissioner within 180 days of the date the
4.3 eligible grocery employee knew or should have known of the alleged violation.

4.4 (b) The commissioner shall investigate a complaint it receives regarding an alleged
4.5 violation of this section. The commissioner shall not disclose the identity of a complainant
4.6 unless disclosure of the complainant's identity is necessary for resolution of the investigation
4.7 or otherwise required by law. The commissioner shall, to the extent practicable, notify the
4.8 complainant that the commissioner will be disclosing the complainant's identity prior to the
4.9 disclosure.

4.10 (c) The commissioner may, at any time after the filing of a complaint, resolve the
4.11 complaint by any method of dispute resolution, unless the complaint is withdrawn by the
4.12 complainant.

4.13 (d) The commissioner shall keep complainants reasonably notified regarding the status
4.14 of a complaint and any resulting investigation.

4.15 (e) A proceeding to recover a civil penalty authorized by this section is commenced by
4.16 the service of a notice of violation, which is returnable to the Office of Administrative
4.17 Hearings. The office has the power to impose the penalties described in subdivisions 3 and
4.18 6.

4.19 (f) The commissioner may settle a notice of violation at any time prior to the conclusion
4.20 of an adjudication, provided that a complainant who opts out of the settlement may withdraw
4.21 the complaint and file a private right of action pursuant to subdivision 5.

4.22 Subd. 5. **Civil action.** An eligible grocery employee alleging a violation of this section
4.23 may bring a civil action against an incumbent grocery employer for a violation of subdivision
4.24 2, paragraph (a), or against a successor grocery employer for a violation of subdivision 2,
4.25 paragraphs (b) to (e), only if:

4.26 (1) the eligible grocery employee has filed a complaint with the commissioner pursuant
4.27 to subdivision 4, paragraph (a), arising out of the same facts and circumstances, the
4.28 commissioner has not, within 120 days, either resolved the complaint or issued a notice of
4.29 violation, and the employee has withdrawn the complaint with the commissioner; or

4.30 (2) the eligible grocery employee has filed a complaint with the commissioner pursuant
4.31 to subdivision 4, paragraph (a), arising out of the same facts and circumstances, has opted
4.32 out of a settlement reached by the commissioner pursuant to subdivision 4, paragraph (f),
4.33 and has withdrawn the complaint with the commissioner.

5.1 Subd. 6. Remedies. In addition to the penalties authorized by subdivision 3, the remedy
5.2 in any administrative proceeding or civil action undertaken pursuant to this section may
5.3 include:

5.4 (1) three times the pay for each day the eligible grocery employee was discharged or
5.5 not retained in violation of subdivision 2, paragraph (b), which must be calculated at a rate
5.6 of compensation not less than the higher of:

5.7 (i) the average regular rate of pay received by the eligible grocery employee during the
5.8 last three years of the eligible grocery employee's employment in the same job category; or

5.9 (ii) the most recent regular rate received by the eligible grocery employee while employed
5.10 by either the incumbent grocery employer or the successor grocery employer, regardless of
5.11 whether the employee obtained an alternate source of income that was less than, equal to,
5.12 or greater than the rate calculated pursuant to this clause;

5.13 (2) the value of the benefits the eligible grocery employee would have received under
5.14 the successor grocery employer's benefit plan for those days the employee was discharged
5.15 or was not retained in violation of subdivision 2, paragraph (b);

5.16 (3) an order requiring that the successor grocery employer retain its eligible grocery
5.17 employees during the transitional employment period, unless an eligible grocery employee
5.18 is discharged pursuant to subdivision 2, paragraph (c), or with cause; and

5.19 (4) reasonable attorney fees and costs incurred in maintaining a civil action for a violation
5.20 of this section, provided the eligible grocery employee is the prevailing party in a civil
5.21 action.

5.22 Subd. 7. Exclusions; collective bargaining agreements. This section does not apply
5.23 to any successor grocery employer that, on or before the effective date of the transfer of
5.24 control from a predecessor grocery employer to the successor grocery employer, enters into
5.25 a collective bargaining agreement covering the eligible grocery employees or agrees to
5.26 assume, or to be bound by, the collective bargaining agreement of the predecessor grocery
5.27 employer covering the eligible grocery employees, provided that the collective bargaining
5.28 agreement provides terms and conditions regarding the discharge or laying off of employees.

5.29 EFFECTIVE DATE. This section is effective August 1, 2020, and applies to collective
5.30 bargaining agreements entered into on or after that date.