



**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 eliminate farmworker abuse for Maryland workers and for migrant and temporary 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 provides free civil legal services to Maryland hourly wage earners throughout the State, and to seasonal migrant farmworkers including H-2A temporary agricultural workers. The migrant farmworkers are recruited annually by Maryland growers from foreign countries to pick vegetable and fruit crops that end up in Maryland grocery stores serving Maryland consumers. SB0742 will protect farmworkers from illegal recruitment practices and will ensure that all farmworkers are paid at the federally mandated rate. Maryland Legal Aid has legal

expertise in overcoming barriers to employment for Maryland workers, as well as for seasonal and migrant farmworkers.

Both low-income Marylanders and seasonal and migrant farmworkers are disadvantaged when foreign recruiters charge an unlawful fee for H-2A employment. This fee artificially depresses the mandated wage for all workers, and creates a barrier to employment of wage earners in Maryland. SB0742 will end these practices.

SB0742 will eliminate farmworker abuse for Maryland workers and for migrant and temporary farmworkers, by:

- Prohibiting discrimination in recruitment, hiring, and job assignments;
- Banning recruitment fees to prevent workers from arriving to work already indebted and vulnerable to coercive labor conditions;
- 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 and pay them less than minimum domestic wages.¹ The U.S. Department of Labor annually calculates the Adverse Effect Wage Rate (AEWR). This rate establishes a minimum farmworker wage for all workers on a farm, including regular domestic and H-2A workers. This existing law prevents recruited foreign laborers from having an adverse effect on Maryland wage earners.² The AEWR is set by the federal government to neutralize the adverse effect of imported foreign workers.³ This law protects Maryland domestic workers. Unscrupulous growers, however, can circumvent the AEWR by taking a percentage of a recruitment fee charged to H-2A applicants. These fees range from \$3,000 - \$4,000 per worker, collected up front, before employment begins. The recruited migrant farmworker thus begins his

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.").

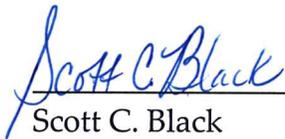
² NAACP v. Donovan, 566 F.Supp. 1202, 1205 (D.C.C. 1983).

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

employment already indebted to the recruiter. The recruiter collects many thousands of dollars, illegally. SB0742 will prevent this.

Current federal regulations prohibit an employer from seeking payments from prospective H-2A workers for recruitment costs.⁴ Growers, foreign labor contractors and their agents are all prohibited from charging recruitment fees from prospective H-2A workers.⁵ Unfortunately however, these fees are a common and growing practice. SB0742 will provide a registry of certified recruiters who have been trained to follow proper recruiting practices. It also makes the grower (who is the employer) and the recruiters, jointly and severally liable should the recruiter or farmer impose the impermissible fees on 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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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).