

# ALERT

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 **CalChamber**  
CALIFORNIA CHAMBER OF COMMERCE

## Dramatic Penalty Increase Passes Assembly Committee



The Assembly Natural Resources Committee this week passed a California Chamber of Commerce-opposed “job killer” bill that dramatically increases penalties for a single-day violation triggered by a release of an air toxic contaminant.

**SB 691 (Hancock; D-Berkeley)** dramatically increases existing strict-liability penalties for nuisance-based, nonvehicular air-quality violations without adequately defining what types and levels of pollution would trigger those penalties.

Businesses, public agencies, universities, power producers and hospitals are among entities subject to the increased penalties.

In her testimony to the committee, CalChamber Policy Advocate Mira Guertin said that SB 691 is just too broad.

“There’s nothing in the bill that limits this to events that affect large numbers of people and more importantly to large amounts of a chemical being released,” said Guertin. “That has been the subject of negotiations for the last five months, all through the Senate and all through the summer, and the language is still not in the bill.”

SB 691 proposes a tenfold increase in penalties for Title V facilities for a one-day violation from a maximum of

\$10,000 under current law to a maximum of \$100,000.

Although the proponents claim SB 691 is intended to apply only to “major events,” it does not define “major events” or criteria for this enhanced penalty.

As a result, this increase could affect any Title V facility in California. There are more than 700 Title V facilities in the Bay Area Air Quality Management District, South Coast Air Quality Management District and San Joaquin Air Pollution Control District alone.

### Casts Broad Net

Nuisance penalties are relatively low because “nuisance” is a strict liability offense. This means that someone accused of creating a nuisance can be held liable even if they had no knowledge of the event and no intent to create a nuisance.

An air district simply has to allege that several people have complained about an air emission and the alleged violator would be subject to enormous liability.

While the bill sponsor contends the bill is meant to address major air emission incidents within an air district or jurisdiction that disrupts the lives of thousands of people, the bill has no standards of review or criteria to determine if any such standard has been met.

Rather, the bill would cast a broad net. Examples of those affected under this new

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## Minimum Wage Bill Moves to Senate Appropriations Suspense File



A California Chamber of Commerce-opposed “job killer” bill that locks in an automatic 25% minimum wage increase far exceeding any reasonably expected rate of inflation was held on the Senate Appropriations Committee suspense file on August 12, pending a review of the bill’s fiscal impacts.

**AB 10 (Alejo; D-Salinas)** unfairly imposes an automatic \$2 increase in the minimum wage over the next five years, that will continue to increase costs on employers of all sizes, regardless of other economic factors or costs that California employers are struggling with to sustain their business.

### Employer Concerns

Automatically indexing the minimum wage to inflation has always been troubling to the business community because it fails to take into consideration other economic factors or cumulative costs to which employers may be subjected.

While CalChamber appreciates the removal in AB 10 of the automatic adjustment in the minimum wage according to the Consumer Price Index (CPI), the proposed incremental increases over the next five-year period

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[CAJobKillers.com](http://CAJobKillers.com)

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## Labor Law Corner

# Explicit Wage Agreements Not Allowed for Nonexempt Employees



**Dale Louton**  
HR Adviser

*We need your advice on a new contract we have put together for our sales associate who will be working the salesroom floor. Agreed upon weekly salary is \$550. This weekly income is based on 48 hours—40 hours regular time and eight hours overtime. The sales associate is required to clock in and out, including meal periods. For any weekly overtime beyond 48 hours, the associate will be paid overtime.*

An explicit written agreement is no longer allowed. Your proposal is in violation of Labor Code Section 515(d). Employees cannot agree to a salary that covers both straight time and overtime, either oral or written.

To determine the regular hourly rate of pay for a nonexempt salaried employee, one must divide the weekly salary by no more than 40 hours.

### Calculating Pay

In this proposed agreement, \$550 divided by 40 equals \$13.75 per hour, which is the regular rate of pay. An employee also is entitled to premium pay for the eight hours in excess of 40. The total amount due for the week is \$715. The calculation is below.

$\$550 \div 40 = \$13.75$  per hour  
 $\$13.75 \times 1.5 = \$20.625$  per hour  
 This employee is now due \$550 (\$13.75 multiplied by 40) plus \$165 (\$20.625 multiplied by 8), a total of \$715.

As you can see, if such a contract

were to be put in place, a substantial amount of restitution would be due to your sales associate.

### Wage Statement

Labor Code Section 226 requires that at the time of payment of wages, an accurate itemized wage statement detachable from the check must be given to employees. This wage statement, or what is commonly called the check stub, must show several items, including gross wages paid, total hours worked and hourly rates in effect. There are severe penalties for failure to comply.

For complete information on Statement of Wage Deductions go to [HRCalifornia.com](http://HRCalifornia.com).

*The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at [www.hrcalifornia.com](http://www.hrcalifornia.com).*

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## CalChamber-Sponsored Seminars/Trade Shows

More information: [calchamber.com/events](http://calchamber.com/events).  
**Labor Law**

HR Boot Camp: Toughest Challenges. CalChamber. September 11, San Diego. (800) 331-8877.

Put It in Writing: Employee Handbooks Webinar. CalChamber. September 19. (800) 331-8877.

California Rules for Pay/Scheduling Nonexempt Webinar. CalChamber. October 17. (800) 331-8877.

### Business Resources

California HR Conference. Professionals in Human Resources Association. August 26–28, Anaheim. (310) 416-1210.

### International Trade

Go Global Webinars. U.S. Department of Commerce. August 27: Documentation and Shipping; September 10 and September 24: Understanding Export Regulations; October 8: Avoiding and Resolving Problems.

America's Cup: San Francisco 2013. America's Cup. September 7–22, San Francisco.

China International Auto Parts Expo 2013. Consulate General of People's Repub-

lic of China, San Francisco. September 13–15, Beijing, China. (415) 852-5972.

U.S.-Saudi Business Opportunities Forum. Committee for International Trade, Saudi-U.S. Trade Group, U.S.-Saudi Arabian Business Council. September 16–18, Los Angeles.

Guy Fox Maritime Industry Salute Dinner. International Seafarers Center of Long Beach-Los Angeles. September 18,

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## CalChamber Calendar

### Water Committee:

September 12, La Jolla

### CalChamber Fundraising Committee:

September 12, La Jolla

### Board of Directors:

September 12–13, La Jolla

### International Trade Breakfast:

September 13, La Jolla

### 2013 PAC Workshop:

September 27, Burbank

### Fall Public Affairs Conference

October 17–18, Laguna Niguel



# Bill Expanding Discrimination Litigation Sent to Assembly Committee Suspense File



A California Chamber of Commerce-opposed “job killer” bill that hampers California employers’ ability to conduct business and unfairly subjects them to

costly litigation, was held on the Assembly Appropriations Committee suspense file on August 14, pending a review of the bill’s fiscal impacts.

**SB 404 (Jackson; D-Santa Barbara)** makes it virtually impossible for employers to manage their employees and exposes them to a higher risk of litigation by expanding the Fair Employment and Housing Act (FEHA) to include a protected classification for any person who is, perceived to be, or associated with an individual who provides medical or supervisory care to a listed family member.

### ‘Familial Status’

SB 404 proposes to include “familial status” as a protected classification under the FEHA to prevent discrimination on such basis. The term “familial status” is broadly defined as:

- any individual who provides “medical or supervisory care” to a child, parent, spouse, domestic partner, or in-law;
- any employee who is “perceived” as someone who provides medical or supervisory care to a child, parent, spouse, domestic partner, or in-law; or
- any person who is “associated” with a person who provides medical or supervisory care to a child, parent, spouse, domestic partner, or in-law.

### Ambiguity

The term “medical” care is undefined and therefore could be liberally interpreted to include such tasks as administering over-the-counter medication once a day or even driving a listed family member to a doctor’s appointment on a quarterly basis.

Moreover, “supervisory” care is also ambiguous and would expand this proposed classification to employees who are not actually providing any care to a covered family member, but rather “supervising” the care the family member receives.

Furthermore, SB 404 applies to anyone who is perceived to provide familial care or associated with someone who provides familial care. Such a broad application of a protected classification will essentially encompass almost all employees in the workforce and, therefore, will hamper employers’ ability to manage their business, as any adverse employment action an employer takes against an employee could potentially be challenged as discriminatory on the basis of “familial status.”

### Burdens Small Businesses

The burden that SB 404 creates will have an impact on small businesses as well as large ones. The FEHA applies to any employer with five employees or more.

Accordingly, SB 404 will subject these small businesses to potential costly litigation based on the allegation that an employee who suffered an adverse employment action provided familial medical or supervisory care, was per-

ceived as providing such care, or was associated with someone providing such care.

### Employees Already Protected

California already protects employees from discrimination on the basis of sex, pregnancy, medical condition, mental disability, or physical disability. Similarly, California provides employees with leave to care for the serious medical condition of family members, which may be compensated through California’s Paid Family Leave Act.

In addition, California requires “kin care” that mandates an employee be allowed to use at least half of any accrued sick leave to care for family members. These various leaves and protections are in addition to those provided by federal law.

Given these existing protections, there is simply no basis to include the broad protected classification under California law as proposed by SB 404, other than to increase litigation opportunities.

### Costly Litigation

Approximately 19,500 discrimination claims were filed in 2010 with the Department of Fair Employment and Housing under the FEHA—1,000 complaints more than in 2009. Notably, more than 4,000 of these complaints were dismissed due to lack of evidence of any violation.

Adding this new expansive classification to FEHA will only cause such cases to dramatically increase, thereby burdening the state agency as well as California employers with costly litigation.

### Action Needed

SB 404 may be considered by Assembly Appropriations at the committee’s next hearing, voted off the suspense file and sent to the full Assembly for a vote. August 30 is the last day for the committee to meet and send bills to the floor.

Contact your Assembly representatives and members of Assembly Appropriations and urge them to **oppose SB 404**.

**Staff Contact: Jennifer Barrera**

## CalChamber-Sponsored Seminars/Trade Shows

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Aboard RMS Queen Mary. (310) 816-6510.

Trade Mission to Myanmar. California Centers for International Trade Development. September 19–26, Myanmar. (951) 571-6458.

The Americas Business Forum. Los

Angeles Area Chamber. September 25–26, Los Angeles. (213) 580-7570.

Expo Pakistan. Trade Development Authority of Pakistan. September 26–29, Karachi, Pakistan.

California Trade and Investment Delegation to China. Bay Area Council. October 13–20. (415) 946-8734.

## Job Creator Encouraging International Trade/Tourism Moves in Senate



A California Chamber of Commerce-supported job creator bill creating an

enhanced driver license (EDL) passed the Assembly Judiciary Committee with unanimous support this week.

**SB 397 (Hueso; D-Logan Heights)** encourages international trade and tourism by authorizing the Department of Motor Vehicles to issue EDLs to U.S. citizens to expedite legal traffic at the border.

Creation of the EDL for U.S. citizens will help reduce congestion at ports of

entry along the California-Mexico border.

The ports of entry along the California-Mexico border are among the busiest in the world. Each year, 45 million vehicle passengers cross the border via one of the six ports of entry.

At San Ysidro Port, 50,000 vehicles are processed by U.S. Customs and Border Patrol (CBP) each day. The average wait time for travelers at these ports is over an hour. These delays result in a loss of 8 million trips each year. In the San Diego region alone, this results in an estimated loss of \$1.2 billion in revenues.

SB 397 relieves the border congestion by implementing a federal EDL program.

This program gives U.S. residents with an EDL access to “ready lanes” at California ports of entry.

An EDL is a standard driver license that has been enhanced in process, technology, and security to denote identity and citizenship for purposes of entering the United States. This technology provides the CBP real-time access to a traveler’s biometric and biographical information, allowing the CBP officer to look quickly at the results and focus on the traveler’s vehicle as opposed to scanning documents—reducing wait time by up to 60%.

**Staff Contact: Jeremy Merz**

## Dramatic Penalty Increase Passes Assembly Committee

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penalty ceiling include: universities, public agencies, food processors, manufacturers, power producers and hospitals.

### Significant Penalty Increase

Increasing the maximum penalty from \$10,000 to \$100,000 is a significant step that would impose a penalty based simply on allegations of annoyance, whether or not the actual emissions are harmful or in violation of an existing permit standard or requirement.

Under existing law, California’s air pollution penalty statutes gradually increase with penalties that are based on the intent of the violator and severity of the violations. The current penalty structure already allows the air district to assess significant penalties.

In fact, an air district has the authority to levy a penalty of up to \$1 million if a nuisance violation is willful and intentional and causes great bodily harm.

SB 691 significantly increases the penalty in an area where air districts already have extraordinary prosecutorial and penalty recovery authority. The air district can determine when a nuisance occurs and then has complete discretion to determine the amount of penalty. SB 691 creates an incentive for the air district to levy the highest penalties possible.

The alleged violator has virtually no defenses to a strict liability offense. The district has to prove only that a few people complained or were annoyed. The district does not have to prove how many people were exposed to air emissions, the severity of the exposure, whether any

permit conditions were violated or whether there were any consequences of the exposure—for example, a visit to a doctor or hospital. The air district does not have any burden of proof that the nuisance was so extraordinary that it would justify a \$100,000 penalty.

### Key Vote

SB 691 passed Assembly Natural Resources on a party-line vote of 6-3 on August 12.

**Ayes:** Chesbro (D-North Coast), Garcia (D-Bell Gardens), Muratsuchi (D-Torrance), Skinner (D-Berkeley), Stone (D-Scotts Valley), Williams (D-Santa Barbara).

**Noes:** Bigelow (R-O’Neals), Grove (R-Bakersfield), Patterson (R-Fresno).  
**Staff Contact: Mira Guertin**

## CalChamber Webinars Help Answer Questions on Affordable Care Act

Questions posed by callers to the California Chamber of Commerce Labor Law Helpline indicate ongoing uncertainty about employer obligations, including the timing of requirements, under the federal Patient Protection and Affordable Care Act (ACA).

A sampling of recent questions:

- Are we covered under the ACA?
- What is the definition of a large employer?
- What is the definition of full-time employee?
- What are the benefit obligations for employers with fewer than 50 employees?

• Can we create a policy that allows the employer to reimburse any employee who must pay more than 9.5% of his/her salary for basic health insurance costs?

• Does the CalChamber have forms related to the affordable health care laws?

• Now that the employer mandate is delayed to 2015, do we still have to provide form OMB No. 1210-0149?

Answers to these questions and more are available in the CalChamber webinars on the ACA, available at [www.calchamber.com/acawebinars](http://www.calchamber.com/acawebinars). The 90-minute webinars are free to CalChamber members, \$99 for nonmembers.

The webinars have included an overview of ACA employer requirements, tax implications, and employee benefits. Coming on September 5 will be a look at Covered California and the individual mandate.



# Assembly, Senate Poised to Consider Bills Harmful to State's Economic Recovery



## OPPOSE

California Chamber of Commerce-opposed legislative proposals creating a host of problems for California employers, business and

the economy will be considered soon by the Assembly and Senate.

Awaiting action by the full Assembly is "job killer" **SB 365 (Wolk; D-Davis)**, which creates uncertainty for California employers making long-term investment decisions by requiring tax incentives end 10 years after their effective date.

The Senate will be considering bills:

- allowing local enforcement of labor laws, **AB 1383 (Committee on Labor and Employment)**;

- giving one-sided evidentiary privileges in employee-union proceedings, **AB 729 (R. Hernández; D-West Covina)**; and

- invading taxpayer privacy, **AB 562 (Williams; D-Santa Barbara)**.

- The Senate Appropriations Committee will be considering a bill expanding liability for individual homeowners who hire "domestic work employees," **AB 241 (Ammiano; D-San Francisco)**.

### Tax Credit Sunset Bill

The CalChamber supports efforts of the state to consider the effectiveness of tax policies and programmatic expenditures.

**SB 365**, however, attempts to address this periodic review and good government structure related to tax policy by mandating a maximum 10-year sunset on all future tax credits. This would have the adverse effect of creating uncertainty about the future of the state's tax structure.

When businesses choose to locate in a state, factors such as the availability of a skilled workforce, infrastructure, regulatory environment, and tax structure all play a significant role.

For capital-intensive industries like manufacturing and research and develop-

ment, investment decisions are made many years into the future. The ability for corporate decision makers to plan anticipated costs over a span of many years is an important factor when determining locations for these investments.

Establishing an arbitrary maximum 10-year sunset puts the long-term viability of any credit in jeopardy and, in many cases, could ultimately render the credit's value useless in a company's final decision on a location.

### Labor Laws: Local Enforcement

**AB 1383** allows local authorities to impose more stringent labor and employment requirements than those already required in the Labor Code, including stricter reporting requirements, notifications, overtime laws, meal and rest breaks, etc., leading to a patchwork of labor laws across the state that will burden small employers as well as large employers that have multiple locations.

The patchwork of requirements will make it more difficult for business to operate, especially small businesses that do not have the capacity to manage new and additional labor laws.

### Evidentiary Privilege

**AB 729** creates a new evidentiary privilege that is one-sided and will provide a union representative with an unfair opportunity to preclude relevant evidence during litigation regarding labor disputes or collective bargaining, that may ultimately result in the miscarriage of justice.

Unlike other privileges that apply to both sides of litigation/proceedings, such as the attorney-client privilege, **AB 729** protects only the union agent and employee communication. Accordingly, in labor-related proceedings, an employer would be forced to disclose all relevant communications, while the union agent or employee could pick and choose which communications they want to disclose.

### Taxpayer Privacy

**AB 562** facilitates the misuse of sensitive tax information and discourages local economic development projects by requiring local agencies to publicly

disclose sensitive tax information of any employer who receives a public subsidy.

Disclosing individually identifiable taxpayer information neither improves the efficacy of public expenditure reports, nor is it necessary for lawmakers making decisions pertaining to the tax or expenditure as a whole.

The CalChamber and opponents of **AB 562** have suggested public expenditures can be evaluated by using aggregated data, similar to what is currently in place for state-level expenditures, but the bill's proponents have rejected this suggestion.

### Domestic Work Employees

**AB 241** discourages individuals from retaining the services of domestic work employees by requiring individuals and families who hire "domestic work employees" to comply with onerous wage-and-hour mandates that even sophisticated businesses in California struggle to satisfy.

The wage-and-hour burden that **AB 241** creates on individual homeowners as well as third-party employers is significant, and unprecedented.

**AB 241** requires individual homeowners as well as the third-party employer of domestic work employees, including nannies and/or caregivers, to ensure that such employees are provided with a duty-free, 30-minute meal period; given the opportunity to take a 10-minute, uninterrupted rest period; and provided with daily/weekly overtime.

Failure to comply invokes costly statutory penalties and litigation, including an employee's right to attorneys' fees.

The detrimental impact of this potential liability will either discourage the employment of "domestic work employees," thereby increasing the unemployment rate in California; or force such homeowners and "third-party employers" into the underground economy.

### Action Needed

The CalChamber is encouraging members to contact their senators to urge them to **oppose** these bills.

**Staff Contacts: Jennifer Barrera, Jeremy Merz**



## Minimum Wage Bill Moves to Senate Appropriations Suspense File

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are essentially the same as tying the minimum wage to inflation, and in fact may be even worse.

Historically, the Legislature has never imposed a minimum wage increase that has extended more than two years, given the unpredictability of the economy and the changing dynamics of the labor force.

Although AB 10 has removed the CPI, employers' concerns remain the same: a very long duration of a very stiff increase in the minimum wage.

Instead of limiting the increase to a 15% increase over a three-year period, the amended version of AB 10 seeks to increase the minimum wage by 25% over a five-year period—more than double the historical duration of any expansion of the minimum wage in California.

Similar to CPI, AB 10's proposed increase will remain in effect, regardless of whether the economy in year three or four takes a downturn, or whether employers are struggling with other cumulative costs.

While the proposed form of the increase under the amended version of AB 10 has changed, the result of the proposal is actually worse.

### Economy Slowly Improving

Although California's economy is showing signs of improvement, such improvement is still at the infant stage. California still has one of the highest unemployment rates in the country at 8.6%, with some counties still facing unemployment rates over 20%.

An increase in the minimum wage that starts in 2014 and continues through 2018, will have a negative impact on any economic recovery by either limiting available jobs or, worse, creating further job loss.

As recently reported in a study conducted by the National Federation of Independent Business Research Foundation, the expected job loss by 2023 as a result of the prior version of AB 10 would have ranged from 48,000 to 68,000 jobs, depending upon the annual rate of inflation.

Given the lock-stepped increase in the

amended version of AB 10 over five years that exceeds any plausible rate of inflation, the job loss that will result will likely be much higher.

Notably, the average rate of inflation over the last 10 years in California is 2.5%. Applying a 2.5% rate of inflation over the next five years to the current minimum wage would increase the minimum wage to only \$9.06, almost a dollar less than the current proposal under AB 10.

Accordingly, the amended version of AB 10 imposes an even higher increase amongst employers than what they might expect to be the rate of inflation, which could ultimately jeopardize their ability to continue to recover from the recession or simply sustain operations.

According to the Department of Finance, expected inflation in California will average 2% from 2013 through 2016, which would—if continued through 2018—result in a minimum wage increase of \$.83 to a rate of \$8.83. The point of this exercise is not to select an index, but to point out the fruitlessness of mandating an employer's costs out many years.

### Other Costs for Employers

AB 10 also forces this proposed five-year increase without concern to other costs California employers may be facing.

As set forth in the Governor's budget, California employers will face an increase next year in the annual assessment they are required to pay in order to fund programs within the Department of Industrial Relations. Again, while the exact cost is currently unknown, there is no question that it will be higher than the current assessment.

In 2014, California employers also will lose a part of their federal tax credit due to California's failure to repay money borrowed from the federal government for unemployment insurance benefits. This will increase the total federal tax California employers are required to pay for any employee who earns more than \$7,000 per year.

In addition, the tax increases approved under Proposition 30 for personal income

tax, as well as the sales-and-use tax, will also be in full effect in 2014.

These cumulative costs are just in 2014.

In 2015, California employers undoubtedly also will face an increase in costs as a result of the implementation of the Patient Protection and Affordable Care Act. Although employers are not sure of the exact costs associated with the implementation, they do know there will be a cost.

Any further additional costs in 2015 through 2018 are unknown, which is why the minimum wage should not be increased for such an extended period as AB 10 proposes.

An increase in minimum wage would not only increase hourly employees' wages, but salaried employees' compensation as well. In order for employees to qualify as "exempt" under any of the six exemptions in California, they must meet the salary-basis test, which is two times the monthly minimum wage.

If AB 10 is implemented as proposed, that amount in January 2016 will rise from the current annual salary of \$33,280 to at least \$41,600, which is an increased cost to employers of \$8,320 per exempt employee.

There is no reason why California, with a full-time Legislature, needs to set forth a five-year incremental increase for the minimum wage. Rather, the Cal-Chamber believes a historical two-year incremental increase is more appropriate and allows the Legislature to determine thereafter whether businesses can sustain a further increase given the economy and other cost-related factors.

### Action Needed

AB 10 may be considered by Senate Appropriations at the committee's next hearing and may be voted off the suspense file and sent to the full Senate for a vote. August 30 is the last day for the committee to meet and send bills to the floor.

Contact your Senate representatives and members of Senate Appropriations and urge them to **oppose AB 10**.

**Staff Contact: Jennifer Barrera**

# CalChamber, Coalition Opposing Overly Broad Foreign Worker Proposal



## OPPOSE

The California Chamber of Commerce and a coalition of employer groups are **opposing** legislation that aims to prevent human trafficking,

but goes too far. The CalChamber and coalition support the goal of the bill, but SB 516 goes too far, is premature in light of federal action and will disadvantage California in finding and retaining the best possible employees.

**SB 516 (Steinberg; D-Sacramento)** approaches the real problem of human trafficking in an overly broad manner that will harm legitimate employers by imposing significant burdens on and risks to employers who hire workers from foreign countries.

The bill passed the Assembly Judiciary Committee this week and will be considered next by the Assembly Appropriations Committee.

### Oppose Unless Amended

The CalChamber and coalition oppose SB 516 unless it is amended and have submitted to the author a mockup of SB 516 amended that would allow them to remove their opposition.

The CalChamber and coalition members understand the author's desire to address the real problems of human trafficking, but SB 516 goes much too far and creates unnecessary state oversight over legitimate business operations that are necessary for California businesses to assist foreign workers in coming to this state.

The coalition has met numerous times with the author's staff and engaged in conversations with the sponsors to explain the unique circumstances of many of the businesses reflected in the opposition letter.

The coalition's amended version of the bill reflects a comprehensive solution that meets the objectives as expressed in the bill without unduly impacting California's ability to compete in a global marketplace in obtaining the best and the brightest, as well as creating safeguards for foreign workers seeking employment in California.

Human trafficking is a crime and

punishable under any number of existing provisions of law. SB 516 compounds penalties on top of remedies already available to charge violators. The bill goes even further to allow administrative, or paperwork violations to be treated as a violation of the new requirements, and without a showing of harm.

### Broad Coverage

According to SB 516, any person or company that assists in securing or actually secures or provides employment to foreign workers for compensation is a foreign labor contractor (FLC), and any employer who hires a foreign worker would be subject to the requirements.

This sweeping definition appears to include employers of all foreign workers who enter the U.S. legitimately through different types of visas. These workers often are assisted by a variety of entities, or recruited by the employer, all of which under this bill will be designated as FLCs. Examples of included foreign employees:

- Engineers, doctors, nurses, medical specialists, and researchers.
- International college students who come out in groups to perform seasonal work in theme parks and resorts.
- Hospitality workers for hotels and restaurants.
- Actors and other professionals for movie and television production.

### Joint Liability for Employer

The most alarming requirements in the bill include, but are not limited to:

- All FLCs must register with the Labor Commissioner and post a surety bond. The registration includes detailed information. Any incomplete or inaccurate information could be viewed as a violation and the FLC could be subject to penalties and a lawsuit. The employer would be jointly liable.
- The employer must disclose to the Labor Commissioner the use of, or planned use of an FLC, and post a surety bond. Not using a registered FLC subjects the employer to penalties.
- Any violation is equally punishable, without any showing of harm by the FLC. The employer is jointly liable. Furthermore, no actual harm must be shown to bring a

private right of action; anyone who believes there is a violation can file a lawsuit.

### More Reasons to Oppose

Other reasons for the CalChamber and coalition opposition include:

- Without regard to employer or industry history of human trafficking, all employers would face equally stringent registration, regulation, bond requirements, and significant liability.
- Immigration reform is being debated in Congress. The conversation in California is premature given the rapid pace with which reform is moving in Congress.
- SB 516 creates duplicative, overlapping and more onerous requirements than the language in the U.S. Senate bill (S. 744). California should wait until federal immigration reform has been accomplished to avoid conflicts with federal requirements. If Congress and California pass conflicting or duplicative FLC registration and regulation, California employers that hire foreign workers will be at a competitive disadvantage to businesses in other states because they will face higher litigation risks, and higher burdens.
- Immigration reform is expected to ease the labor needs of California employers in both high- and low-skilled jobs. SB 516 could undermine the benefits of national reform for California.

### Uniform Model Approach

In July, the National Conference of Commissioners on Uniform State Laws, adopted a model "Uniform Act on Prevention of and Remedies for Human Trafficking." The CalChamber and coalition urge that the author, sponsors and committee members look seriously at this proposal as an alternative to SB 516.

### Key Vote

SB 516 passed Assembly Judiciary, 7-3 on August 13:

Ayes: Alejo (D-Salinas), Chau (D-Alhambra), Dickinson (D-Sacramento), Garcia (D-Bell Gardens), Muratsuchi (D-Torrance), Stone (D-Scotts Valley), Wieckowski (D-Fremont).

Noes: **Gorell (R-Camarillo), Maienschein (R-San Diego), Wagner (R-Irvine).**  
Staff Contact: Marti Fisher

## Protect your business and employees.



California companies with 50 or more employees are required to provide two hours of sexual harassment prevention training to all supervisors **within six months of hire or promotion**, and every two years thereafter. CalChamber's online supervisor course meets state training requirements and helps your company avoid work situations that put you at risk for costly lawsuits. Regardless of company size, we recommend training for all nonsupervisory employees as well. Learners can start and stop anytime because the system tracks their progress.

### Take 20% Off Our Online California Harassment Prevention Training.

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