

SENATE BILL 1016

K3

7lr1718
CF 7lr2909

By: **Senator Lee**

Introduced and read first time: February 3, 2017

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Regulation of Farm Labor Contractors and Foreign**
3 **Labor Contractors**

4 FOR the purpose of establishing licensing and regulatory requirements for foreign labor
5 contractors; providing that an agreement by a foreign worker to waive certain rights
6 is void as contrary to public policy; authorizing the Commissioner of Labor and
7 Industry to enter certain housing at certain times for a certain purpose; requiring
8 the Commissioner to keep a certain public registry of all licensed foreign labor
9 contractors beginning on a certain date; authorizing the Attorney General, under
10 certain circumstances, to investigate certain allegations and proceed in a court to
11 enforce certain provisions of law; requiring an individual to be licensed by the
12 Commissioner before the individual may perform a foreign labor contracting service
13 in the State for consideration; altering the contents of a certain application;
14 providing that a certain license authorizes the licensee to perform foreign labor
15 contracting services for consideration; requiring a licensee to take certain actions
16 while performing a foreign labor contracting service in the State; altering the
17 grounds on which the Commissioner is authorized to deny a certain license or
18 suspend or revoke a certain license; authorizing the Commissioner to suspend a
19 license summarily under certain circumstances; authorizing the Commissioner to
20 pass an order under certain circumstances to require a person immediately to cease
21 performing a foreign labor contracting service; requiring the Commissioner to
22 require, except under certain circumstances, a foreign labor contractor to post a
23 surety bond or other security under certain circumstances; authorizing the
24 Commissioner to require security in a certain amount; requiring each foreign labor
25 contractor to provide each foreign worker with a certain contract at a certain time
26 and in a certain language; prohibiting changes to a certain contract from being made
27 except under certain circumstances; requiring a foreign labor contractor who
28 provides certain housing to ensure that certain conditions of occupancy are posted
29 conspicuously while the foreign worker stays in the housing; requiring the
30 Commissioner to make available to a foreign labor contractor a certain contract;
31 requiring a foreign labor contractor to file with the Commissioner certain contracts;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



prohibiting a foreign labor contractor or an employer that uses a foreign labor contractor from assessing to a foreign worker certain costs, fees, and expenses; requiring a foreign labor contractor to immediately repay a foreign worker and provide the foreign worker with certain employment under certain circumstances; requiring certain employers to file with the Commissioner certain information; providing that a certain employer is jointly and severally liable for a violation of certain provisions of this Act committed by a foreign labor contractor; requiring the Commissioner to require by regulation a foreign labor contractor to keep certain records; requiring a foreign labor contractor to keep certain records even if the foreign labor contractor is not responsible for paying a foreign worker; requiring that certain information be included on a certain pay stub; requiring each foreign labor contractor to ensure that certain vehicles meet certain standards and that certain drivers are authorized under certain provisions of law to drive certain vehicles; requiring that each foreign labor contractor ensure that owners of certain vehicles have certain liability policies; prohibiting a person from performing a foreign labor contracting service in the State for consideration except under certain circumstances; prohibiting a foreign labor contractor from discriminating against a foreign worker to the same extent an employer is prohibited from discriminating under certain provisions of law; prohibiting a person from making certain representations to the public except under certain circumstances; prohibiting a person from using a foreign labor contractor to perform a foreign labor contracting service except under certain circumstances; providing that a person is not liable for hiring a certain person under certain circumstances; altering certain penalties; requiring the Commissioner to consider certain factors before assessing a certain penalty against a foreign labor contractor; establishing certain penalties for a willful violation of certain provisions of law by a foreign labor contractor; prohibiting a foreign labor contractor from taking adverse action against a foreign worker for a certain reason; authorizing a foreign worker, under certain circumstances, to bring an action in a certain court to recover certain damages; making conforming changes; defining certain terms; altering a certain defined term; providing for the construction of this Act; and generally relating to regulation of farm labor contractors and foreign labor contractors.

BY repealing and reenacting, with amendments,

Article – Labor and Employment

Section 7-101, 7-103, 7-202, 7-203, 7-205, 7-301, 7-302, 7-305, 7-307, 7-308, 7-310, 7-311; 7-403 and 7-404 to be under the amended subtitle “Subtitle 4. Responsibilities of Farm Labor and Foreign Labor Contractors”; and 7-501, 7-502, 7-503, 7-506, and 7-507 to be under the amended title “Title 7. Farm Labor and Foreign Labor Contractors”

Annotated Code of Maryland
(2016 Replacement Volume)

BY adding to

Article – Labor and Employment

Section 7-312.1, 7-401.1, 7-401.2, 7-401.3, and 7-508

Annotated Code of Maryland

(2016 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Labor and Employment

Title 7. Farm Labor AND FOREIGN LABOR Contractors.

7–101.

(a) In this title the following words have the meanings indicated.

(b) “Agricultural operation” means:

(1) a person:

(i) who performs a farm labor contracting service; and

(ii) who:

1. owns or operates a farm;

2. owns or operates a cannery, packing shed, or other
processing establishment; or

3. produces or conditions seed; or

(2) a not-for-profit or cooperative association that:

(i) performs a farm labor contracting service;

(ii) consists of owners or operators of farms; and

(iii) is incorporated or qualified under the laws of the State.

(c) “Agricultural work” means employment:

(1) on a farm, in any activity that relates to the maintenance, management,
or operation of the farm or its tools or other equipment, including cultivation of soil, raising
of bees, or the growing, harvesting, or producing of an agricultural or horticultural
commodity; or

(2) by the owner or operator of a farm, to dry, to freeze, to grade, to pack,
to package, to plant, to process, or otherwise to handle an agricultural or horticultural
commodity in its unmanufactured state before delivery for storage.

(d) “Commissioner” means the Commissioner of Labor and Industry.

(E) “EMPLOYMENT” INCLUDES CULTURAL EXCHANGE, TRAINING, OR BUSINESS ACTIVITIES FOR WHICH A FOREIGN WORKER RECEIVES ANY FORM OF COMPENSATION, INCLUDING A STIPEND, FROM ANY SOURCE, WHETHER PAID IN THE UNITED STATES OR IN THE FOREIGN WORKER’S COUNTRY OF ORIGIN.

[(e)] (F) (1) “Farm” means an area that is used primarily to raise an agricultural or horticultural commodity.

(2) “Farm” includes:

- (i) a dairy farm;
- (ii) a fruit farm;
- (iii) a furbearing animal farm;
- (iv) a greenhouse;
- (v) a nursery;
- (vi) an orchard;
- (vii) a poultry farm;
- (viii) a ranch;
- (ix) a stock farm; and
- (x) a truck farm.

[(f)] (G) “Farm labor contractor” means a person, other than an agricultural operation or an employee of an agricultural operation, who performs a farm labor contracting service for consideration.

(H) (1) “FOREIGN LABOR CONTRACTOR” MEANS A PERSON WHO PERFORMS A FOREIGN LABOR CONTRACTING SERVICE.

(2) “FOREIGN LABOR CONTRACTOR” INCLUDES:

(I) A PERSON WORKING ON BEHALF OF AN EMPLOYER LOCATED IN THE STATE REGARDLESS OF WHETHER THE FOREIGN WORKER IN RELATION TO WHOM THE FOREIGN LABOR CONTRACTING SERVICE IS PERFORMED IS LOCATED IN THE UNITED STATES;

1 1. is absent overnight from the permanent place of residence
2 of the individual; or

3 2. as part of a day-haul operation, is transported or caused
4 to be transported by a farm labor contractor or an agent of a farm labor contractor to or
5 from the place of employment.

6 (2) “Migrant agricultural worker” does not include:

7 (i) an immediate family member of the owner or operator of a farm
8 or a cannery, packing shed, or other processing establishment;

9 (ii) an immediate family member of an individual who produces or
10 conditions seeds;

11 (iii) an immediate family member of a farm labor contractor; or

12 (iv) a nonimmigrant alien, as defined in 8 U.S.C. §
13 1101(a)(15)(H)(ii)(a), who is authorized under federal law to work in agricultural
14 employment in the United States.

15 **[(j)] (N)** “Perform a farm labor contracting service” means to recruit, to employ,
16 to hire, to provide, to solicit, to transport, or to provide housing for a migrant agricultural
17 worker.

18 **(O) (1) “PERFORM A FOREIGN LABOR CONTRACTING SERVICE” MEANS TO**
19 **RECRUIT, TO EMPLOY, TO HIRE, TO CONTRACT WITH, TO PURPORT TO EMPLOY,**
20 **HIRE, OR CONTRACT WITH, TO PROVIDE, TO SOLICIT, TO TRANSPORT, OR TO**
21 **PROVIDE HOUSING FOR A FOREIGN WORKER DIRECTLY OR THROUGH AN AGENT**
22 **REGARDLESS OF WHETHER THE SERVICE IS PERFORMED IN THE UNITED STATES.**

23 **(2) “PERFORM A FOREIGN LABOR CONTRACTING SERVICE”**
24 **INCLUDES:**

25 **(I) ANY ACTIVITY LEADING TO POTENTIAL EMPLOYMENT OF A**
26 **FOREIGN WORKER BEGINNING WITH THE INITIAL CONTACT WITH THE FOREIGN**
27 **WORKER OUTSIDE THE UNITED STATES;**

28 **(II) COORDINATING OR PROVIDING TRANSPORTATION**
29 **SPECIFICALLY FOR THE PURPOSE OF AIDING A FOREIGN WORKER TO OBTAIN**
30 **EMPLOYMENT;**

31 **(III) INTERVIEWING, TESTING, EVALUATING, AND SCREENING A**
32 **FOREIGN WORKER FOR JOB QUALIFICATIONS;**

(IV) SETTING UP A VISA APPOINTMENT WITH THE CONSULATE;

AND

(V) REFERRING THE FOREIGN WORKER TO AN EMPLOYER FOR
CONSIDERATION FOR HIRE.

7–103.

An agreement by a migrant agricultural worker **OR A FOREIGN WORKER** to waive or modify a right of the migrant agricultural worker **OR FOREIGN WORKER** under this title is void as contrary to public policy.

7–202.

(a) The Commissioner shall administer and enforce this title.

(b) To administer or enforce this title, the Commissioner may:

(1) conduct necessary investigations; and

(2) enter, at reasonable times, without delay:

(i) a migratory labor camp;

(ii) a place of employment; or

(iii) housing that:

1. a farm labor contractor provides to a migrant agricultural worker; **OR**

2. **A FOREIGN LABOR CONTRACTOR PROVIDES TO A FOREIGN WORKER.**

(c) To administer or enforce this title, the Commissioner may administer oaths and depose witnesses.

(d) (1) To administer or enforce this title, the Commissioner may issue a subpoena for the attendance of a witness to testify or the production of books, documents, papers, and records.

(2) If a person fails to comply with a subpoena issued under this subsection or fails to testify on any matter on which the person lawfully may be interrogated, on a complaint filed by the Commissioner, the circuit court for the county where the person resides or is then present may pass an order directing compliance with the subpoena or compelling testimony.

1 7–203.

2 (a) In addition to any powers set forth elsewhere, the Commissioner:

3 (1) may accept from any source a grant to carry out this title; and

4 (2) to administer or enforce this title, may certify to official acts.

5 (b) In addition to any duties set forth elsewhere, the Commissioner shall keep:

6 (1) a central public registry of all licensed farm labor contractors; AND

7 (2) BEGINNING JULY 1, 2018, A CENTRAL PUBLIC REGISTRY OF ALL
8 LICENSED FOREIGN LABOR CONTRACTORS THAT:

9 (I) IS AVAILABLE ONLINE IN A USER-FRIENDLY FORMAT;

10 (II) IS AVAILABLE, AT A MINIMUM, IN ENGLISH AND SPANISH;

11 (III) IS UPDATED WITHIN 5 BUSINESS DAYS AFTER A MATERIAL
12 CHANGE IS MADE IN THE INFORMATION PREVIOUSLY PROVIDED BY A LICENSED
13 FOREIGN LABOR CONTRACTOR; AND

14 (IV) INCLUDES THE FOLLOWING INFORMATION:

15 1. FOR EACH EMPLOYER FOR WHOM THE FOREIGN
16 LABOR CONTRACTOR PERFORMS FOREIGN LABOR CONTRACTING SERVICES:

17 A. THE NAME AND CONTACT INFORMATION OF THE
18 EMPLOYER; AND

19 B. THE NUMBER, OCCUPATIONS, WAGES, VISA
20 CLASSIFICATIONS, AND EMPLOYMENT DATES OF FOREIGN WORKERS WHO WERE
21 HIRED BY THE EMPLOYER AND WITH RESPECT TO WHOM THE FOREIGN LABOR
22 CONTRACTOR PERFORMED A FOREIGN LABOR CONTRACTING SERVICE FOR THE
23 PERSON;

24 2. THE INDUSTRY FOR WHICH THE FOREIGN LABOR
25 CONTRACTOR PERFORMS FOREIGN LABOR CONTRACTING SERVICES; AND

26 3. THE NAMES OF ALL PERSONS EMPLOYED BY OR
27 CONTRACTED BY THE LICENSED FOREIGN LABOR CONTRACTOR TO PERFORM
28 FOREIGN LABOR CONTRACTING SERVICES AND THE CITIES, STATES, AND FOREIGN

COUNTRIES WHERE THE FOREIGN LABOR CONTRACTING SERVICES WILL BE PERFORMED BY THE PERSONS.

7–205.

(A) On request of the Commissioner, the Attorney General may proceed in a court or before a federal unit to enforce:

- (1) a decision of the Commissioner made under this title;
- (2) a subpoena issued under this title;
- (3) an order of the Commissioner passed under this title; or
- (4) the collection of a civil penalty assessed under this title.

(B) ON THE ATTORNEY GENERAL’S OWN INITIATIVE, THE ATTORNEY GENERAL MAY:

- (1) INVESTIGATE AN ALLEGED VIOLATION OF THIS TITLE; AND**
- (2) PROCEED IN A COURT TO ENFORCE THIS TITLE.**

7–301.

Except as otherwise provided in this title, an individual shall be licensed by the Commissioner before the individual may perform a farm labor contracting service **OR A FOREIGN LABOR CONTRACTING SERVICE** in the State for consideration.

7–302.

(a) An applicant for a license shall:

- (1) submit to the Commissioner:
 - (i) an application on the form that the Commissioner provides; and
 - (ii) two recent, passport sized, color photographs of the applicant;

and

- (2) pay to the Commissioner an application fee of \$25.

(b) The application shall state:

- (1) the permanent place of residence of the applicant;

(2) each address where the applicant expects to reside while in the State;

(3) each farm labor contracting service **OR FOREIGN LABOR CONTRACTING SERVICE** that the applicant will perform for consideration;

(4) **IF THE APPLICANT WILL BE PERFORMING A FARM LABOR CONTRACTING SERVICE**, the name and address of each agricultural operation for whom the applicant will perform [a] **THE** farm labor contracting service, in the State, for consideration;

(5) the name and permanent address of each person who will act as custodian of records of wages that are required under this title to be kept;

(6) **IF THE APPLICANT WILL BE PERFORMING A FARM LABOR CONTRACTING SERVICE**, the number of migrant agricultural workers that the applicant expects to use in the State to perform a farm labor contracting service for consideration;

(7) **IF THE APPLICANT WILL BE PERFORMING A FOREIGN LABOR CONTRACTING SERVICE, THE NUMBER OF FOREIGN WORKERS WITH RESPECT TO WHOM THE APPLICANT EXPECTS TO PERFORM A FOREIGN LABOR CONTRACTING SERVICE;**

[(7)] (8) if the applicant will provide housing or cause housing to be provided to a migrant agricultural worker **OR A FOREIGN WORKER:**

(i) the name of each person who will provide the housing; and

(ii) each address where the housing will be provided;

[(8)] (9) if registration is required under the federal Migrant and Seasonal Agricultural Worker Protection Act, the registration identification number of the applicant;

[(9)] (10) the name of a resident agent who is acceptable to the Commissioner;

[(10)] (11) the consent of the applicant to service of process on the resident agent whenever the applicant leaves the State or otherwise is unavailable to accept service; [and]

(12) **IF THE APPLICANT WILL BE PERFORMING A FOREIGN LABOR CONTRACTING SERVICE:**

(I) **WHETHER THE APPLICANT HAS VIOLATED ANY EMPLOYMENT, LABOR, OR IMMIGRATION LAWS;**

1 (II) THE AMOUNT OF TIME THE APPLICANT HAS BEEN
2 PERFORMING FOREIGN LABOR CONTRACTING SERVICES;

3 (III) THE APPLICANT'S REVENUE AND OPERATING BUDGET;

4 (IV) THE MANNER IN WHICH THE FOREIGN LABOR CONTRACTING
5 SERVICE WILL BE PERFORMED;

6 (V) WHETHER THE APPLICANT IS OR HAS BEEN REGISTERED
7 WITH ANY OTHER STATE OR THE FEDERAL GOVERNMENT TO PERFORM A FOREIGN
8 LABOR CONTRACTING SERVICE;

9 (VI) IF THE APPLICANT IS OR HAS BEEN REGISTERED WITH ANY
10 OTHER STATE OR THE FEDERAL GOVERNMENT TO PERFORM A FOREIGN LABOR
11 CONTRACTING SERVICE:

12 1. WHETHER THE REGISTRATION HAS EVER BEEN
13 REVOKED OR SUSPENDED AND, IF SO, THE REASONS FOR THE REVOCATION OR
14 SUSPENSION; AND

15 2. WHETHER THE OTHER STATE OR THE FEDERAL
16 GOVERNMENT EVER REFUSED TO REISSUE THE REGISTRATION AND, IF SO, THE
17 REASONS FOR THE REFUSAL;

18 (VII) ANY PROFESSIONAL ORGANIZATIONS OF WHICH THE
19 APPLICANT IS A MEMBER;

20 (VIII) A LIST OF EMPLOYERS WHO HAVE USED THE SERVICES OF
21 THE APPLICANT WITHIN THE IMMEDIATELY PRECEDING 2 YEARS THAT INCLUDES:

22 1. THE NAME OF EACH EMPLOYER;

23 2. REGARDING FOREIGN WORKERS WITH RESPECT TO
24 WHOM THE APPLICANT PERFORMED A FOREIGN LABOR CONTRACTING SERVICE FOR
25 EACH EMPLOYER:

26 A. THE NUMBER OF FOREIGN WORKERS HIRED BY THE
27 EMPLOYER;

28 B. THE CITIES AND COUNTRIES OF ORIGIN OF THE
29 FOREIGN WORKERS;

C. THE CITIES AND STATES WHERE THE FOREIGN WORKERS WERE EMPLOYED;

D. THE RANGE OF WAGES PAID TO THE FOREIGN WORKERS; AND

E. THE INDUSTRIES AND OCCUPATIONS IN WHICH THE FOREIGN WORKERS WERE EMPLOYED; AND

3. THE VALUE OF THE CONTRACT ENTERED INTO BY THE EMPLOYER AND THE APPLICANT;

(IX) THE NAMES AND ADDRESSES OF ALL REGISTERED BUSINESS AGENTS IN THE UNITED STATES OR IN A FOREIGN JURISDICTION;

(X) ALL TAX IDENTIFICATION NUMBERS ISSUED TO THE APPLICANT; AND

(XI) THE NAMES OF ALL INDIVIDUALS, INCLUDING ANY INDEPENDENT CONTRACTORS OR SUBCONTRACTORS, EMPLOYED OR USED BY THE APPLICANT OR WITH WHOM THE APPLICANT CONTRACTS TO PERFORM A FOREIGN LABOR CONTRACTING SERVICE; AND

[(11)] (13) other relevant information that the Commissioner requires.

(c) If information required under subsection (b) of this section changes, the applicant or, if a license has been issued, the licensee shall give the Commissioner notice of the change within 10 days after the applicant or licensee knows or should have known of the change.

(d) Information in an application or in a notice of change may not be used to imply legal responsibility on an agricultural operation for the care, custody, or activities of a migrant agricultural worker whom a farm labor contractor provides.

(e) The Commissioner shall make application forms reasonably available at convenient locations throughout the State.

7–305.

While a license is in effect, it authorizes the licensee to:

(1) IF THE LICENSEE IS A FARM LABOR CONTRACTOR, perform farm labor contracting services for consideration; **OR**

1 **(2) IF THE LICENSEE IS A FOREIGN LABOR CONTRACTOR, PERFORM**
2 **FOREIGN LABOR CONTRACTING SERVICES FOR CONSIDERATION.**

3 7–307.

4 While a licensee is performing a farm labor contracting service **OR A FOREIGN**
5 **LABOR CONTRACTING SERVICE** in the State, the licensee shall:

6 (1) carry the license; and

7 (2) show the license:

8 (i) to each person with whom the licensee intends to deal as a farm
9 labor contractor **OR A FOREIGN LABOR CONTRACTOR**; and

10 (ii) on request, to an authorized employee or official of the State.

11 7–308.

12 Subject to the hearing provisions of § 7–309 of this subtitle, the Commissioner may
13 deny a license to any applicant or suspend or revoke a license if the applicant or licensee:

14 (1) fraudulently or deceptively obtains or attempts to obtain a license for
15 the applicant or licensee or for another;

16 (2) fraudulently or deceptively uses a license;

17 (3) knowingly makes any misrepresentation in the application;

18 (4) is not the real party in interest in the application for a license and the
19 real party in interest:

20 (i) has been refused a license;

21 (ii) has had a license suspended or revoked; or

22 (iii) otherwise fails to qualify under this section for a license;

23 (5) fails to comply with any provision of this title;

24 (6) fails to comply with any regulation that the Commissioner adopts;

25 (7) fails to comply with an order that the Commissioner passes;

26 (8) fails to satisfy a judgment that the Commissioner obtains under this
27 title;

(9) knowingly gives a migrant agricultural worker **OR A FOREIGN WORKER** who is recruited or hired false or misleading information about the existence or conditions of employment;

(10) fails, without just cause, to comply with any agreement or arrangement with an agricultural operation or with a migrant agricultural worker **OR FOREIGN WORKER**;

(11) is found by the Secretary of Health and Mental Hygiene to have violated a regulation of the Secretary on housing, sanitation, or safety for migrant agricultural workers **OR FOREIGN WORKERS**;

(12) has had a farm labor contractor registration certificate suspended or revoked by the United States Department of Labor or by another state for a reason that would justify suspension or revocation of a license in this State;

(13) has been convicted of a felony under a law of the State or under federal law; [or]

(14) during the past 5 years, has been convicted of a misdemeanor in connection with performing a farm labor contracting service **OR A FOREIGN LABOR CONTRACTING SERVICE** if the misdemeanor relates to:

(i) gambling;

(ii) sale, distribution, or possession of an alcoholic beverage; or

(iii) sale, distribution, or possession of a controlled dangerous substance; **OR**

(15) ASSESSES TO A FOREIGN WORKER ANY COSTS, FEES, OR EXPENSES RELATED TO THE PERFORMANCE OF A FOREIGN LABOR CONTRACTING SERVICE.

7-310.

The Commissioner may suspend a license summarily pending the determination of a hearing under § 7-309 of this subtitle if the Commissioner finds suspension necessary to prevent abuse of or injury to a migrant agricultural worker **OR A FOREIGN WORKER**.

7-311.

(a) If, after an investigation, the Commissioner has reason to believe that a person is performing a farm labor contracting service **OR A FOREIGN LABOR CONTRACTING SERVICE** for consideration in the State without a license, the Commissioner may pass an order to require the person immediately to cease performing the farm labor contracting service **OR FOREIGN LABOR CONTRACTING SERVICE**.

(b) The Commissioner shall give notice of the order and, if requested under subsection (d) of this section, hold a hearing in accordance with Title 10, Subtitle 2 of the State Government Article.

(c) An order passed under this section shall be:

(1) served personally; or

(2) sent by certified mail to the last known address of the person.

(d) (1) Within 7 days after service of an order under this section, the person may submit to the Commissioner a written request for a hearing.

(2) Unless a person requests a hearing in accordance with paragraph (1) of this subsection, the order is final.

7-312.1.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE COMMISSIONER SHALL REQUIRE A FOREIGN LABOR CONTRACTOR TO POST A SURETY BOND OR OTHER SECURITY IF THE COMMISSIONER:

(1) FINDS THAT THE FOREIGN LABOR CONTRACTOR HAS VIOLATED A PROVISION OF THIS TITLE OR ANY ORDER THAT THE COMMISSIONER ISSUES OR REGULATION THAT THE COMMISSIONER ADOPTS; OR

(2) RECEIVES A CERTIFIED RECORD OF THE FINDING OF A UNIT OF ANOTHER STATE OR THE UNITED STATES THAT THE FOREIGN LABOR CONTRACTOR HAS VIOLATED ANY LAW THAT RELATES TO:

(I) REGISTRATION AS A FOREIGN LABOR CONTRACTOR; OR

(II) THE EMPLOYMENT OF, PROVISION OF HOUSING FOR, OR TRANSPORTATION OF A FOREIGN WORKER.

(B) THE COMMISSIONER MAY NOT REQUIRE SECURITY ON THE BASIS OF AN ADMINISTRATIVE DECISION THAT A COURT NULLIFIES.

(C) THE COMMISSIONER MAY REQUIRE SECURITY IN AN AMOUNT THAT THE COMMISSIONER CONSIDERS ADEQUATE TO ENSURE COMPLIANCE WITH THE LAWS OF THE STATE.

Subtitle 4. Responsibilities of Farm Labor AND FOREIGN LABOR Contractors.

7-401.1.

(A) (1) IN ACCORDANCE WITH THIS SECTION, EACH FOREIGN LABOR CONTRACTOR SHALL PROVIDE EACH FOREIGN WORKER WITH AN ENFORCEABLE EMPLOYMENT CONTRACT SIGNED BY THE FOREIGN LABOR CONTRACTOR AND THE FOREIGN WORKER THAT INCLUDES ALL ASSURANCES MADE BY THE FOREIGN LABOR CONTRACTOR AND ALL TERMS AND CONDITIONS OF EMPLOYMENT TO BE PROVIDED TO THE FOREIGN WORKER AND OTHER RELEVANT INFORMATION, INCLUDING:

(I) EACH PLACE OF EMPLOYMENT IN THE STATE;

(II) THE NAME OF THE EMPLOYER AND ANY AGENTS OF THE EMPLOYER OR THE FOREIGN LABOR CONTRACTOR;

(III) A DESCRIPTION OF THE WORK ACTIVITIES INVOLVED;

(IV) EACH CONDITION OF EMPLOYMENT AT EACH PLACE OF EMPLOYMENT, INCLUDING:

1. THE WAGE TO BE PAID;

2. THE PERSON WHO WILL PAY THE WAGE;

3. WHEN THE WAGE IS DUE;

4. THE HOURS TO BE WORKED;

5. INFORMATION ABOUT MEALS AND REST PERIODS TO BE PROVIDED TO THE FOREIGN WORKER;

6. ANY PRODUCTION STANDARDS; AND

7. THE PERIOD FOR WHICH THE FOREIGN WORKER IS TO BE EMPLOYED;

(V) THE HOUSING, INSURANCE, OR TRANSPORTATION THAT WILL BE PROVIDED TO THE FOREIGN WORKER;

(VI) ANY COST THAT WILL BE CHARGED TO THE FOREIGN WORKER FOR HOUSING OR INSURANCE;

(VII) EACH LABOR DISPUTE THAT THE FOREIGN LABOR CONTRACTOR KNOWS EXISTS AT A PLACE OF EMPLOYMENT;

1 (VIII) A DISCLOSURE REGARDING THE ABILITY OF THE FOREIGN
2 WORKER TO ENGAGE IN A STRIKE OR LOCKOUT;

3 (IX) THE INFORMATION TO BE INCLUDED ON EACH PAY STUB;

4 (X) ANY AMOUNTS THAT WILL BE WITHHELD OR DEDUCTED
5 FROM THE PAY OF THE FOREIGN WORKER;

6 (XI) ANY APPLICABLE PENALTIES FOR EARLY TERMINATION OF
7 EMPLOYMENT;

8 (XII) THE FOLLOWING INFORMATION REGARDING THE VISA
9 UNDER WHICH THE FOREIGN WORKER IS TO BE EMPLOYED:

10 1. THE TYPE OF VISA;

11 2. THE LENGTH OF TIME FOR WHICH THE VISA IS VALID;

12 3. THE TERMS AND CONDITIONS UNDER WHICH THE VISA
13 WILL BE RENEWED;

14 4. WHETHER THE EMPLOYER OR THE FOREIGN WORKER
15 IS RESPONSIBLE FOR SECURING THE RENEWAL OF THE VISA; AND

16 5. ANY EXPENSES ASSOCIATED WITH THE RENEWAL;

17 (XIII) CONTACT INFORMATION, INCLUDING THE PHONE NUMBER
18 AND ADDRESS, FOR THE INDIVIDUAL, INDEPENDENT CONTRACTOR,
19 SUBCONTRACTOR, OR AGENT WHO WILL BE IN DIRECT CONTACT WITH THE FOREIGN
20 WORKER;

21 (XIV) WHETHER THE FOREIGN WORKER IS COVERED BY
22 WORKERS' COMPENSATION, PRIVATE INSURANCE, OR OTHER COVERAGE FOR
23 INJURIES OR DEATH SUSTAINED DURING THE COURSE OF EMPLOYMENT;

24 (XV) A REQUIREMENT THAT THE FOREIGN LABOR CONTRACTOR
25 OR THE EMPLOYER PAY ALL FEES, INCLUDING VISA APPLICATION FEES, BORDER
26 CROSSING FEES, TRANSPORTATION COSTS, OR ANY OTHER COST OR FEE RELATED
27 TO RECRUITMENT FOR EMPLOYMENT IN THE UNITED STATES;

28 (XVI) PROOF OF COMPLIANCE WITH THE LOCAL HOUSING CODE
29 FOR THE AREA WHERE THE FOREIGN WORKER WILL BE HOUSED;

(XVII) WHETHER ANY EDUCATION OR TRAINING WILL BE PROVIDED TO THE FOREIGN WORKER AND, IF SO, ANY ASSOCIATED COSTS AND WHETHER THE FOREIGN WORKER IS RESPONSIBLE FOR PAYING THE ASSOCIATED COSTS; AND

(XVIII) A DESCRIPTION OF PROTECTIONS AVAILABLE TO THE FOREIGN WORKER UNDER THE FEDERAL TRAFFICKING VICTIMS PROTECTION ACT.

(2) EACH FOREIGN LABOR CONTRACTOR SHALL PROVIDE THE EMPLOYMENT CONTRACT REQUIRED UNDER THIS SUBSECTION TO THE FOREIGN WORKER:

(I) AT THE TIME THE RECRUITMENT PROCESS BEGINS; AND

(II) IN THE PRIMARY LANGUAGE OF THE FOREIGN WORKER.

(3) CHANGES TO THE EMPLOYMENT CONTRACT REQUIRED UNDER THIS SUBSECTION MAY NOT BE MADE UNLESS THE FOREIGN WORKER:

(I) IS GIVEN 48 HOURS TO REVIEW AND CONSIDER THE CHANGES; AND

(II) VOLUNTARILY CONSENTS TO THE CHANGES.

(B) EACH FOREIGN LABOR CONTRACTOR WHO PROVIDES HOUSING FOR A FOREIGN WORKER SHALL ENSURE THAT ALL OF THE CONDITIONS OF OCCUPANCY ARE POSTED CONSPICUOUSLY WHILE THE FOREIGN WORKER STAYS IN THE HOUSING.

(C) ON REQUEST, THE COMMISSIONER SHALL MAKE AVAILABLE TO A FOREIGN LABOR CONTRACTOR A STANDARD EMPLOYMENT CONTRACT THAT CAN BE USED TO MEET THE REQUIREMENTS OF THIS SECTION.

(D) A FOREIGN LABOR CONTRACTOR SHALL FILE WITH THE COMMISSIONER EACH EMPLOYMENT CONTRACT PROVIDED TO A FOREIGN WORKER UNDER SUBSECTION (A) OF THIS SECTION.

7-401.2.

(A) A FOREIGN LABOR CONTRACTOR OR AN EMPLOYER THAT USES A FOREIGN LABOR CONTRACTOR MAY NOT ASSESS TO A FOREIGN WORKER ANY COSTS,

1 FEES, OR EXPENSES RELATED TO THE PERFORMANCE OF A FOREIGN LABOR
2 CONTRACTING SERVICE.

3 (B) IF A FOREIGN LABOR CONTRACTOR OR EMPLOYER VIOLATES
4 SUBSECTION (A) OF THIS SECTION BEFORE THE FOREIGN WORKER BEGINS WORK
5 FOR WHICH THE FOREIGN LABOR CONTRACTING SERVICE WAS PERFORMED, THE
6 FOREIGN LABOR CONTRACTOR SHALL:

7 (1) IMMEDIATELY REPAY THE FOREIGN WORKER; AND

8 (2) PROVIDE THE EXACT OR COMPARABLE EMPLOYMENT FOR THE
9 FOREIGN WORKER.

10 7-401.3.

11 (A) EACH EMPLOYER THAT USES A FOREIGN LABOR CONTRACTOR SHALL
12 FILE WITH THE COMMISSIONER THE NAME AND CONTACT INFORMATION FOR THE
13 FOREIGN LABOR CONTRACTOR.

14 (B) AN EMPLOYER THAT USES A FOREIGN LABOR CONTRACTOR IS JOINTLY
15 AND SEVERALLY LIABLE FOR ANY VIOLATION OF § 7-401.1 OF THIS SUBTITLE
16 COMMITTED BY THE FOREIGN LABOR CONTRACTOR.

17 7-403.

18 (a) (1) The Commissioner may require, by regulation, a farm labor contractor
19 to keep records of:

20 [(1)] (I) wages owed to each migrant agricultural worker for agricultural
21 work performed in the State; and

22 [(2)] (II) wages paid to each migrant agricultural worker for agricultural
23 work performed in the State.

24 [(b)] (2) A farm labor contractor shall keep all of the records required under
25 [subsection (a) of this section] PARAGRAPH (1) OF THIS SUBSECTION even if the farm
26 labor contractor is not responsible for paying a migrant agricultural worker.

27 (B) (1) THE COMMISSIONER SHALL REQUIRE, BY REGULATION, A
28 FOREIGN LABOR CONTRACTOR TO KEEP RECORDS OF:

29 (I) WAGES OWED TO EACH FOREIGN WORKER FOR WORK
30 PERFORMED IN THE STATE FOR WHICH THE FOREIGN LABOR CONTRACTING
31 SERVICE WAS PERFORMED; AND

(II) WAGES PAID TO EACH FOREIGN WORKER FOR WORK PERFORMED IN THE STATE FOR WHICH THE FOREIGN LABOR CONTRACTING SERVICE WAS PERFORMED.

(2) A FOREIGN LABOR CONTRACTOR SHALL KEEP ALL THE RECORDS REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION EVEN IF THE FOREIGN LABOR CONTRACTOR IS NOT RESPONSIBLE FOR PAYING A FOREIGN WORKER.

(3) THE INFORMATION LISTED IN PARAGRAPH (1) OF THIS SUBSECTION SHALL BE INCLUDED IN THE PAY STUB OF A FOREIGN WORKER.

7-404.

(a) Each farm labor contractor AND EACH FOREIGN LABOR CONTRACTOR shall ensure that each vehicle that the farm labor contractor OR FOREIGN LABOR CONTRACTOR uses or causes to be used to transport a migrant agricultural worker OR A FOREIGN WORKER in the State meets applicable federal and State standards for safety.

(b) Each farm labor contractor AND EACH FOREIGN LABOR CONTRACTOR shall ensure that the driver of each vehicle that the farm labor contractor OR FOREIGN LABOR CONTRACTOR uses or causes to be used to transport a migrant agricultural worker OR A FOREIGN WORKER in the State is authorized under Title 16 of the Transportation Article to drive the vehicle.

(c) (1) Each farm labor contractor AND EACH FOREIGN LABOR CONTRACTOR shall ensure that the owner of each vehicle that the farm labor contractor OR FOREIGN LABOR CONTRACTOR uses or causes to be used to transport a migrant agricultural worker OR FOREIGN WORKER in the State has a policy that insures against liability for bodily injury and damage to property that arises from the ownership or operation of the vehicle.

(2) The Commissioner shall set, by regulation, the minimum amount of insurance coverage required under paragraph (1) of this subsection, but the amount may not exceed the coverage required under federal law.

7-501.

(A) Except as otherwise provided in this title, a person may not perform a farm labor contracting service OR A FOREIGN LABOR CONTRACTING SERVICE in the State for consideration unless licensed by the Commissioner.

(B) A FOREIGN LABOR CONTRACTOR MAY NOT DISCRIMINATE AGAINST A FOREIGN WORKER, WHETHER DURING THE COURSE OF RECRUITMENT IN THE FOREIGN WORKER'S COUNTRY OF ORIGIN OR IN THE UNITED STATES, TO THE SAME

**EXTENT AN EMPLOYER IS PROHIBITED FROM DISCRIMINATING UNDER TITLE 20,
SUBTITLE 6 OF THE STATE GOVERNMENT ARTICLE.**

7-502.

(A) Unless authorized under this title to perform a farm labor contracting service for consideration, a person may not represent to the public, by the use of a title, including “licensed farm labor contractor”, by description of services, methods, or procedures, or otherwise, that the person is authorized to perform a farm labor contracting service in the State for consideration.

(B) UNLESS AUTHORIZED UNDER THIS TITLE TO PERFORM A FOREIGN LABOR CONTRACTING SERVICE FOR CONSIDERATION, A PERSON MAY NOT REPRESENT TO THE PUBLIC, BY THE USE OF A TITLE, INCLUDING “LICENSED FOREIGN LABOR CONTRACTOR”, BY DESCRIPTION OF SERVICES, METHODS, OR PROCEDURES, OR OTHERWISE, THAT THE PERSON IS AUTHORIZED TO PERFORM A FOREIGN LABOR CONTRACTING SERVICE IN THE STATE FOR CONSIDERATION.

7-503.

(a) Except as otherwise provided in this title, a person may not use a farm labor contractor to perform a farm labor contracting service **OR A FOREIGN LABOR CONTRACTOR TO PERFORM A FOREIGN LABOR CONTRACTING SERVICE** unless the person ascertains that the farm labor contractor **OR FOREIGN LABOR CONTRACTOR** is licensed by:

(1) requesting confirmation from the Commissioner that the farm labor contractor **OR FOREIGN LABOR CONTRACTOR** is licensed; or

(2) examining the license.

(b) (1) Whenever a person makes a request under subsection (a)(1) of this section, the Commissioner shall inform the person whether the farm labor contractor **OR FOREIGN LABOR CONTRACTOR** is licensed.

(2) Within 5 working days after a person makes a request under subsection (a)(1) of this section, the Commissioner shall respond in writing.

(3) If the status changes during the term of the license, the Commissioner shall give the person who made the request written notice of the change.

(4) If the Commissioner fails to provide the notice required under this subsection, a person is not liable for hiring a person who is not authorized to perform farm labor contracting services **OR FOREIGN LABOR CONTRACTING SERVICES** in the State.

(c) Notwithstanding subsection (b)(4) of this section, a person may not hire or continue to use a farm labor contractor to perform a farm labor contracting service **OR A FOREIGN LABOR CONTRACTOR TO PERFORM A FOREIGN LABOR CONTRACTING SERVICE** after the person receives notice from the Commissioner or otherwise learns that the farm labor contractor **OR FOREIGN LABOR CONTRACTOR** is not licensed.

7–506.

(a) Subject to the limitations in this section, the Commissioner may assess a civil penalty against a person who willfully or repeatedly violates:

- (1) any provision of this title;
- (2) any order passed under this title; or
- (3) any regulation adopted to carry out this title.

(b) A civil penalty under this section may not exceed **[\$5,000] \$50,000** for each violation.

(c) (1) Before the Commissioner assesses a civil penalty against an agricultural operation, the Commissioner shall consider the appropriateness of the penalty in relation to:

- (i) the size of the business;
- (ii) any good faith effort to comply with § 7–503 of this subtitle; and
- (iii) the history of previous violations.

(2) Before the Commissioner assesses a civil penalty against a farm labor contractor **OR FOREIGN LABOR CONTRACTOR**, the Commissioner shall consider the appropriateness of the penalty in relation to:

- (i) the size of the business;
- (ii) the gravity of the violation;
- (iii) the good faith of the farm labor contractor **OR THE FOREIGN LABOR CONTRACTOR**; and
- (iv) the history of previous violations in this State or in any other state that relate to licensing or to the treatment of a migrant agricultural worker **OR FOREIGN WORKER**.

7–507.

1 A farm labor contractor **OR FOREIGN LABOR CONTRACTOR** who willfully violates
2 any provision of this title or any regulation adopted to carry out this title is guilty of a
3 misdemeanor and on conviction is subject:

4 (1) for a first offense, to a fine not exceeding **[\$5,000] \$50,000** or
5 imprisonment not exceeding 1 year or both; and

6 (2) for a subsequent offense, to a fine not exceeding **[\$10,000] \$100,000** or
7 imprisonment not exceeding 3 years or both.

8 **7-508.**

9 **(A) A FOREIGN LABOR CONTRACTOR MAY NOT TAKE ANY ADVERSE ACTION**
10 **AGAINST A FOREIGN WORKER BECAUSE THE FOREIGN WORKER EXERCISED ANY**
11 **RIGHT GRANTED UNDER THIS TITLE.**

12 **(B) IF A FOREIGN WORKER BELIEVES THAT A FOREIGN LABOR CONTRACTOR**
13 **HAS VIOLATED THIS TITLE OR HAS CAUSED THIS TITLE TO BE VIOLATED, THE**
14 **FOREIGN WORKER MAY BRING AN ACTION IN A COURT OF COMPETENT**
15 **JURISDICTION TO RECOVER ANY DAMAGES SUSTAINED BY THE FOREIGN WORKER**
16 **DUE TO THE VIOLATION.**

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be construed
18 to preempt or alter any rights or remedies, including any causes of action, available under
19 federal law or any other State law.

20 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2017.