

SENATE BILL REPORT

SB 6332

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, January 21, 2010

Title: An act relating to human trafficking.

Brief Description: Concerning human trafficking.

Sponsors: Senators Kohl-Welles, Haugen, Delvin, Kline, Fraser, Stevens, Shin, Fairley and Roach.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/19/10, 1/21/10 [DPS].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 6332 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin, Honeyford, King and Kline.

Staff: Kathleen Buchli (786-7488)

Background: International labor recruitment agencies and domestic employers of foreign workers must provide a disclosure statement to foreign workers, not including those holding an H-1B visa, who have been referred to or hired by a Washington employer. The disclosure statement must state that the worker may be considered an employee under the laws of the state of Washington; state that the worker may be subject to both state and federal laws governing overtime and work hours; include an itemized listing of any deductions the employer intends to make from the worker's pay for food and housing, including an itemized listing of the international labor recruitment agency's fees; state that the worker has the right to control his or her travel and labor documents, subject to federal law; and include a list of services or a hotline the worker may contact.

Federal law requires the United States Secretary of State to develop an informational pamphlet on the legal rights and resources available to nonimmigrant visa holders in certain employment and education-based visa categories. The pamphlet must include information on: the legal rights of nonimmigrant visa holders, including labor and employment law; the illegality of slavery and trafficking in persons; the right to report abuse without retaliation;

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and the right of the nonimmigrant visa holder not to relinquish possession of his or her passport. Before their visa interview, visa applicants are required to have read and understood the pamphlet before being issued a visa.

Summary of Bill (Recommended Substitute): A foreign worker is defined as a person who is not a citizen of the United States, who comes to Washington State based on an offer of employment, and who holds a nonimmigrant visa for temporary visitors. The exception for H-1B visa holders is removed. International labor recruitment agencies and domestic employers of foreign workers are not required to provide the disclosure statement if the foreign worker has been provided the federal informational pamphlet. A worker is presumed to have been provided the pamphlet if the federal law requiring the pamphlet is in effect and the worker holds an A-3, G-5, NATO-7, H, J, or B-1 personal or domestic servant visa.

An international labor recruitment agency or domestic employer that fails to provide the disclosure statement to any foreign worker is liable to that foreign worker in a civil action. The court must award a prevailing foreign worker an amount between \$200 and \$500, or actual damages, whichever is greater. The court may also award other equitable relief. A prevailing foreign worker must be awarded court costs and attorneys' fees.

The Department of Labor and Industries (L&I) must integrate information on assisting victims of human trafficking into existing posters and brochures. The toll-free telephone number of the National Human Trafficking Resource Center and the Washington State Office of Crime Victims Advocacy must be included on the posters and brochures.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute): The disclosure statement requirements apply to domestic employers and international labor recruitment agencies who hire foreign workers on or after the effective date of this act. If a foreign worker has been provided the federal informational pamphlet, neither a domestic employer nor an international labor recruitment agency is required to provide the state disclosure statement. The civil penalties in the bill apply to violations of both domestic employers and international labor recruitment agencies.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: The United States is a destination country for people being trafficked and Washington State has been the leader in addressing this terrible social problem. Washington State can be considered a transit state for people moving through the state to be trafficked elsewhere. Certainly people come to the country for good reasons and work for large and small companies that do not traffic or harm their employees. This bill provides a reasonable approach to the problem and contains a reasonable penalty. This legislation has been worked on for many months and many

stakeholders have been brought into the discussion. Trafficking activities in this state include forced prostitution, forced panhandling, and forced labor. Disclosure statements help us spread the word. We appreciate that the provisions of the act require material be culturally appropriate and be in appropriate languages. We also approve of removing the exclusion of the H-1B visa. We support the private right of action created in the bill; it is necessary for workers to assert their rights and the attorneys' fees provision helps these workers because many attorneys will not take these cases unless they are provided attorneys' fees. We are concerned about suggestions on changing enforcement to L&I because they are restricted in resources and the bill may not be enforced. The definition of foreign worker excludes undocumented people, perhaps these people would be likely targets as well. The federal provision does not contain information about recruitment fees and this would be useful to H-2A workers. We recommend H-2A and H-2B visa holders continue to get the Washington State disclosure form. This bill hits the mark and goes after the appropriate groups of people.

OTHER: We appreciate the efforts in developing a compromise during the interim and that the bill appreciates the differences between immigration issues and human trafficking. The definition of foreign worker needs to state that it does not include United States citizens and permanent residents. International labor recruitment agencies and domestic employers need to have the same protections. We need to consider an administrative penalty through the Department of Labor and Industries, rather than the civil penalty in the bill.

Persons Testifying: PRO: Senator Kohl-Welles, prime sponsor; Rani Hong, Tronie Foundation; Rose Gunderson, Washington Attorney General's Office; Chris Cheney, Washington Growers League; Andrea Schmitt, Columbia Legal Services.

OTHER: Scott Dilley, Washington Farm Bureau; Lew McMurrin, Washington Technology Industry Association.