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To: Members of the Assembly State and Local Government Committee

From: Alexis Bailey, Vice President of Government Affairs

Date: March 17, 2023

RE: NJBIA Opposition to A-4682 – Establishes employment protections for certain service employees during changes of ownership

On behalf of our member companies that make NJBIA the largest, most impactful statewide business association in the nation, **I write to you in opposition to Assembly Bill No. 4682 (Schaer/Timberlake/Danielsen), which would require a vast number of covered employers to retain a wide range of service employees for 90 days following not only the sale of a business that employs service workers, but also a change in service vendor contract ownership.** If enacted, this legislation would place an unwarranted mandate on business and stifle its ability to make necessary operational decisions.

This legislation follows the recent enactment of a series of similar troubling laws mandating the retention of employees. In January, Governor Murphy signed P.L. 2021 c.496 into law which mandates the retention of hotel employees following a transfer of ownership. In August, he signed P.L. 2022 c.101 into law mandating employee retention in healthcare entities. **The current bill is the most far-reaching employee retention bill to date because it impacts so many types of employers and goes beyond mandating retention of employees during the sale of an entire business, but also the change of vendors for a minor service contract.** Legislation such as this usurps managerial decision making, increasing the regulatory burden of doing business and harming our overall competitiveness in New Jersey.

This legislation so broadly defines service employees and covered locations to impact a significant number of businesses in our state, negatively impacting large swaths of our economy. Employers and facilities captured under this legislation include multi-family residential buildings with more than 50 units, commercial or office buildings that are more than 100,000 square feet, primary, secondary and tertiary schools, as well as cultural centers such as museums, convention centers, arenas, performance halls, industrial sites, pharmaceutical labs, airports, train stations, hospitals, nursing care facilities, senior care centers and other healthcare provider locations, state courts and warehouse and distribution centers.

Under the legislation, service employees include any non-managerial or professional employee who works 16 or more hours per week in connection with the care or maintenance of a building or property. These types of employees include, *but are not limited to*, security, front desk, maintenance, grounds maintenance, stationary fireman, elevator operators, window cleaners and janitorial service staff. At airports, it includes passenger-related security services, cargo related and ramp services, in-terminal and

passenger handling and cleaning services. In schools, the bill includes food service workers.

In practice, this legislation will create a significant logistical burden for service vendors and interfere with private contracts. **This legislation would require a new service vendor, referred to as a “successor employer” to maintain the employees of a previous vendor if they are providing the same type of service.** This would effectively require successor employers to assume another vendor’s employees regardless of whether the original vendor had other work assignments for those employees, if the successor employer had their own employees to bring on the job, or if the covered location contracting for service work was dissatisfied with the job being done by the previous vendor’s employees. This provision unnecessarily entangles three separate business entities into contracts and makes it impractical to ever change service contracts, stifling competition and efficiency.

Most egregiously, this legislation includes criminal penalties for employers if they do not retain employees that were never theirs in the first place. This legislation includes *“imprisonment for any term not less than 10 days and not exceeding 90 days for a “second and each subsequent violation of the bill. As defined in the bill in section 3, “each week, in any day of which a violation occurs, shall constitute a separate offense.”* As amended, this would have the impact of subjecting employers to potential jail time on week 2 or day 8 that service employees are not retained. This criminalization of the business community is extreme and completely unnecessary when hefty fines are already present in the bill as a deterrent.

Employers should have the choice to hire whom they see fit based on financial need, job performance, experience or other factors in order to make sound business decisions. Mandated employee retention may force businesses to maintain inadequate service for three months if they change service contracts due to unsatisfactory work. This can have health and safety implications for businesses and the public that purchase their products or services. Additionally, this legislation may not pass legal muster as the bill would make successor employers bound to contract agreements that they did not agree to by requiring them to assume the employees of a former vendor during the 90-day period.

There is no need for this broad legislation. **There are already safeguards in place to protect workers if they lose their job.** These include collective bargaining, unemployment insurance and the state and federal mass layoff protections for employees. Additionally, employers already have the opportunity and often do freely choose to interview and hire the workers employed under previous contracts during the sale of a business if it would be the most advantageous for their operations.

This legislation is the most broad and troubling iteration of employee retention mandates to date. This unsettling trend adds to New Jersey’s reputation of being overly regulated and an unfriendly place to do business. **The Legislature must seriously consider the need for these mandates and the harmful message they send to the business community.** Employee retention and seniority systems in private businesses should not be dictated by statute. Employers have a right to determine who they hire and retain as they see fit in order to make necessary operational decisions.

Thank you for taking our concerns into consideration. **We urge you to vote NO on A-4682.** If you have any questions or concerns, I can be reached at abailey@njbia.org.