

AMENDED IN ASSEMBLY SEPTEMBER 4, 2013

AMENDED IN ASSEMBLY AUGUST 20, 2013

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN SENATE MAY 7, 2013

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 516**

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

February 21, 2013

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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 *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, and 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, *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 ~~provide for the exempt a person from joint and several liability of for an act or omission by a foreign labor contractors and persons contractor if the person is using the a registered foreign labor contractors’ contractor’s services if specified conditions are met.~~ 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.~~ *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.

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

1 often complicit with, or are directly involved in, the illegal  
2 trafficking of foreign workers.

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

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

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

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

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

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

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

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

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

35 9998.1. The following definitions are applicable to this chapter:

36 (a) "Person" includes any natural person, company, firm,  
37 partnership or joint venture, association, corporation, limited  
38 liability company, or sole proprietorship.

39 (b) "Foreign labor contracting activity" means ~~recruiting,~~  
40 ~~soliciting, or related activities with respect to recruiting or~~

1 *soliciting for compensation* a foreign worker who resides outside  
2 of the United States in furtherance of that worker’s employment  
3 in California, including when that activity occurs wholly outside  
4 the United States. “Foreign labor contracting activity” does not  
5 include the services of an employer, or employee of an employer,  
6 if those services are provided directly to foreign workers solely to  
7 find workers for the employer’s own use, ~~and are provided without~~  
8 ~~the participation of any foreign labor contractor.~~ *use.*

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

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

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

29 9998.1.5. (a) On and after July 1, 2015, a person acting as a  
30 foreign labor contractor shall register with the Labor Commissioner  
31 in accordance with the terms and procedures for registration  
32 established by the commissioner by January 1, 2015. On and after  
33 August 1, 2015, the commissioner shall post on its Internet Web  
34 site the names and contact information for all registered foreign  
35 labor contractors and a list of the names and contact information  
36 for any foreign labor contractors denied renewal or registration.

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

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

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

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

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

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

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

25 (i) For gross receipts up to five hundred thousand dollars  
26 (\$500,000), a fifty-thousand-dollar (\$50,000) bond.

27 (ii) For gross receipts of five hundred thousand dollars  
28 (\$500,000) to two million dollars (\$2,000,000), a  
29 one-hundred-thousand-dollar (\$100,000) bond.

30 (iii) For gross receipts greater than two million dollars  
31 (\$2,000,000), a one-hundred-fifty-thousand-dollar (\$150,000)  
32 bond.

33 (B) If the foreign labor contractor has been the subject of a final  
34 judgment in a year in an amount equal to that of the bond required,  
35 that contractor shall be required to deposit an additional bond  
36 within 60 days. The bond shall be payable to the people of the  
37 State of California and shall be conditioned on the foreign labor  
38 contractor complying with all the terms and provisions of this  
39 chapter and paying all damages occasioned to any person by failure  
40 to do so, or by any violation of this chapter, or false statements or

1 misrepresentations made in the registration process. The bond shall  
2 also be payable for interest on wages and for any damages arising  
3 from violation of applicable orders of the Industrial Welfare  
4 Commission, and for any other monetary relief awarded to a  
5 foreign worker as a result of a violation of law by the foreign labor  
6 contractor.

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

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

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

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

16 (3) Section 236.1 of the Penal Code.

17 (4) An applicable guest worker program.

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

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

22 9998.2. (a) On and after July 1, 2015, a person *who knows or*  
23 *should have known that the person is* using the services of a foreign  
24 labor contractor to procure foreign workers or employees pursuant  
25 to subdivision (b) of Section 9998.1 shall disclose this information  
26 to the Labor Commissioner in accordance with the terms and  
27 procedures established by the commissioner by January 1, 2015.

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

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

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

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

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

3 9998.2.5. (a) A foreign labor contractor shall ascertain and  
4 disclose in writing to each foreign worker who is recruited for  
5 employment in English and in the primary language of the foreign  
6 worker being recruited, at the time of the foreign worker's  
7 recruitment, the following information:

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

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

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

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

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

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

39 (B) Explains that no additional requirements or changes may  
40 be made to the terms of the contract originally *provided by the*

1 *foreign labor contractor and* signed by the foreign worker, unless  
2 the foreign worker is provided at least 48 hours to review and  
3 consider the additional requirements or changes and the foreign  
4 worker gives specific consent, voluntarily and without threat of  
5 penalty, to each additional requirement or change.

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

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

19 ~~(7) Any other information that the commissioner may require~~  
20 ~~by regulation.~~

21 (b) The foreign labor contractor shall file the disclosure required  
22 under subdivision (a) with the Labor Commissioner within ~~72~~  
23 ~~hours~~ *seven business days* of providing it to the foreign worker.

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

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

38 (e) Additional requirements or changes shall not be made to the  
39 terms of the contract originally *provided by the foreign labor*  
40 *contractor and* signed by the foreign worker, unless the foreign

1 worker is provided at least 48 hours to review and consider the  
2 additional requirements or changes and the foreign worker gives  
3 specific consent, voluntarily and without threat of penalty, to each  
4 additional requirement or change.

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

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

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

13 9998.8. (a) A person who violates this chapter or who causes  
14 or induces another to violate this chapter is guilty of a misdemeanor  
15 punishable by a fine of not more than one thousand dollars  
16 (\$1,000), or imprisonment in the county jail for not more than six  
17 months, or both. ~~An employer shall be not liable under this~~  
18 ~~subdivision if the employer only used services provided by a~~  
19 ~~foreign labor contractor registered with the Labor Commissioner~~  
20 ~~pursuant to Section 9998.1.5. A person shall not be liable under~~  
21 ~~this subdivision for any act or omission by a foreign labor~~  
22 ~~contractor engaged by the person if the foreign labor contractor~~  
23 ~~was registered with the Labor Commissioner pursuant to Section~~  
24 ~~9998.1.5 no later than the first day of engagement.~~

25 (b) A person who violates any provision of this chapter shall  
26 be subject to a civil penalty of no less than one thousand dollars  
27 (\$1,000) and no more than twenty-five thousand dollars (\$25,000)  
28 per violation, in addition to any other civil remedies available to  
29 the Labor Commissioner or an aggrieved person.

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

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

35 (2) Bring an action for damages, against a person who violates  
36 this chapter to recover the greater of all of his or her actual damages  
37 or five hundred dollars (\$500) per employee per violation for an  
38 initial violation, and one thousand dollars (\$1,000) per employee  
39 for each subsequent violation, and, upon prevailing in an action

1 brought pursuant to this section, recover costs and reasonable  
2 attorney’s fees.

3 (3) Enforce the liability on the bonds required under Section  
4 9998.1.5.

5 ~~(d) (1) A person using the services of a foreign labor contractor~~  
6 ~~is jointly and severally liable for any violation of this chapter by~~  
7 ~~a foreign labor contractor unless both of the following are true:~~

8 ~~(A) The person only used services provided by a foreign labor~~  
9 ~~contractor registered with the Labor Commissioner pursuant to~~  
10 ~~Section 9998.1.5.~~

11 ~~(B) The person has made a good faith effort to ensure~~  
12 ~~compliance of this chapter by the foreign labor contractor.~~

13 ~~(2) For purposes of this subdivision, “good faith effort” means~~  
14 ~~all reasonable and feasible efforts by the person using the services~~  
15 ~~of the foreign labor contractor to ensure the foreign labor contractor~~  
16 ~~has not committed any violations of this chapter. An evaluation~~  
17 ~~of a person’s good faith effort may include, but is not limited to,~~  
18 ~~the following factors:~~

19 ~~(A) The extent to which the person has informed the foreign~~  
20 ~~labor contractor of its obligations and liabilities under this chapter.~~

21 ~~(B) The extent to which the person has periodically reviewed~~  
22 ~~the foreign labor contractor’s recruiting and contracting practices,~~  
23 ~~including reports by foreign workers of practices that may violate~~  
24 ~~this chapter.~~

25 ~~(C) Whether the person has obtained and reviewed copies of~~  
26 ~~disclosure statements or other documentation required to be~~  
27 ~~provided by the foreign labor contractor to the foreign worker by~~  
28 ~~this chapter.~~

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

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

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

39 9998.10. The Labor Commissioner and the deputies and  
40 representatives authorized by the commissioner in writing may

1 take assignments of actions on the bonds required under Section  
2 9998.1.5 by aggrieved persons and may prosecute the actions on  
3 behalf of persons who, in the judgment of the commissioner, are  
4 financially unable to employ counsel, in the same manner that  
5 claims are prosecuted under Section 98 of the Labor Code.

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

8 ~~9998.11. A person who, upon information and belief, claims  
9 a violation of this chapter has been committed may bring a civil  
10 action for injunctive relief on behalf of the general public and,  
11 upon prevailing, shall recover reasonable attorney’s fees and costs.~~

12 *9998.11. The Labor Commissioner may adopt regulations or  
13 policies and procedures to implement the provisions of this chapter.*

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