HOUSE BILL REPORT
ESSB 6007

As Passed House:
February 22, 2024

Title: An act relating to employment standards for grocery workers.

Brief Description: Concerning employment standards for grocery workers.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Conway, Keiser, Hasegawa, Dhingra, Randall, Saldaña, Liias, Hunt, Nguyen, Kuderer, Van De Wege, Frame, Nobles, Pedersen, Salomon, Shewmake, Stanford, Trudeau, Valdez and Wilson, C.).

Brief History:
Committee Activity:
Labor & Workplace Standards: 2/14/24, 2/16/24 [DP].
Floor Activity:
Passed House: 2/22/24, 60-33.

Brief Summary of Engrossed Substitute Bill

- Requires a successor grocery employer to retain the incumbent grocery employer's employees for a 180-day transitional period, with certain exceptions.
- Requires certain successors to provide an allowance to the incumbent's grocery workers who are not retained for 180 days and who have not quit or been discharged for cause.
- Exempts grocery employers of a certain size and certain grocery employers located in food deserts.
- Allows for a private cause of action if the employer has not cured the violation.
- Prohibits retaliation against employees enforcing the provisions.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 7 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby, Ortiz-Self and Rude.

Minority Report: Without recommendation. Signed by 2 members: Representatives Schmidt, Ranking Minority Member; Ybarra.

Staff: Trudes Tango (786-7384).

Background:

When a company merges with, buys out, or acquires the assets of another company, the successor company may have certain responsibilities or incur liabilities of the predecessor company, depending on the circumstances. Generally, for collective bargaining in the private sector, the successorship doctrine provides that a successor employer must recognize and bargain with the union of the predecessor's employees if the successor hires a majority of its workforce from the predecessor's employees and continues the predecessor's business in substantially the same way. There are exceptions to the successorship doctrine.

Summary of Bill:

<u>Requirements of Incumbent Grocery Employers</u>.
An incumbent grocery employer (incumbent) must provide a successor grocery employer (successor) and any collective bargaining representative, contact information of eligible grocery workers (grocery workers) within 15 days after the execution of a purchase agreement or other document effecting a change in control. If the incumbent does not provide the information, the successor may obtain it from a collective bargaining representative.

An "eligible grocery worker" is an individual who worked for the incumbent grocery employer for at least six months prior to the change in control, but who is not a managerial, supervisory, or confidential employee.

The incumbent must post public notice of the change in control at affected grocery establishments. "Change in control" includes a sale, purchase, transfer of assets, merger, or reorganization of an incumbent.

<u>Requirements of Successor Grocery Employers</u>.
A successor must:
- maintain a preferential hiring list of the incumbent's grocery workers and hire from that list for a specified period of time, based on seniority;
- retain the hired grocery workers, except for cause, for a 180-day transition period under the terms and conditions established by the successor and pursuant to a relevant

collective bargaining agreement, if any;
- provide each grocery worker a written evaluation after the 180-day transitional period, and consider offering continued employment if the worker's evaluation is satisfactory; and
- maintain written records of offers to hire and performance evaluations.

A "successor grocery employer" does not include an entity that owns or controls 25 or fewer grocery establishments in the state. A "grocery establishment" means a retail store in the state that is over 15,000 square feet and that sells primarily household foodstuffs.

Requirements for Certain Successors to Pay Dislocated Grocery Worker Allowances.
Successors that own, control, or operate 20 or more grocery establishments, must provide a dislocated grocery worker allowance to grocery workers who are not retained for at least 180 days after the change in control, unless the grocery worker quits or was discharged for cause. The allowance must be equal to one week of pay for each full year of employment with the incumbent. The rate of the allowance is the average regular rate of compensation received during the grocery worker's last three years of employment with the incumbent or the final regular rate of compensation paid to the grocery worker, whichever is higher. The successor must provide the greater of the allowance or what is required in a relevant collective bargaining agreement.

Exemptions for Certain Grocery Employers and Grocery Establishments in Food Deserts.
The provisions do not apply to grocery employers when the number of workers employed by the incumbent nationwide immediately prior to the change in control and the number of workers employed by the successor nationwide immediately prior to the change in control equal less than 300 workers total.

The provisions also do not apply to grocery establishments located in geographic areas designated as food deserts, based on the Food Access Research Atlas, if more than six years have passed since the most recent grocery establishment was located in the food desert and the grocery establishment sells fresh fruit and vegetables in amounts and of a quality comparable to what it sells in its three closest stores located outside the food desert. When there has been a merger, a successor may not cause a grocery establishment located in a food desert to cease being fully operational and open to the public until the establishment provides written notice to the city and county councils, the local health department, and the Attorney General 180 days before the establishment ceases to be fully operational and open to the public. The notice must include a written analysis, with data, of how residents living in the food desert will be able, at comparable costs, to purchase food after the establishment closes and a profit and loss statement for the establishment.

Antiretaliation Provisions.
An employer may not refuse to employ, terminate, reduce the compensation of, or otherwise take adverse action against an employee for enforcing the employee's rights. This applies to an employee who mistakenly, but in good faith, alleges noncompliance with the

requirements.

Private Cause of Action and Right to Cure.
An aggrieved employee or employee representative or nonprofit corporation may bring an action in court for violations of the provisions. However, the employee may bring a court action only after the employee has provided the employer written notice of the alleged violations and the employer has not cured the alleged violations within 30 days of receipt of the notice.

The court may award to the employee: hiring and reinstatement rights, front pay or back pay, the value of benefits the employee would have received under benefit plans, and reasonable attorneys' fees and costs.

Local Ordinances Not Preempted.
The provisions do not preempt any local ordinances providing equal or greater protection to eligible grocery workers.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) When there is a large merge, such as the Kroger, Safeway, Albertson merger that the Attorney General is trying to block, the disruption in the grocery business is huge. This bill is trying to protect grocery workers, who are critical in the safe food supply chain. Most new owners will hire the employees of the previous store. There are many negative effects on the community and workforce when larger mergers happen and this bill provides job security. The bill targets the large grocery chains. Mergers result in store closures, job losses, higher prices, and food deserts.

(Opposed) The lawsuit filed by the Attorney General's Office makes this bill unnecessary. The bill should provide for preemption of local ordinances. There is concern that the bill would create similar expectations of the smaller grocery stores.

Persons Testifying: (In support) Senator Steve Conway, prime sponsor; Isaac Wagnitz, United Food and Commercial Workers Union Local 367; Tom Lambro, United Food and Commercial Workers Union Local 3000; Britt Leggett; and Jennifer MaCabe.

(Opposed) Katie Beeson, Washington Food Industry Association.

Persons Signed In To Testify But Not Testifying: None.