87R1797 JES-D

By:  White H.B. No. 820

A BILL TO BE ENTITLED

AN ACT

relating to requiring certain business entities to audit the business's supply chain and on-site services for the use of forced labor; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 113 to read as follows:

CHAPTER 113. AUDITING AND REPORTING ON USE OF FORCED LABOR

Sec. 113.001.  DEFINITIONS. In this chapter:

(1)  "Covered business" means a business entity that:

(A)  is doing business in this state; and

(B)  has annual, worldwide gross receipts that exceed $500 million.

(2)  "Forced labor" means any forced labor practice or human trafficking activity in violation of state, national, or international standards, including:

(A)  the International Labor Organization Convention No. 182;

(B)  the Trafficking Victims Protection Act of 2000 (22 U.S.C. Section 7101 et seq.); and

(C)  criminal prohibitions related to slavery and human trafficking under Chapter 77, Title 18, United States Code, if the act had been committed within the jurisdiction of the United States.

(3)  "Gross receipts" means the gross amount, including cash and the fair market value of other property or services, received in a transaction that produces business income from the sale or exchange of property, the performance of services, or the use of property or capital. The term does not include:

(A)  income from the repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or similar marketable instrument;

(B)  proceeds from the issuance of a business's own stock or the sale of treasury stock;

(C)  amounts received as the result of litigation, including damages;

(D)  property acquired by an agent on behalf of another party;

(E)  federal, state, or local tax refunds or other tax benefit recoveries;

(F)  certain contributions to capital;

(G)  income from discharge of indebtedness; or

(H)  amounts realized from exchanges of inventory that are not recognized under the Internal Revenue Code of 1986.

(4)  "On-site service" means any service work provided on the site of a covered business, including food service work and catering services.

(5)  "On-site service provider" means any business entity that provides workers who perform, collectively, at least 30 hours per week of on-site services for a covered business.

Sec. 113.002.  FORCED LABOR AUDIT. (a) A covered business shall conduct an annual audit of the business's supply chain and on-site services to investigate the use of forced labor by the business's suppliers, including direct and secondary suppliers, and on-site service providers. In performing the audit, a covered business's auditor must:

(1)  conduct worker interviews of a cross-section of workers that represents the full diversity of the business's workplace, including, if applicable, men and women, migrant workers and local workers, and workers from different shifts, performing different tasks, and from different production teams;

(2)  conduct management interviews of a cross-section of each of the business's suppliers' and on-site service providers' management representatives, including human resources personnel and production supervisors;

(3)  use audit tools to ensure that workers and managers are asked a comprehensive set of questions; and

(4)  review documentation necessary to provide proof of compliance and to corroborate or find discrepancies in information gathered under Subdivisions (1) and (2), including a review of the following:

(A)  age verification procedures and documents;

(B)  a master list of workers younger than 18 years of age, if applicable;

(C)  worker selection and recruitment procedures;

(D)  contracts with labor brokers, if any;

(E)  worker contracts and employment agreements;

(F)  introduction program materials;

(G)  personnel files;

(H)  worker communication and training plans and certifications provided to workers, including skills training, worker preparedness, government certification programs, and systems or policy orientations;

(I)  collective bargaining agreements, including:

(i)  collective bargaining representative certifications;

(ii)  descriptions of the role of the labor organization; and

(iii)  minutes of the labor organization's meetings;

(J)  contracts with any security agency, including descriptions of the scope of responsibilities of the security agency;

(K)  payroll and time records;

(L)  production capacity reports;

(M)  written human resources policies and procedures;

(N)  occupational health and safety plans and records, including:

(i)  legal permits;

(ii)  maintenance and monitoring records;

(iii)  injury and accident reports;

(iv)  investigation procedures;

(v)  chemical inventories;

(vi)  personal protective equipment inventories;

(vii)  training certificates; and

(viii)  evacuation plans;

(O)  disciplinary notices;

(P)  grievance reports;

(Q)  performance evaluations;

(R)  promotion or merit increase records;

(S)  dismissal and suspension records of workers;

(T)  records of workers who have resigned; and

(U)  worker pay stubs.

(b)  In conducting worker interviews under Subsection (a), the auditor must:

(1)  interview a representative group of workers using age-sensitive interview techniques if the workers are younger than 18 years of age and employed at the facility of a direct supplier or on-site service provider;

(2)  conduct the interview:

(A)  on site or, in cases where there are indications of egregious violations about which the worker may hesitate to discuss on site, off site and outside of the worker's working hours; and

(B)  individually or in groups;

(3)  collect from each interviewed worker copies of the worker's pay stubs;

(4)  ensure all worker responses are confidential and not shared with management; and

(5)  interview a representative of the labor organization or other worker representative organization that represents workers at the facility or, if the organization is not present, attempt to interview a representative from a local worker advocacy group.

Sec. 113.003.  WORKER PROTECTIONS FOR PARTICIPATION IN AUDIT. A covered business shall include in any contract with a direct supplier or on-site service provider that the supplier or provider:

(1)  may not retaliate against any worker in participating in the forced labor audit under this chapter; and

(2)  must protect worker participation in the audit using the same grievance reporting and resolution mechanisms normally available to the worker for a workplace grievance.

Sec. 113.004.  CLOSING MEETING WITH MANAGEMENT. After completion of the forced labor audit of a covered business's direct suppliers and on-site service providers under Section 113.002, the auditor shall hold a closing meeting with the covered business's management to:

(1)  report any violations or nonconformities found in a supplier's or provider's facility; and

(2)  determine the steps to address and remediate any identified problems with the supplier or provider related to forced labor.

Sec. 113.005.  AUDITOR'S REPORT. The auditor shall prepare a full report of the audit, which must include:

(1)  a disclosure of the audited direct supplier's or on-site service provider's documented:

(A)  processes and procedures that relate to eradicating forced labor; and

(B)  risk assessment and prioritization policies that relate to eradicating forced labor;

(2)  a description of the worker interviews, management interviews, and documentation review conducted under Section 113.002;

(3)  a description of all uses or suspected uses of forced labor by the supplier or provider; and

(4)  for any use or suspected use of forced labor identified under Subdivision (3), a description of any corrective and protective actions recommended to the supplier or provider, including:

(A)  the issues relating to the use of forced labor and any causes of the use;

(B)  the implementation of a solution; and

(C)  a method to check the effectiveness of the solution.

Sec. 113.006.  REPORT TO SECRETARY OF STATE. (a) A covered business shall submit a report to the secretary of state, in the form and by the deadline prescribed by the secretary of state, that describes:

(1)  the findings of an audit performed under Section 113.002, including details of any instance of found or suspected forced labor; and

(2)  efforts taken to eradicate forced labor from the business's supply chain and on-site services.

(b)  The report must disclose the covered business's policies or procedures, if any, for:

(1)  preventing the use of forced labor by the business and the business's direct suppliers and on-site service providers;

(2)  verifying suppliers' and providers' practices to evaluate and address risks of forced labor, including whether the verification is provided by a third party;

(3)  requiring suppliers and providers to provide written certification that materials incorporated into the product supplied or the services provided, respectively, comply with laws regarding forced labor of each country in which the supplier or provider is engaged in business;

(4)  maintaining internal accountability standards and procedures for employees or contractors of the business for the failure to meet requirements regarding forced labor; and

(5)  providing training on recognizing and preventing forced labor to employees, including management personnel who have direct responsibility for supply chain management and on-site services, particularly training on mitigating risks within the business's product supply chains and on-site services.

(c)  The report must include a written certification signed by the chief executive officer or equivalent executive of the business that states that:

(1)  the business has complied with the requirements of this chapter;

(2)  the business exercised due diligence to eradicate forced labor from the business's supply chain and on-site services; and

(3)  to the best of the executive's knowledge, the business has:

(A)  found no known instances of forced labor by the business's supply chain or on-site service providers; or

(B)  disclosed every known instance of forced labor used by the business's supply chain or on-site service providers.

Sec. 113.007.  ONLINE REPORT. (a) Except as provided by Subsection (b), a covered business shall:

(1)  publish the report submitted to the secretary of state under Section 113.006 on the business's publicly accessible Internet website; and

(2)  provide a conspicuous and easily understood link on the home page of the website that provides access to the report.

(b)  A covered business that does not have a publicly accessible Internet website shall provide the report in written form to any consumer of the business not later than the 30th day after the date a request by the consumer for a copy of the report is received.

Sec. 113.008.  ADMINISTRATIVE PENALTY. (a) Except as provided by Subsection (b), the secretary of state may assess an administrative penalty of not more than $100 million against a covered business if, after notice and an opportunity for a hearing, the secretary of state determines that the covered business violated a requirement under this chapter.

(b)  The secretary of state may increase the penalty under Subsection (a) to not more than $500 million if the secretary of state finds that the covered business wilfully violated a requirement of this chapter.

Sec. 113.009.  INJUNCTIVE RELIEF. (a) The secretary of state may request the attorney general institute a civil action for relief, including a permanent or temporary injunction, restraining order, or other appropriate order, if the secretary of state believes a violation of this chapter constitutes a hazard to workers.

(b)  The attorney general may file an action under this section in a district court in Travis County or in the county where the violation occurred.

Sec. 113.010.  REPORT TO LEGISLATURE. The secretary of state shall prepare and submit an annual report to the governor, the lieutenant governor, the speaker of the house of representatives, and each member of the legislature that includes each covered business that in the preceding year:

(1)  failed to conduct an audit required under this chapter;

(2)  had an administrative penalty imposed on the business under Section 113.008; or

(3)  has been found to have used forced labor, including the use of forced labor in the business's supply chain or by an on-site service provider.

Sec. 113.011.  RULES. The secretary of state shall adopt rules necessary to administer and enforce this chapter.

SECTION 2.  (a) Not later than March 1, 2022, the secretary of state shall adopt rules necessary to administer and enforce Chapter 113, Business & Commerce Code, as added by this Act.

(b)  A business entity required to conduct a forced labor audit of the business's supply chain and on-site services under Section 113.002, Business & Commerce Code, as added by this Act, shall begin conducting the business's first audit not later than September 1, 2022.

SECTION 3.  This Act takes effect September 1, 2021.