

AMENDED IN SENATE MAY 7, 2013
AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 516

Introduced by Senator Steinberg
(Coauthors: Senators Leno and Lieu)

February 21, 2013

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.

LEGISLATIVE COUNSEL'S DIGEST

SB 516, as amended, 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 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 require a foreign labor contractor to register with the Labor Commissioner and pay a specified fee, upon satisfying specified conditions. The bill would require the commissioner to enforce and administer the registration and supervision of foreign labor contractors. The bill would prohibit a person from 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 using the services of foreign labor contractors to obtain foreign workers to disclose specified information and deposit with the commissioner a surety bond in a specified amount, for payment of any amount adjudicated against that person, as specified.

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 employment services, as defined. 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 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, and 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 bonds deposited with the commissioner. The bill would provide for the joint and several liability of foreign labor contractors and persons using the foreign labor contractors' services. The bill would further authorize a person who, upon information and

belief, claims a violation of these provisions has been committed to bring a civil action for injunctive relief on behalf of the general public and, upon prevailing, recover reasonable attorney's fees and costs. 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

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

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

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

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

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

23 (e) California already regulates farm labor contractors through
24 a comprehensive licensing system and provides some oversight

1 of the activities of foreign labor contractors. This bill expands
2 regulation of the activities of foreign labor contractors by the
3 following:

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

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

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

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

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

15 9998.1. The following definitions are applicable to this chapter:

16 (a) "Person" includes any natural person, company, firm,
17 partnership or joint venture, association, corporation, limited
18 liability company, or sole proprietorship.

19 (b) "Compensation" means all forms of remuneration or
20 consideration for the provision of employment services to foreign
21 workers by a foreign labor contractor.

22 (c) "Employment services" includes, but is not limited to,
23 procuring employment, marketing labor, processing visa
24 applications, or otherwise arranging the employment or
25 transportation, housing, and other living accommodations for
26 foreign workers either on behalf of those foreign workers or on
27 behalf of another person, including services performed outside the
28 United States.

29 (d) "Foreign worker" means any person seeking employment
30 who is not a United States citizen but who is authorized by the
31 federal government to work in the United States, including a person
32 who engages in temporary nonagricultural labor pursuant to Section
33 1101(a)(15)(H)(ii)(b) of Title 8 of the federal Immigration and
34 Nationality Act.

35 (e) "Foreign labor contractor" means any person who for
36 compensation agrees to assist in securing or who actually secures
37 for or provides employment services to foreign workers.

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

1 9998.1.5. (a) On and after July 1, 2015, a person acting as a
2 foreign labor contractor shall register with the Labor Commissioner
3 in accordance with the terms and procedures for registration
4 established by the commissioner by January 1, 2015. On and after
5 August 1, 2015, the commissioner shall post on its Internet Web
6 site the names and contact information for all registered foreign
7 labor contractors and a list of the names and contact information
8 for any foreign labor contractors denied renewal or registration.

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

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

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

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

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

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

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

36 (i) For gross receipts up to five hundred thousand dollars
37 (\$500,000), a twenty-five-thousand-dollar (\$25,000) bond.

38 (ii) For gross receipts of five hundred thousand dollars
39 (\$500,000) to two million dollars (\$2,000,000), a
40 fifty-thousand-dollar (\$50,000) bond.

1 (iii) For gross receipts greater than two million dollars
2 (\$2,000,000), a seventy-five-thousand-dollar (\$75,000) bond.

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

17 (4) The person has paid to the commissioner a registration fee
18 of five hundred dollars (\$500) plus a filing fee of ten dollars (\$10).

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

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

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

26 (3) Section 236.1 of the Penal Code.

27 (4) An applicable guest worker program.

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

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

32 9998.2. (a) On and after July 1, 2015, a person using the
33 services of a foreign labor contractor to procure foreign workers
34 or employees shall disclose this information to the Labor
35 Commissioner in accordance with the terms and procedures
36 established by the commissioner by January 1, 2015.

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

39 (1) The names and addresses of all persons, except bona fide
40 employees on stated salaries, financially interested, either as

1 partners, associates, or profit sharers, in the person's business
2 enterprise, together with the amount of their respective interests.

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

8 (3) A copy of the foreign labor contractor's disclosure as
9 required under Section 9998.2.5 to all foreign workers or
10 employees obtained by the person through the services of the
11 foreign labor contractor or its agents.

12 (4) Information about the steps the person has taken to verify
13 the accuracy of the information provided in the foreign labor
14 contractor's disclosure under Section 9998.2.5 and submitted under
15 paragraph (3).

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

19 (d) (1) A person using or anticipating using the services of a
20 foreign labor contractor to obtain workers or employees shall
21 deposit with the commissioner a surety bond in an amount based
22 on the size of the person's annual payroll for all employees, as
23 follows:

24 (A) For payrolls up to five hundred thousand dollars (\$500,000),
25 a twenty-five-thousand-dollar (\$25,000) bond.

26 (B) For payrolls of five hundred thousand dollars (\$500,000)
27 to two million dollars (\$2,000,000), a fifty-thousand-dollar
28 (\$50,000) bond.

29 (C) For payrolls greater than two million dollars (\$2,000,000),
30 a seventy-five-thousand-dollar (\$75,000) bond.

31 (2) If the person has been the subject of a final judgment in a
32 year in an amount equal to that of the bond required, that person
33 shall be required to deposit an additional bond within 60 days. The
34 bond shall be payable to the people of the State of California and
35 shall be conditioned on the person complying with all the terms
36 and provisions of this chapter and paying all damages occasioned
37 to any person by failure to do so, or by any violation of this chapter,
38 or false statements or misrepresentations made in complying with
39 this section. The bond shall also be payable for interest on wages
40 and for any damages arising from violation of applicable orders

1 of the Industrial Welfare Commission, and for any other monetary
2 relief awarded to a foreign worker as a result of a violation of law
3 by the person.

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

6 9998.2.5. (a) A foreign labor contractor shall ascertain and
7 disclose in writing to each foreign worker who is recruited for
8 employment in English and in the primary language of the foreign
9 worker being recruited, at the time of the foreign worker's
10 recruitment, the following information:

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

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

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

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

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

35 (A) States that no foreign labor contractor, or agent or employee
36 of a foreign labor contractor, can lawfully assess any fee, including
37 visa fees, processing fees, transportation fees, legal expenses,
38 placement fees, and other costs to a foreign worker for employment
39 services, and that the employer may bear the costs or fees for the

1 foreign labor contractor, but that these fees cannot be assessed to
2 the foreign worker.

3 (B) Explains that no additional requirements or changes may
4 be made ~~from~~ *to* the terms of the contract originally signed by the
5 foreign worker, unless the foreign worker is provided at least 48
6 hours to review and consider the additional requirements or
7 changes and the foreign worker gives specific consent, voluntarily
8 and without threat of penalty, to each additional requirement or
9 change.

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

17 (6) Any education or training to be provided or required,
18 including the nature, timing, and cost of training and the person
19 who will pay training costs, whether the training is a condition of
20 employment, continued employment, or future employment, and
21 whether the foreign worker will be paid or remunerated during the
22 training period, including the rate of pay or remuneration.

23 (7) Any other information that the commissioner may require
24 by regulation.

25 (b) A foreign labor contractor, or the agent, subcontractor, or
26 employee of a foreign labor contractor, or a person using the
27 services of a foreign labor contractor to obtain foreign workers or
28 employees, may not assess any fee, including, but not limited to,
29 visa fees, processing fees, transportation fees, legal expenses,
30 placement fees, and other costs, to a foreign worker for
31 employment services.

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

38 (d) *Additional requirements or changes shall not be made to*
39 *the terms of the contract originally signed by the foreign worker,*
40 *unless the foreign worker is provided at least 48 hours to review*

1 *and consider the additional requirements or changes and the*
2 *foreign worker gives specific consent, voluntarily and without*
3 *threat of penalty, to each additional requirement or change.*

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

6 9998.6. A person may not intimidate, threaten, restrain, coerce,
7 discharge, or in any manner discriminate against a foreign worker
8 or a member of his or her family in retaliation for the foreign
9 worker's exercise of any right under this chapter.

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

12 9998.8. (a) A person who violates this chapter or who causes
13 or induces another to violate this chapter is guilty of a misdemeanor
14 punishable by a fine of not more than one thousand dollars
15 (\$1,000), or imprisonment in the county jail for not more than six
16 months, or both.

17 (b) A person who violates any provision of this chapter shall
18 be subject to a civil penalty of no less than one thousand dollars
19 (\$1,000) and no more than twenty-five thousand dollars (\$25,000)
20 per violation, in addition to any other civil remedies available to
21 the Labor Commissioner or an aggrieved person.

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

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

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

34 (3) Enforce the liability on the bonds required under Section
35 9998.1.5 or 9998.2.

36 (d) Foreign labor contractors and those persons using their
37 services to obtain foreign workers or employees are jointly and
38 severally liable for violations of this chapter.

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

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

6 9998.10. The Labor Commissioner and the deputies and
7 representatives authorized by the commissioner in writing may
8 take assignments of actions on the bonds required under Section
9 9998.1.5 or 9998.2 by aggrieved persons and may prosecute the
10 actions on behalf of persons who, in the judgment of the
11 commissioner, are financially unable to employ counsel, in the
12 same manner that claims are prosecuted under Section 98 of the
13 Labor Code.

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

16 9998.11. A person who, upon information and belief, claims
17 a violation of this chapter has been committed may bring a civil
18 action for injunctive relief on behalf of the general public and,
19 upon prevailing, shall recover reasonable attorney's fees and costs.

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

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