



**MARYLAND
LEGAL AID**

*Advancing
Human Rights and
Justice for All*

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February 27, 2020

The Honorable Delores Kelley
Chair, Finance Committee
Maryland General Assembly
Miller Senate Office Building 3 East Wing
11 Bladen St., Annapolis, MD 21401

**RE: TESTIMONY IN SUPPORT OF SENATE BILL 0742
Labor and Employment – Fair Recruitment and Transparency Act
Invitation to testify from Senator Susan Lee**

Dear Chairman Kelley and Members of the Committee:

Thank you for the opportunity to testify in support of SB 0742, a bill that will help to eliminate abuse of Maryland workers as well as abuse of migrant and seasonal farmworkers. Maryland Legal Aid is a private, non-profit organization that provides free civil legal services to low-income Marylanders. In our 12 offices around the State we help individuals and families with a wide array of civil legal issues including consumer, housing, public benefits, employment and family law matters. We also represent abused and neglected children, and provide legal assistance to vulnerable older adults and nursing home residents. This letter serves as notice that Scott C. Black is testifying on behalf of Maryland Legal Aid, at the request of Senator Susan Lee.

Maryland Legal Aid has several collaborative partnerships with community agencies that seek to eliminate barriers to employment for low-income Marylanders. Consequently, Maryland Legal Aid has expertise in overcoming many barriers to employment for Maryland workers as well as in migrant and seasonal farmworkers' issues.

Many Maryland growers hire foreign recruiters to bring H-2A workers to Maryland for agricultural work. Both low-income Marylanders as well

as migrant and seasonal farmworkers are disadvantaged when foreign recruiters charge unlawful fees for H-2A employment. These unlawful fees depress the federally mandated wage and result in loss of employment opportunities for Maryland workers. These recruiter fees create a direct barrier to employment in Maryland. SB0742 will end these practices.

SB0742 will provide crucial checks to eliminate abuse of Maryland farmworkers and migrant and seasonal farmworkers, by:

- Banning recruitment fees that will prevent workers from arriving to work already indebted and vulnerable to coercive labor conditions;
- Prohibiting discrimination in recruitment, hiring, and job assignments; and
- Requiring the licensing of recruiters and the creation of a registry to ensure that farmers and workers know who they are collaborating with.

Existing federal H-2A regulations are designed to protect domestic workers from growers who hire foreign workers for less than the prevailing established wage.¹ The US Dept. of Labor annually calculates the Adverse Effect Wage Rate (AEWR). The purpose of AEWR is to prevent importation of foreign workers from having an adverse effect on the prevailing wage rate,² thereby having an adverse effect on Maryland wage earners. The AEWR is set by the federal government, for the sole purpose of neutralizing the adverse effect of imported foreign workers.³ Currently, AEWR and other federal regulations prohibit an employer from seeking payments from prospective H-2A workers for recruitment costs.⁴ The grower, the foreign labor contractor and their agents are all prohibited from charging recruitment fees for H-2A employment.⁵

¹ The H-2A regulations are designed to ensure that the use of foreign workers does not depress the wages of U.S. workers. Shoreham Cooperative Apple Producers Assn, Inc. v. Donovan, 764 F.2d 135, 137 (2d Cir. 1985); NAACP v. Donovan, 737 F.2d 67, 69 (D.C. Cir. 1984); Salazar-Calderon v. Presidio Valley Farmers Assn., 765 F.2d 1334, 1338 (5th Cir. 1985); Okeelandta Corp. v. Bygrave, 660 So.2d 743, 745 (Fla. 4th DCA 1995) (one of the purposes of the Wagner-Peyser Act is "to protect domestic workers from foreign workers whom employers might be able to hire for less than prevailing domestic wages.").

² NAACP v. Donovan, 566 F.Supp. 1202, 1205 (D.C.C. 1983).

³ Williams v. Usery, 531 F.2d 305, 306 (5th Cir. 1976).

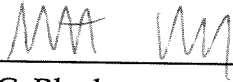
⁴ 20 C.F.R. §655.135(j).

⁵ 20 C.F.R. §655.135(k); Palma Ulloa v. Fancy Farms, Inc., 274 F.Supp. 3d 1287, 1288 n.2 (M.D. Fla. 2017).

Unfortunately, these prohibited fees are a common and growing practice. Unscrupulous growers can circumvent AEWR by a variety of means such as by taking a percentage of the recruitment fee or by taking advantage of workers who arrive at the job site in significant debt because of the fee. This month Maryland Legal Aid was alerted to a foreign recruiter who charged each foreign farmworker \$3,000 for H-2A employment on a Maryland farm. This particular recruiter impermissibly pocketed over \$40,000 for this one placement. SB0742 will prevent this abuse.

SB0742 will provide growers a registry of licensed recruiters who have been certified as to following proper recruiting practices, as well as a means of legal redress should the recruiter or the grower continue to charge impermissible fees for H-2A employment.

Maryland Legal Aid supports SB0742 without amendments and respectfully requests that this committee give it a favorable report.



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