

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.

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

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

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

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

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

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

17 (F) certain contributions to capital;

18 (G) income from discharge of indebtedness; or

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

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

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

27 Sec. 113.002. FORCED LABOR AUDIT. (a) A covered business

1 shall conduct an annual audit of the business's supply chain and
2 on-site services to investigate the use of forced labor by the
3 business's suppliers, including direct and secondary suppliers,
4 and on-site service providers. In performing the audit, a covered
5 business's auditor must:

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

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

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

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

21 (A) age verification procedures and documents;

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

24 (C) worker selection and recruitment procedures;

25 (D) contracts with labor brokers, if any;

26 (E) worker contracts and employment agreements;

27 (F) introduction program materials;

- 1 (G) personnel files;
- 2 (H) worker communication and training plans and
3 certifications provided to workers, including skills training,
4 worker preparedness, government certification programs, and
5 systems or policy orientations;
- 6 (I) collective bargaining agreements, including:
7 (i) collective bargaining representative
8 certifications;
9 (ii) descriptions of the role of the labor
10 organization; and
11 (iii) minutes of the labor organization's
12 meetings;
- 13 (J) contracts with any security agency,
14 including descriptions of the scope of responsibilities of the
15 security agency;
- 16 (K) payroll and time records;
- 17 (L) production capacity reports;
- 18 (M) written human resources policies and
19 procedures;
- 20 (N) occupational health and safety plans and
21 records, including:
22 (i) legal permits;
23 (ii) maintenance and monitoring records;
24 (iii) injury and accident reports;
25 (iv) investigation procedures;
26 (v) chemical inventories;
27 (vi) personal protective equipment

- 1 inventories;
- 2 (vii) training certificates; and
- 3 (viii) evacuation plans;
- 4 (O) disciplinary notices;
- 5 (P) grievance reports;
- 6 (Q) performance evaluations;
- 7 (R) promotion or merit increase records;
- 8 (S) dismissal and suspension records of workers;
- 9 (T) records of workers who have resigned; and
- 10 (U) worker pay stubs.

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

13 (1) interview a representative group of workers using
14 age-sensitive interview techniques if the workers are younger than
15 18 years of age and employed at the facility of a direct supplier or
16 on-site service provider;

17 (2) conduct the interview:

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

22 (B) individually or in groups;

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

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

27 (5) interview a representative of the labor

1 organization or other worker representative organization that
2 represents workers at the facility or, if the organization is not
3 present, attempt to interview a representative from a local worker
4 advocacy group.

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

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

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

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

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

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

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

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

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

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

5 (2) a description of the worker interviews, management
6 interviews, and documentation review conducted under Section
7 113.002;

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

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

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

16 (B) the implementation of a solution; and

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

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

23 (1) the findings of an audit performed under Section
24 113.002, including details of any instance of found or suspected
25 forced labor; and

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

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

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

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

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

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

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

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

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

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

1 and

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

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

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

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

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

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

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

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

27 (b) The secretary of state may increase the penalty under

1 Subsection (a) to not more than \$500 million if the secretary of
2 state finds that the covered business wilfully violated a
3 requirement of this chapter.

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

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

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

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

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

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

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

27 SECTION 2. (a) Not later than March 1, 2022, the secretary

1 of state shall adopt rules necessary to administer and enforce
2 Chapter 113, Business & Commerce Code, as added by this Act.

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

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