

Senate Bill No. 477

CHAPTER 711

An act to amend Sections 9998.1, 9998.6, and 9998.8 of, to add Sections 9998.1.5, 9998.2.5, 9998.10, and 9998.11 to, and to repeal and add Section 9998.2 of, the Business and Professions Code, relating to foreign labor contractors.

[Approved by Governor September 28, 2014. Filed with
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LEGISLATIVE COUNSEL'S DIGEST

SB 477, Steinberg. Foreign labor contractors: registration.

Existing federal law permits certain aliens to engage in employment in the United States under specified conditions. Existing state law regulates the services of foreign labor contractors, as defined, with regard to contracts, recruitment procedures and representations, and information as to terms and conditions of employment. Existing law provides that any person who violates or induces a violation of the latter provisions is guilty of a misdemeanor. Existing law also permits any person aggrieved by a violation of these provisions to bring an action for injunctive relief or damages, or both, and authorizes recovery of damages, costs, and reasonable attorney's fees, in an amount not less than \$500, if the aggrieved person prevails on the action.

Under existing state law, the Division of Labor Standards Enforcement in the Department of Industrial Relations, under the direction of the Labor Commissioner, enforces and administers the licensing and supervision of farm labor contractors, as defined.

This bill would change the definition of a foreign labor contractor to mean a person who performs foreign labor contracting activity, as defined. The bill, on and after July 1, 2016, would require a foreign labor contractor to register with the Labor Commissioner and would impose certain conditions for registration, including payment of specified fees. The bill would require the commissioner to enforce and administer the registration and supervision of foreign labor contractors, and would authorize the commissioner to adopt regulations or policies and procedures to implement these provisions. The bill would prohibit a person from knowingly entering into an agreement for the services of a foreign labor contractor that is not registered with the commissioner. The bill would also require foreign labor contractors to disclose specified information and deposit with the commissioner a surety bond in a specified amount, for payment of any amount adjudicated against the foreign labor contractor, as a condition of registration, as specified. The bill would further require persons knowingly using the services of foreign

labor contractors to obtain foreign workers to disclose specified information to the commissioner.

The bill would require a foreign labor contractor to disclose in writing to each foreign worker who is recruited for employment certain information, as specified. The bill would prohibit a foreign labor contractor and its agent from assessing a fee or cost to a foreign worker for foreign labor contracting activities. The bill would also prohibit charging a foreign worker with any costs or expenses not customarily assessed against similarly situated workers, and would limit the amount of housing costs charged to the foreign worker to the market rate for similar housing. The bill would prohibit requiring a foreign worker to pay any costs or expenses prior to commencement of work. The bill would prohibit additional requirements or changes to the terms of the contract originally provided to and signed by the foreign worker, unless the foreign worker is provided at least 48 hours to review and consider the additional requirements or changes, and would require the specific consent of the foreign worker, as provided, to each additional requirement or change.

The bill would authorize a civil penalty for violations of these provisions, would authorize the commissioner or a person aggrieved by a violation of these provisions to bring an action for injunctive relief or damages, or both, and would authorize recovery of damages, costs, and reasonable attorney's fees, as specified, including enforcement of liability against the bond deposited with the commissioner. The bill would exempt a person from joint and several liability for an act or omission by a foreign labor contractor if the person is using a registered foreign labor contractor's services. The bill would also exempt a person who uses the services of a registered foreign labor contractor from misdemeanor liability for an act or omission by the foreign labor contractor. Because this bill would expand the scope of the provisions regulating foreign labor contractors, a violation of which is a misdemeanor, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Foreign labor contractors are increasingly relied upon to facilitate the movement of labor from one country to another. California is the leading destination state in the United States for temporary foreign workers. As of January 2011, there were 130,000 temporary foreign workers in California.

(b) While many foreign labor contractors behave ethically and are engaged in lawful conduct, some foreign labor contractors are often complicit with, or are directly involved in, the illegal trafficking of foreign workers.

(c) Unscrupulous foreign labor contractors often charge exorbitant fees for their services, force foreign workers into debt bondage, falsify documents, and deceive foreign workers about the terms and conditions of work, thereby increasing their vulnerability to human trafficking.

(d) The incidence of known human trafficking cases involving foreign labor recruiters is increasing dramatically in the United States. Stricter regulation of foreign labor contractors will ensure the integrity of the Californian economy, which is undermined when unregulated persons conspire to fraudulently deceive foreign workers about the terms and conditions of work.

(e) California already regulates farm labor contractors through a comprehensive licensing system and provides some oversight of the activities of foreign labor contractors. This bill expands regulation of the activities of foreign labor contractors by the following:

(1) Requiring foreign labor contractors to register with the appropriate state agency.

(2) Requiring disclosure of the use of foreign labor contractors, and their agents, by persons seeking to employ foreign workers.

(3) Imposing penalties on a person using an unregistered foreign labor contractor to obtain foreign workers or employees.

(4) Expanding the remedies available to foreign workers aggrieved by the actions of foreign labor contractors and those acting in concert with them.

(f) It is the intent of the Legislature that the Labor Commissioner proceed as expediently as possible in reviewing applications for foreign labor contractor registration to ensure that workers may come to the United States for legitimate employment without undue delay.

SEC. 2. Section 9998.1 of the Business and Professions Code is amended to read:

9998.1. The following definitions are applicable to this chapter:

(a) “Person” includes any natural person, company, firm, partnership or joint venture, association, corporation, limited liability company, or sole proprietorship.

(b) “Foreign labor contracting activity” means recruiting or soliciting for compensation a foreign worker who resides outside of the United States in furtherance of that worker’s employment in California, including when that activity occurs wholly outside the United States. “Foreign labor contracting activity” does not include the services of an employer, or employee of an employer, if those services are provided directly to foreign workers solely to find workers for the employer’s own use.

(c) “Foreign worker” means any person seeking employment who is not a United States citizen or permanent resident but who is authorized by the federal government to work in the United States, including a person who engages in temporary nonagricultural labor pursuant to Section 101(a)(15)(H)(ii)(b) of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101(a)(15)(H)(ii)(b)).

(d) “Foreign labor contractor” means any person who performs foreign labor contracting activity, including any person who performs foreign labor contracting activity wholly outside the United States, except that the term does not include any entity of federal, state, or local government. “Foreign labor contractor” does not include a person licensed by the Labor Commissioner as a talent agency under Chapter 4 (commencing with Section 1700) of Part 6 of Division 2 of the Labor Code, or a person who obtained and maintains full written designation from the United States Department of State under Part 62 of Title 22 of the Code of Federal Regulations.

SEC. 3. Section 9998.1.5 is added to the Business and Professions Code, to read:

9998.1.5. (a) On and after July 1, 2016, a person acting as a foreign labor contractor shall register with the Labor Commissioner in accordance with the terms and procedures for registration established by the commissioner by January 1, 2016. On and after August 1, 2016, the commissioner shall post on its Internet Web site the names and contact information for all registered foreign labor contractors and a list of the names and contact information for any foreign labor contractors denied renewal or registration.

(b) The Labor Commissioner may not register a person to act as a foreign labor contractor, and may not renew a registration, until all of the following conditions are satisfied:

(1) The person has executed a written application in a form prescribed by the commissioner, subscribed and sworn to by the person, and containing all of the following:

(A) A statement by the person of all facts required by the commissioner concerning the applicant’s character, competency, responsibility, and the manner and means by which the person proposes to conduct operations as a foreign labor contractor if registered.

(B) The names and addresses of all persons, except bona fide employees on stated salaries, financially interested, either as partners, associates, or profit sharers, in the proposed operation as a foreign labor contractor, together with the amount of their respective interests.

(C) A declaration consenting to the designation by a court or the commissioner as an agent available to accept service of summons in any action against the registrant, if the registrant has left the jurisdiction in which the action is commenced or otherwise has become unavailable to accept service.

(2) The commissioner, after investigation, is satisfied as to the character, competency, and responsibility of the person.

(3) (A) The person has deposited with the commissioner a surety bond in an amount based on the size of the person’s annual gross receipts from operations as a foreign labor contractor, as follows:

(i) For gross receipts up to five hundred thousand dollars (\$500,000), a fifty-thousand-dollar (\$50,000) bond.

(ii) For gross receipts of five hundred thousand dollars (\$500,000) to two million dollars (\$2,000,000), a one-hundred-thousand-dollar (\$100,000) bond.

(iii) For gross receipts greater than two million dollars (\$2,000,000), a one-hundred-fifty-thousand-dollar (\$150,000) bond.

(B) If the foreign labor contractor has been the subject of a final judgment in a year in an amount equal to that of the bond required, that contractor shall be required to deposit an additional bond within 60 days. The bond shall be payable to the people of the State of California and shall be conditioned on the foreign labor contractor complying with all the terms and provisions of this chapter and paying all damages occasioned to any person by failure to do so, or by any violation of this chapter, or false statements or misrepresentations made in the registration process. The bond shall also be payable for interest on wages and for any damages arising from violation of applicable orders of the Industrial Welfare Commission, and for any other monetary relief awarded to a foreign worker as a result of a violation of law by the foreign labor contractor.

(4) The person has paid to the commissioner a registration fee and a filing fee in a total amount the commissioner determines is sufficient to support the ongoing costs of the program.

(c) The commissioner may not register a person as a foreign labor contractor, if the person was found by a court, the Secretary of Labor, or the commissioner to have violated any of the following provisions:

(1) The federal Trafficking Victims Protection Act of 2000 (Division A, Public Law 106-386), as amended.

(2) Sections 1682 to 1699, inclusive, of the Labor Code.

(3) Section 236.1 of the Penal Code.

(4) An applicable guest worker program.

SEC. 4. Section 9998.2 of the Business and Professions Code is repealed.

SEC. 5. Section 9998.2 is added to the Business and Professions Code, to read:

9998.2. (a) On and after July 1, 2016, a person who knows or should have known that the person is using the services of a foreign labor contractor to procure foreign workers or employees pursuant to subdivision (b) of Section 9998.1 shall disclose this information to the Labor Commissioner in accordance with the terms and procedures established by the commissioner by January 1, 2016.

(b) The disclosure shall include, but is not limited to, the following:

(1) The name, address, and contact information of the person designated by the employer to work with a foreign labor contractor.

(2) A declaration consenting to the designation by a court of the commissioner as an agent available to accept service of summons in any action against the person, if the person has left the jurisdiction in which the action is commenced or otherwise has become unavailable to accept service.

(c) A person may not knowingly enter into an agreement for the services of a foreign labor contractor that is not registered under this chapter.

SEC. 6. Section 9998.2.5 is added to the Business and Professions Code, to read:

9998.2.5. (a) A foreign labor contractor shall ascertain and disclose in writing to each foreign worker who is recruited for employment in English and in the primary language of the foreign worker being recruited, at the time of the foreign worker's recruitment, the following information:

(1) The identity of the employer and the identity of the person conducting the recruiting on behalf of the employer, including any subcontractor or agent involved in the recruiting.

(2) A signed copy of the work contract, including all assurances and terms and conditions of employment, from the prospective employer for whom the foreign worker is being recruited, including the compensation to be paid, the place and period of employment, a description of the type and nature of employment activities, any withholdings or deductions from compensation, and any penalties for terminating employment.

(3) The type of visa under which the foreign worker is to be employed, the length of time the visa is valid, and the terms and conditions under which the visa will be renewed with a clear statement of whether the employer will secure renewal of the visa or if renewal must be obtained by the foreign worker, and any expenses associated with securing or renewing the visa.

(4) An itemized list of any costs or expenses to be charged to the foreign worker, including, but not limited to, the costs of housing or accommodation, transportation to and from the worksite, meals, medical examinations, health care or safety equipment costs, and any other costs, expenses, or deductions to be charged the foreign worker.

(5) A statement, in a form specified by the Labor Commissioner, that does each of the following:

(A) States that no foreign labor contractor, or agent or employee of a foreign labor contractor, can lawfully assess any fee, including visa fees, processing fees, transportation fees, legal expenses, placement fees, and other costs to a foreign worker for foreign labor contracting activities, and that the employer may bear the costs or fees for the foreign labor contractor, but that these fees cannot be assessed to the foreign worker.

(B) Explains that no additional requirements or changes may be made to the terms of the contract originally provided by the foreign labor contractor and signed by the foreign worker, unless the foreign worker is provided at least 48 hours to review and consider the additional requirements or changes and the foreign worker gives specific consent, voluntarily and without threat of penalty, to each additional requirement or change.

(C) Describes the protections afforded the foreign worker by this chapter and by the federal Trafficking Victims Protection Act of 2000 (Division A, Public Law 106-386), as amended, and any applicable guest worker program, including relevant information about the procedure for filing a complaint under this chapter, and the telephone number for the national human trafficking resource center hotline.

(6) Any education or training to be provided or required, including the nature, timing, and cost of training and the person who will pay training

costs, whether the training is a condition of employment, continued employment, or future employment, and whether the foreign worker will be paid or remunerated during the training period, including the rate of pay or remuneration.

(b) The foreign labor contractor shall file the disclosure required under subdivision (a) with the Labor Commissioner within seven business days of providing it to the foreign worker.

(c) A foreign labor contractor, or the agent, subcontractor, or employee of a foreign labor contractor, or a person using the services of a foreign labor contractor to obtain foreign workers or employees, may not assess any fee, including, but not limited to, visa fees, processing fees, transportation fees, legal expenses, placement fees, and other costs, to a foreign worker for foreign labor contracting activities.

(d) A foreign worker may not be required to pay any costs or expenses that are not customarily assessed against all workers similarly employed in the United States. No costs or expenses shall be required to be paid by the foreign worker prior to the commencement of work. The amount charged for providing housing to the foreign worker shall be limited to market rate for similar housing.

(e) Additional requirements or changes shall not be made to the terms of the contract originally provided by the foreign labor contractor and signed by the foreign worker, unless the foreign worker is provided at least 48 hours to review and consider the additional requirements or changes and the foreign worker gives specific consent, voluntarily and without threat of penalty, to each additional requirement or change.

SEC. 7. Section 9998.6 of the Business and Professions Code is amended to read:

9998.6. A person may not intimidate, threaten, restrain, coerce, discharge, or in any manner discriminate against a foreign worker or a member of his or her family in retaliation for the foreign worker's exercise of any right under this chapter.

SEC. 8. Section 9998.8 of the Business and Professions Code is amended to read:

9998.8. (a) A person who violates this chapter or who causes or induces another to violate this chapter is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or imprisonment in the county jail for not more than six months, or both. A person shall not be liable under this subdivision for any act or omission by a foreign labor contractor engaged by the person if the foreign labor contractor was registered with the Labor Commissioner pursuant to Section 9998.1.5 no later than the first day of engagement.

(b) A person who violates any provision of this chapter shall be subject to a civil penalty of no less than one thousand dollars (\$1,000) and no more than twenty-five thousand dollars (\$25,000) per violation, in addition to any other civil remedies available to the Labor Commissioner or an aggrieved person.

(c) The commissioner or a person aggrieved by a violation of this chapter may do all of the following:

(1) Bring an action for injunctive relief against a person who violates this chapter and, upon prevailing, recover costs and reasonable attorney's fees.

(2) Bring an action for damages, against a person who violates this chapter to recover the greater of all of his or her actual damages or five hundred dollars (\$500) per employee per violation for an initial violation, and one thousand dollars (\$1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, recover costs and reasonable attorney's fees.

(3) Enforce the liability on the bonds required under Section 9998.1.5.

(d) A person shall not be jointly and severally liable for any act or omission by a foreign labor contractor engaged by the person if the foreign labor contractor was registered with the Labor Commissioner pursuant to Section 9998.1.5 no later than the first day of engagement.

(e) Nothing in this section shall be construed to preempt or alter any other rights or remedies, including any causes of action, available under any other federal or state law.

SEC. 9. Section 9998.10 is added to the Business and Professions Code, to read:

9998.10. The Labor Commissioner and the deputies and representatives authorized by the commissioner in writing may take assignments of actions on the bonds required under Section 9998.1.5 by aggrieved persons and may prosecute the actions on behalf of persons who, in the judgment of the commissioner, are financially unable to employ counsel, in the same manner that claims are prosecuted under Section 98 of the Labor Code.

SEC. 10. Section 9998.11 is added to the Business and Professions Code, to read:

9998.11. The Labor Commissioner may adopt regulations or policies and procedures to implement the provisions of this chapter.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.