

HOUSE BILL REPORT

E2SSB 5850

As Reported by House Committee On:
Commerce & Labor
General Government Appropriations

Title: An act relating to protecting workers from human trafficking violations.

Brief Description: Protecting workers from human trafficking violations.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Kohl-Welles, Swecker, Keiser, Franklin, Kline, Hargrove, Fraser, Tom, Regala, Prentice, McAuliffe and Shin).

Brief History:

Committee Activity:

Commerce & Labor: 3/24/09, 3/27/09 [DPA];

General Government Appropriations: 4/1/09, 4/3/09 [DPA(APPG w/o CL)].

**Brief Summary of Engrossed Second Substitute Bill
(As Amended by House)**

- Requires the Office of Crime Victims Advocacy to supply certain health profession boards and commissions with information about human trafficking, and requires these boards and commissions to disseminate this information to certain health care professionals.
- Requires employers and international labor recruitment agencies to provide disclosure statements to foreign workers, specifies the content of these statements, and makes this requirement subject to the Consumer Protection Act.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Crouse, Green, Moeller and Williams.

Staff: Jill Reinmuth (786-7134)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Human trafficking generally involves the recruitment or transportation of a person, within or across national borders, for work or services, by means of violence or threat of violence, debt bondage, deception, or other coercion. A person may be trafficked for a number of reasons including forced prostitution, exploitative domestic service in private homes, and indentured servitude in sweatshops.

In 2003 a bill classifying human trafficking as a criminal offense was passed. In 2002 and 2003 bills addressing the international matchmaking industry were passed. International matchmaking agencies must notify foreign prospective spouses that they may request a background check and other personal information about Washington resident prospective spouses. A violation of this requirement is a violation of the Consumer Protection Act.

Since 2002 various task forces have developed recommendations for responding to human trafficking. Most recently, in July 2008, the Task Force against the Trafficking of Persons issued recommendations. Phase I recommendations included providing comprehensive direct outreach to those who may be victims, and training service providers to identify and assist victims.

The Office of Crime Victims Advocacy (OCVA) assists communities in planning and implementing services for crime victims, advocates on behalf of crime victims in obtaining needed services and resources, and advises local and state governments on practices, policies, and priorities that impact crime victims. The OCVA has coordinated efforts to study human trafficking and worked with various task forces on human trafficking.

Employers are not required to inform workers of services for victims of human trafficking. They are, however, required to inform workers of their rights under certain federal and state laws.

Most employers are required to post notices on: job safety and health law; workers' rights under wage and hour laws; workers' rights under family and medical leave laws; workers' compensation benefits; unemployment insurance benefits; and employment discrimination.

Some employers and other parties are required to disclose certain information in writing to workers. For example, agricultural employers, agricultural associations, and farm labor contractors must provide certain information to migrant agricultural workers at the time of recruitment. The disclosure statement must be in English, or as necessary and reasonable, in Spanish or other languages. It must include information about wages, benefits, workers' compensation, and costs for transportation and housing that will be charged. Employment agencies must provide applicants with contracts that contain information about services, fees, and payment methods.

Summary of Amended Bill:**Information for Health Professionals.**

The Office of Crime Victims Advocacy (OCVA) must supply certain health profession boards and commissions with information on how to recognize victims of human trafficking, what services are available for these victims, and where to report potential trafficking situations. The boards and commissions are the Medical Quality Assurance Commission, the Examining Board of Psychologists, and the Mental Health Counselors, Marriage and Family Therapists, and Social Workers' Advisory Committee. The information must be culturally sensitive and include information on minor victims.

The health profession boards and commissions must disseminate this information to certain health care professionals by providing information on websites, in newsletters, at meetings, or through other methods. The health care professionals are physicians, psychologists, and social workers, mental health counselors, and marriage and family therapists. The boards and commissions must report to the OCVA on methods used to distribute information.

Information for Foreign Workers.

Domestic employers of foreign workers ("employers") are persons residing in the state who recruit or employ a foreign worker to perform work in the state. International labor recruitment agencies ("agencies") are entities that do business in the United States and offer employment referral services involving foreign workers by acting as intermediaries between employers and foreign workers. Foreign workers are persons who are not United States citizens and who come to the state based on an offer of employment, but not persons who hold H-1B, H-2A, or H-2B visas.

Employers and agencies must provide disclosure statements to foreign workers referred to or hired by a Washington employer. The disclosure statement must be given to the worker no later than the date the worker arrives at the place of employment.

The disclosure statement must:

- be in the foreign worker's primary language;
- state that the foreign worker may be considered an employee under state law, is subject to state worker health and safety laws, and may be eligible for workers' compensation and unemployment insurance;
- state that the foreign worker may be subject to state and federal laws on overtime and work hours;
- include itemized listings of the agency's fees and the employer's intended deductions from pay for food and housing;
- state that the foreign worker has the right to control travel and labor documents at all times, and that the employer may not require the employee to surrender those documents; and
- include a list of services or a hotline a foreign worker may contact if he or she thinks he or she may be a victim of trafficking.

The Department of Labor and Industries may create a model disclosure form and post it on its website.

Employers and agencies are deemed to be doing business in Washington and are subject to the jurisdiction of state courts if the employer contracts for employment services with a Washington resident or is considered to be doing business under any other law. A violation of the disclosure statement requirement is a violation of the Consumer Protection Act.

Amended Bill Compared to Original Bill:

The definition of "foreign worker" excludes not only persons who hold an H-1B visa, but also persons who hold an H-2A or H-2B visa.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available. New fiscal note requested on 3/27/09.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) This bill continues our state's pioneering work on the issue of human trafficking. It takes an employment perspective on this issue.

This bill would help assuage horrible situations when people are brought to this country unlawfully for purposes of employment. They are promised good jobs. Then they are threatened, their passports are confiscated, and they are forced into involuntary servitude, and frequently prostitution. These activities primarily affect women and children, but also affect men.

This bill requires international labor recruitment agencies and domestic employers to provide information to foreign workers about federal and state labor laws. A Senate floor amendment excludes H-1B workers, but not H-2A and H-2B workers. It does not change laws. Instead, it protects workers who are brought here by giving them information about existing laws in a language they can understand. Efforts are being made in India to provide information to potential victims of human trafficking.

This bill also requires education for health care providers. They need to be knowledgeable about identifying victims of human trafficking.

Agricultural guest workers and other guest workers need the protections in this bill. They have no knowledge about labor laws, and are vulnerable to trafficking and other types of abuses. They are very different from H-1B visa holders.

(With concerns) There are already scores of disclosure requirements. There are already disclosure requirements for H-2A and H-2B workers. This bill should target workers who are not already covered.

The disclosure requirement needs work. A statement that a worker may or may not have certain protections is not helpful. A violation of the disclosure requirement is subject to the Consumer Protection Act, including treble damages and attorneys' fees.

The idea of telling workers that employers cannot take their visas is a good idea.

(Opposed) None.

Persons Testifying: (In support) Senator Kohl-Welles, prime sponsor; Benita Gjurasic and Rani Hong, Tronie Foundation; and Andrea Schmitt, Columbia Legal Services.

(With concerns) Dan Fazio, Washington Farm Bureau.

Persons Signed In To Testify But Not Testifying: (In support) Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs.

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

Majority Report: Do pass as amended by Committee on General Government Appropriations and without amendment by Committee on Commerce & Labor. Signed by 14 members: Representatives Darneille, Chair; Takko, Vice Chair; McCune, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Armstrong, Blake, Crouse, Dunshee, Hudgins, Kenney, Pedersen, Sells, Short and Williams.

Staff: Steve Smith (786-7178)

Summary of Recommendation of Committee On General Government Appropriations Compared to Recommendation of Committee On Commerce & Labor:

The General Government Appropriations striking amendment specifies that the disclosure statement must be in English or, if the worker is not fluent or literate in English, another language that is understood by the worker. The striking amendment also requires that the disclosure statement state that the employer may not require the worker to surrender travel and labor documents, except as required by law or for visa applications.

The General Government Appropriations striking amendment does not exclude persons who hold an H-2A or H-2B visa from the definition of "foreign worker." The Commerce and Labor amendment excludes such persons.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) The fiscal note is clearly about the Office of the Attorney General (AGO). All of the activities described are a good deal for the estimated cost. The Senate doubled the cost because the Commerce and Labor amendment halved the covered population and the AGO's cost by excluding farm workers. The bill is preferred in the form passed by the Senate.

The fiscal note also includes costs for the Department of Health (DOH). The DOH and others would not have to develop materials. Instead, the Office of Crime Victims Advocacy (OCVA) would supply materials to the DOH, and the DOH would give them to the various professions. The OCVA is capable and willing to prepare those materials.

(Opposed) None.

Persons Testifying: Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs.

Persons Signed In To Testify But Not Testifying: None.