

Date of Hearing: April 8, 2021

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kara, Chair

AB 364 (Rodriguez) – As Introduced February 1, 2021

SUBJECT: Foreign labor contractor registration: agricultural workers

SUMMARY: Adds foreign labor contractors who recruit or solicit agricultural workers to coverage under the State Labor Commissioner’s (LC) foreign labor contractor registration program.

EXISTING LAW:

- 1) Exempts from regulation of foreign labor contractors those who recruit agricultural workers.
- 2) Defines foreign labor contracting activity as recruiting or soliciting a foreign worker who resides outside the United States for paid employment in California.
- 3) Defines foreign worker as any person seeking employment who is not a U.S. citizen or permanent resident but who is authorized by the federal government to work in the U.S.
- 4) Defines foreign labor contractor as any person who performs foreign labor contracting activity, including activity performed wholly outside the U.S., except government entities, a person licensed as a talent agency, and a person maintaining written designation under federal law as a participant in a work-and study-based exchange visitor program.
- 5) Directs the LC to oversee and enforce a program regulating foreign labor contractor activities.
- 6) Obligates a foreign labor contractor to register with the LC and disclose information relating to its recruitment or solicitation of workers, as specified.
- 7) Requires that a foreign labor contractor provide a signed work contract, including all terms and conditions of employment, to the worker as well as information about his or her rights under state and federal anti-trafficking laws.
- 8) Prohibits retaliation against a foreign worker or a member of his or her family for the exercise of any right under this provision.
- 9) Provides a right to enforcement by the LC or an aggrieved party, and if appropriate, injunctive and monetary remedies, as specified.

FISCAL EFFECT: Unknown

COMMENTS: Note: This bill is double referred to the Assembly Judiciary Committee upon passage out of this Committee.

Under existing law, SB 477 (Steinberg), Chapter 711, Statutes of 2014, codified in Business and Professions Code Sections 9998 et seq., establishes a licensing and oversight program for foreign labor contractors. Farm labor contractors are subject to different licensing requirements under

Labor Code Sections 1682-1699. Farm labor contractors include persons who employ or supervise farmworkers, recruit or solicit farmworkers, and furnish boarding, lodging or transportation for these workers. While the licensing program for farm labor contractors provides certain protections for workers, including that a contractor be bonded, pass an exam on subjects such as labor law and health and safety regulations, have knowledge of sexual harassment prevention and provide applicable training, and be civilly liable for program violations, it does not include all the protections afforded under the foreign labor contractor licensing program. Unlike the foreign labor contractor licensing program, the farm labor contractor program does not extend protection from retaliation to family members of workers exercising a right under the law, require that a signed written contract be provided to workers, or obligate the contractor to disclose to workers information about their rights under state and federal labor trafficking laws.

A recent report by the Economic Policy Institute found that the vast majority (over 70%) of federal labor standards investigations of farms conducted by the Wage and Hour Division (WHD) of the U.S. Department of Labor detect violations of laws designed to protect farmworkers.¹ The report also suggests that farm labor contractors are the worst violators, accounting for one-fourth of all federal wage and hour violations found in agriculture and one-half of violations found in two of the biggest states for farm employment, California and Florida. However, there is a very low probability (1.1%) that any farm employer will be investigated by the WHD in any given year.

According to the author, this bill will clarify “that SB 477’s consistent and comprehensive protections apply to *all* temporary workers coming to California as originally intended by SB 477’s author. Internationally recruited temporary workers face common patterns of exploitation. Because they are especially vulnerable to labor exploitation and human trafficking, and approximately 200,000 of them come to California annually, SB 477’s provisions must be applicable to all of them, regardless of the visa classification under which they have been recruited and employed.”

The author further argues that, “too many workers in sectors including the agricultural industry have fallen victim to predatory contracts, forced labor, retaliation, and more. The protections that AB 364 seek to ensure are completely separate from current provisions in California law that address farm labor contracting as they cover activities exclusively involving international labor recruitment. Crucially, they provide safeguards early in the recruiting process—at the time and place of recruitment abroad—and are thus essential in preventing exploitation and trafficking.”

Arguments in Support

In support of this measure, the Coalition to Abolish Slavery & Trafficking (CAST), sponsors of this bill, argue that “Fraudulent practices of Foreign Labor Recruiters not only encourage labor trafficking, but also precipitate an unfair advantage for enterprises using their services over businesses who seek to comply with state and federal labor laws. Disreputable Foreign Labor Recruiters also “double dip” by charging both employers and workers fees for their services. These include illegal recruiting fees and excessive costs for visa processing and other

¹ Costa, Daniel, Martin, Philip, and Rutledge, Zachariah. *Federal labor standards enforcement in agriculture: Data reveal the biggest violators and raise new questions about how to improve and target efforts to protect farmworkers*. Economic Policy Institute, December, 2020.

recruitment-related activities. The lack of transparency resulting from hiring unregistered Foreign Labor Recruiters also makes it difficult for businesses to identify superfluous middlemen and streamline their operations, keeping their costs artificially high. Unregulated Foreign Labor Recruiters further expose employers to legal liability. At present, unregistered Foreign Labor Recruiters can easily vanish and avoid accountability for their misdeeds.”

In additional support of this measure, the American Civil Liberties Union (ACLU) argues that “As the result of a drafting error, SB 477 is currently interpreted by California Labor Department regulations as limited to FLCs recruiting workers under H-2B visas. This interpretation limits coverage to only about 5,000 of the approximately 200,000 temporary workers coming to California annually—less than 3 percent. The ACLU further contends that this bill is a “technical fix to SB 477 (Steinberg) to ensure that, with two narrow exceptions, all foreign labor contractors] (FLCs) recruiting individuals for work in California are subject to SB 477’s comprehensive protections to temporary workers.”

Argument in Opposition

In opposition, a coalition of agricultural employers including the Western Growers Association, asserts a different understanding of the scope of SB 477. Opponents contend, “The H-2A visa program was NOT overlooked during the discussion and negotiations of SB 477 (Steinberg) in 2014 which created the foreign labor contracting registration program.” They argue that the bill is unnecessary because “The H-2A visa program is already regulated by a restrictive application and enforcement program at the federal level.” They further contend that California already has a farm labor contractor licensing program, noting “Farm labor contractors in California must be licensed and must take the farm labor contractor exam every two years.”

Related and Prior Legislation

AB 1913 (Katra) 2018 is very similar to this bill in that it would have added foreign labor contractors who recruit or solicit agricultural workers to coverage under the State Labor Commissioner’s foreign labor contractor registration program. The bill failed to obtain passage on the Assembly Third Reading vote.

SB 477 (Steinberg), Chapter 711, Statutes of 2014, established a registration and oversight process for foreign labor contractors including enumerated protections for temporary foreign workers who are recruited to work in California.

SB 516 (Steinberg) 2013 was nearly identical to SB 477 but specified a contractor registration fee of \$500. The bill passed the Legislature but was vetoed by Governor Brown on the grounds that the fee was insufficient to cover the ongoing costs of the proposed program.

REGISTERED SUPPORT / OPPOSITION:

Support

Coalition to Abolish Slavery & Trafficking (CAST) (Sponsor)
Alameda County District Attorney's Office (Co-Sponsor)
San Diego County District Attorney's Office (Co-Sponsor)
ACLU California

Alliance to End Slavery and Trafficking
Bet Tzedek Legal Services
Centro De Los Derechos Del Migrante
Equal Rights Advocates
Freedom United
Hewlett Packard Enterprise
Justice in Motion
Legal Aid of Marin
Los Angeles Center for Law and Justice
Mayor Darrell Steinberg, City of Sacramento
North County Lifeline
Pilipino Workers Center
The University Corporation Dba Strength United
Verite
Verity, Compassion, Safety, Support
Waymakers
Womankind

Oppose

African-American Farmers of California
Agricultural Council of California
California Association of Winegrape Growers
California Chamber of Commerce
California Citrus Mutual
California Cotton Ginners & Growers Association
California Farm Bureau Federation
California Fresh Fruit Association
Family Winemakers of California
Far West Equipment Dealers Association
Nisei Farmers League
Western Agricultural Processors Association
Western Growers Association
Western Plant Health Association

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