SENATE BILL 742

By: Senator Lee
Introduced and read first time: February 3, 2020
Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Labor and Employment – Fair Recruitment and Transparency Act

FOR the purpose of establishing licensing and regulatory requirements for foreign labor contractors; providing that an agreement by a foreign migrant worker to waive certain rights is void as contrary to public policy; authorizing the Commissioner of Labor and Industry to enter certain housing at certain times for a certain purpose; requiring the Commissioner to keep a certain public registry of all licensed foreign labor contractors beginning on a certain date; authorizing the Attorney General, under certain circumstances, to investigate certain allegations and proceed in a court to enforce certain provisions of law; requiring an individual to be licensed by the Commissioner before the individual may perform a foreign labor contracting service in the State for consideration; altering the contents of a certain application; providing that a certain license authorizes the licensee to perform foreign labor contracting services for consideration; requiring a licensee to take certain actions while performing a foreign labor contracting service in the State; altering the grounds on which the Commissioner is authorized to deny a certain license or suspend or revoke a certain license; authorizing the Commissioner to suspend a license summarily under certain circumstances; authorizing the Commissioner to pass an order under certain circumstances to require a person immediately to cease performing a foreign labor contracting service; requiring the Commissioner to require, except under certain circumstances, a foreign labor contractor to post a surety bond or other security under certain circumstances; authorizing the Commissioner to require security in a certain amount; requiring each foreign labor contractor to provide each foreign migrant worker with a certain contract at a certain time and in a certain language; prohibiting changes to a certain contract from being made except under certain circumstances; requiring a foreign labor contractor who provides certain housing to ensure that certain conditions of occupancy are posted conspicuously while the foreign migrant worker stays in the housing; requiring the Commissioner to make available to a foreign labor contractor a certain contract; requiring a foreign labor contractor to file with the Commissioner certain contracts; prohibiting a foreign labor contractor or an employer that uses a foreign labor
contractor from assessing to a foreign migrant worker certain costs, fees, and expenses; requiring a foreign labor contractor to immediately repay a foreign migrant worker and provide the foreign migrant 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 except under certain circumstances; requiring that a foreign labor contractor is jointly and severally liable for certain violations committed by the foreign labor contractor’s agents; authorizing a certain employer to provide information to the Commissioner regarding a certain foreign migrant worker; requiring a certain employer to provide certain information to the Commissioner regarding uncovered fees; requiring the Commissioner to include certain information in a certain report; requiring a certain employer to provide a certain orientation and training to a foreign migrant worker; prohibiting a certain employer from interfering with an individual conducting outreach to a foreign migrant worker employed by the employer; 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 migrant 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 migrant 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 migrant worker for a certain reason; authorizing a foreign migrant worker, under certain circumstances, to bring an action in a certain court to recover certain damages; establishing a Workgroup to Study the International Exchange Visitor Workers in Maryland; providing for the composition, chair, and staffing of the Workgroup; prohibiting a member of the Workgroup from receiving certain compensation, but authorizing the reimbursement of certain expenses; requiring the Workgroup to study and make recommendations regarding J–1 visa holders and temporary worker visa holders; requiring the Workgroup to report its findings and recommendations to the Governor and the General Assembly on or before a certain date; making conforming changes; defining certain terms; altering certain definitions; providing for the construction of this Act; providing for the termination
of certain provisions 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, and 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 and 2019 Supplement)

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 and 2019 Supplement)

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 nonprofit 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.

“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.

“Commissioner” means the Commissioner of Labor and Industry.

“EMPLOYER” means any person that employs an individual in the State.

“EMPLOYMENT” includes cultural exchange, training, or business activities for which a foreign migrant worker receives any form of compensation, including a stipend, from any source, whether paid in the United States or in the foreign migrant worker’s country of origin.

“Farm” means an area that is used primarily to raise an agricultural or horticultural commodity.

“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) “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.

(i) (1) “FOREIGN LABOR CONTRACTOR” MEANS A PERSON THAT
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 MIGRANT WORKER IN
RELATION TO WHOM THE FOREIGN LABOR CONTRACTING SERVICE IS PERFORMED
IS LOCATED IN THE UNITED STATES; AND

(II) A PERSON THAT PERFORMS A FOREIGN LABOR
CONTRACTING SERVICE WHOLLY OUTSIDE THE UNITED STATES.

(j) (1) “FOREIGN MIGRANT WORKER” MEANS AN INDIVIDUAL WHO:

(I) IS SEEKING EMPLOYMENT;

(II) IS NOT A UNITED STATES CITIZEN OR A PERMANENT
RESIDENT; AND

(III) IS AUTHORIZED BY THE FEDERAL GOVERNMENT TO WORK
IN THE UNITED STATES UNDER A NONIMMIGRANT VISA CLASSIFICATION OR STATUS

(2) “FOREIGN MIGRANT WORKER” DOES NOT INCLUDE AN
INDIVIDUAL WHO RECEIVED A GREEN CARD ON ADMISSION TO THE UNITED STATES.

(g) (k) “License” means a license issued by the Commissioner to perform farm
labor contracting services OR FOREIGN LABOR CONTRACTING SERVICES for
consideration.

(h) (L) “Licensed farm labor contractor” means an individual who is licensed
by the Commissioner to perform farm labor contracting services for consideration.
(M) “LICENSED FOREIGN LABOR CONTRACTOR” MEANS AN INDIVIDUAL WHO IS LICENSED BY THE COMMISSIONER TO PERFORM FOREIGN LABOR CONTRACTING SERVICES.

[N](i) “Migrant agricultural worker” means, except as provided in paragraph (2) of this subsection, an individual who:

(i) is employed to perform agricultural work of a seasonal or other temporary nature; and

(ii) in the course of employment:

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

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

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

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

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

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

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

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

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

(2) “PERFORM A FOREIGN LABOR CONTRACTING SERVICE”
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INCLUDES ANY ACTIVITY LEADING TO POTENTIAL EMPLOYMENT OF A FOREIGN MIGRANT WORKER BEGINNING WITH THE INITIAL CONTACT WITH THE FOREIGN MIGRANT WORKER OUTSIDE THE UNITED STATES THROUGH THE ARRIVAL OF THE FOREIGN MIGRANT WORKER AT THE ASSIGNED WORKSITE IN THE STATE.

7–103.

An agreement by a migrant agricultural worker OR A FOREIGN MIGRANT WORKER to waive or modify a right of the migrant agricultural worker OR FOREIGN MIGRANT 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 [a farm labor contractor provides to a migrant agricultural worker] IS PROVIDED TO A FOREIGN MIGRANT WORKER BY A FARM LABOR CONTRACTOR, A FOREIGN LABOR CONTRACTOR, OR AN EMPLOYER.

(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.

7–203.

(a) In addition to any powers set forth elsewhere, the Commissioner:
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(1) may accept from any source a grant to carry out this title; and

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

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

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

(2) BEGINNING JULY 1, 2020, A CENTRAL PUBLIC REGISTRY OF ALL LICENSED FOREIGN LABOR CONTRACTORS THAT:

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

(II) IS AVAILABLE IN ENGLISH AND SPANISH;

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

(IV) INCLUDES THE FOLLOWING INFORMATION:

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

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

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

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

3. THE NAMES OF ALL PERSONS EMPLOYED BY OR CONTRACTED BY THE LICENSED FOREIGN LABOR CONTRACTOR TO PERFORM 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] THE farm labor contracting service for consideration;

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

(II) THE LENGTH OF TIME THE APPLICANT HAS BEEN PERFORMING FOREIGN LABOR CONTRACTING SERVICES;
(III) THE APPLICANT’S REVENUE AND OPERATING BUDGET;

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

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

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

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

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

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

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

1. THE NAME OF EACH EMPLOYER;

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

   A. THE NUMBER OF FOREIGN MIGRANT WORKERS HIRED BY THE EMPLOYER;

   B. THE CITIES AND COUNTRIES OF ORIGIN OF THE FOREIGN MIGRANT WORKERS;

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

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

E. THE INDUSTRIES AND OCCUPATIONS IN WHICH THE
FOREIGN MIGRANT 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 AND COMPANIES
EMPLOYED OR USED BY THE APPLICANT 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.

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

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

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

(1) carry the license; and

(2) show the license:

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

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

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

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

(2) fraudulently or deceptively uses a license;

(3) knowingly makes any misrepresentation in the application;

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

(i) has been refused a license;

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

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

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

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

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

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

(9) knowingly gives a migrant agricultural worker OR A FOREIGN MIGRANT 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
MIGRANT WORKER;

(11) is found by the Secretary of Health to have violated a regulation of the Secretary on housing, sanitation, or safety for migrant agricultural workers OR FOREIGN MIGRANT 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 MIGRANT WORKER PERMITTED TO WORK IN THE UNITED STATES UNDER 8 U.S.C. § 1101(A)(15)(H)(II)(A) 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 MIGRANT 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 MIGRANT 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 MIGRANT WORKER WITH AN EMPLOYMENT CONTRACT SIGNED BY THE FOREIGN LABOR CONTRACTOR AND THE FOREIGN MIGRANT WORKER THAT INCLUDES:

(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 MIGRANT WORKER;

6. ANY PRODUCTION STANDARDS; AND

7. THE LENGTH OF TIME FOR WHICH THE FOREIGN MIGRANT WORKER IS TO BE EMPLOYED;

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

(VI) ANY COST THAT THE FOREIGN MIGRANT WORKER WILL BE CHARGED OR THAT WILL BE DEDUCTED FROM THE FOREIGN MIGRANT WORKER’S WAGES TO COVER HOUSING OR INSURANCE;

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

(VIII) A DISCLOSURE REGARDING THE ABILITY OF THE FOREIGN MIGRANT WORKER TO ENGAGE IN A STRIKE OR LOCKOUT;
(IX) The information to be included on each pay stub in accordance with 20 C.F.R. § 655.12(k);

(X) Any amounts that will be withheld or deducted from the pay of the foreign migrant worker;

(XI) Any applicable penalties for early termination of employment;

(XII) The following information regarding the visa under which the foreign migrant worker is to be employed:

1. The type of visa;

2. The length of time for which the visa is valid;

3. The terms and conditions under which the visa will be renewed;

4. Whether the employer or the foreign migrant worker is responsible for securing the renewal of the visa; and

5. Any expenses associated with the renewal;

(XIII) Contact information, including the phone number and address, for the individual, independent contractor, subcontractor, or agent who will be in direct contact with the foreign migrant worker;

(XIV) Whether the foreign migrant worker is covered by workers’ compensation, private insurance, or other coverage for injuries or death sustained during the course of employment;

(XV) A requirement that the foreign labor contractor or the employer pay all fees, including visa application fees, border crossing fees, transportation costs, or any other cost or fee related to recruitment for employment in the United States;

(XVI) Proof of compliance with the local housing code for the area where the foreign migrant worker will be housed;

(XVII) Whether any education or training will be provided to the foreign migrant worker and, if so, any associated costs.
AND WHETHER THE FOREIGN MIGRANT WORKER IS RESPONSIBLE FOR PAYING THE ASSOCIATED COSTS;

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

(XIX) CONTACT INFORMATION FOR INDIVIDUALS OR DIVISIONS WITHIN THE MARYLAND DEPARTMENT OF LABOR AND THE OFFICE OF THE ATTORNEY GENERAL TO WHICH THE FOREIGN MIGRANT WORKER MAY REPORT ANY POTENTIAL INCIDENTS OF TRAFFICKING OR LABOR RIGHTS VIOLATIONS.

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

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

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

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

(I) IS PROVIDED WITH THE CHANGES IN WRITING;

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

(III) VOLUNTARILY CONSENTS TO THE CHANGES.

(B) EACH FOREIGN LABOR CONTRACTOR WHO PROVIDES HOUSING FOR A FOREIGN MIGRANT WORKER SHALL ENSURE THAT ALL OF THE CONDITIONS OF OCCUPANCY ARE POSTED CONSPICUOUSLY THROUGHOUT THE FOREIGN MIGRANT WORKER’S STAY 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 MIGRANT 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 migrant worker any costs, fees, or expenses related to the performance of a foreign labor contracting service.

(B) If a foreign labor contractor or employer violates subsection (A) of this section before the foreign migrant worker begins work for which the foreign labor contracting service was performed, the foreign labor contractor shall:

(1) immediately repay the foreign migrant worker; and

(2) provide the exact or comparable employment for the foreign migrant worker.

7–401.3.

(A) Each employer that uses a foreign labor contractor shall file with the Commissioner the name and contact information for the foreign labor contractor.

(B) Except as provided in subsection (C) of this section, an employer that uses a foreign labor contractor is jointly and severally liable for any violation of this title committed by the foreign labor contractor.

(C) Subsection (B) of this section does not apply to an employer that uses only foreign labor contractors that have valid licenses under this title:

(1) unless the foreign labor contractor charged a fee to a foreign migrant worker in violation of this title; or

(2) if the employer:

(I) knew that the foreign labor contractor had committed the violation;

(II) demonstrated deliberate ignorance or reckless disregard with respect to the violation; or
(III) Was aware at the time of the violation that a complaint involving the contractor had resulted in a finding by the Commissioner that the foreign labor contractor had acted inconsistently with this title.

(D) A foreign labor contractor shall be jointly and severally liable for violations of this subtitle committed by the foreign labor contractor’s agents in relation to the foreign labor contracting activity of the foreign labor contractor to the same extent as if the foreign labor contractor had committed the violation.

(E) (1) Each employer that uses a foreign labor contractor licensed under this title may provide the Commissioner with any information regarding a foreign migrant worker who was recruited by the foreign labor contractor and who did not enter into the United States to perform work for the employer.

(2) An employer that provides information to the Commissioner under paragraph (1) of this subsection shall provide information regarding any fees paid by the employer that the employer was not able to recover from the recruiter or foreign migrant worker.

(3) The Commissioner shall include in the report required under § 7–206 of this title:

(I) A summary of the number of workers reported to the Commissioner under this section;

(II) The average unrecovered fee per worker paid by the employer; and

(III) Any recommendations by the Commissioner with regard to the unrecovered fees.

(F) (1) An employer that uses a foreign labor contractor shall provide an orientation and training to any foreign migrant worker recruited by the foreign labor contractor to ensure that the foreign migrant worker understands the rights and obligations under the federal and State law, including labor laws, and laws related to combating human trafficking in the United States.

(2) The orientation and training shall be in the format
REQUIRED BY THE COMMISSIONER AND CONDUCTED, TO THE EXTENT RELEVANT, BY ORGANIZATIONS EXPERIENCED IN THE LAWS AS DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(G) AN EMPLOYER THAT USES A FOREIGN LABOR CONTRACTOR MAY NOT INTERFERE WITH AN INDIVIDUAL CONDUCTING OUTREACH TO A FOREIGN MIGRANT WORKER EMPLOYED BY THE EMPLOYER.

7–403.

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

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

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

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

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

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

(II) WAGES PAID TO EACH FOREIGN MIGRANT 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 MIGRANT WORKER.

(3) THE INFORMATION LISTED IN PARAGRAPH (1) OF THIS SUBSECTION SHALL BE INCLUDED IN THE PAY STUB OF A FOREIGN MIGRANT 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 MIGRANT 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 MIGRANT 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 MIGRANT 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 MIGRANT WORKER, WHETHER DURING THE COURSE OF RECRUITMENT IN THE FOREIGN MIGRANT 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 MIGRANT WORKER.

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

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

(2) for a subsequent offense, to a fine not exceeding [[$10,000] $100,000 or imprisonment not exceeding 3 years or both.
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(A) A FOREIGN LABOR CONTRACTOR MAY NOT TAKE ANY ADVERSE ACTION AGAINST A FOREIGN MIGRANT WORKER BECAUSE THE FOREIGN MIGRANT WORKER EXERCISED ANY RIGHT GRANTED UNDER THIS TITLE.

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

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) There is a Workgroup to Study the International Exchange Visitor Workers in Maryland.

(b) The Workgroup consists of the following members:

(1) two members of the Senate of Maryland, appointed by the President of the Senate;

(2) two members of the House of Delegates, appointed by the Speaker of the House;

(3) the Secretary of Labor, or the Secretary’s designee;

(4) the Secretary of Commerce, or the Secretary’s designee;

(5) the Secretary of Health, or the Secretary’s designee;

(6) one representative of the Maryland State AFL–CIO, designated by the President of the Maryland State AFL–CIO; and

(7) the following members, appointed by the Governor:

(i) one member of a foreign labor advocacy group;

(ii) two members of the nonprofit community with an expertise in migrant worker issues;

(iii) two members of the business community with an expertise in migrant worker issues;

(iv) two members of the public with an expertise in migrant worker issues;

(v) two members of the public with an expertise in education;
(vi) two members of the public with an expertise in young adult
issues;
(vii) one member of an affected business;
(viii) one member of the affected workforce; and
(ix) one member of the public.

(c) The Secretary of Labor, or the Secretary’s designee, shall chair the
Workgroup.

(d) The Maryland Department of Labor shall provide staff for the Workgroup.

(e) A member of the Workgroup:

(1) may not receive compensation as a member of the Workgroup; but
(2) is entitled to reimbursement for expenses under the Standard State
Travel Regulations, as provided in the State budget.

(f) The Workgroup shall:

(1) study:

(i) the work conditions of J–1 visa holders in the State, including
application processes, housing, health care, rates of pay, recruitment fees, and program
fees;

(ii) best practices in other states that may be used to ensure J–1 visa
holders are achieving maximum potential in the State;

(iii) the demographic and socioeconomic profiles of individuals
coming to work in the State with a J–1 visa;

(iv) the geographic and age distribution of J–1 visa holders in the
State;

(v) the participation rate, impact, and growth rate of J–1 visa
holders in the State workforce;

(vi) the industries and business locations of where J–1 visa holders
in the State work and the terms for which the holders have agreed to work;

(vii) whether J–1 visa holders perform any work outside of the agreed
terms of the work and the reasons for performing any work outside of the agreed terms of
the work;

(viii) the demographics of temporary worker visa holders of the State;

(ix) the industries that employ workers with temporary visas, including the impact these workers have on the State;

(x) the current State labor laws and their impact on J–1 visa holders and temporary worker visa holders; and

(xi) the impact of potential changes to the State labor laws to the benefit of J–1 visa holders or temporary worker visa holders; and

(2) make recommendations regarding any changes or improvements to State law based on the Workgroup’s findings.

(g) On or before December 1, 2020, the Workgroup shall report its findings and recommendations to the Governor and, in accordance with § 2–1257 of the State Government Article, the General Assembly.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act may not be construed to preempt or alter any rights or remedies, including any causes of action, available under federal law or any other State law.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2020. Section 2 of this Act shall remain effective for a period of 1 year and, at the end of June 30, 2021, Section 2 of this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.