

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Hudson offered the following:

2  
3 **Amendment (with title amendment)**

4 Between lines 1111 and 1112, insert:

5 Section 19. Effective October 1, 2008, part IV of chapter  
6 450, Florida Statutes, consisting of sections 450.401, 450.402,  
7 450.4021, 450.4022, 450.403, 450.404, 450.405, 450.406, 450.407,  
8 450.409, 450.410, and 450.411, is created to read:

9 PART IV

10 FOREIGN LABOR CONTRACTOR REGISTRATION

11 450.401 Short title.--This part shall be known as the  
12 "Foreign Labor Contractor Registration Law."

13 450.402 Applicability.--This part shall apply to all  
14 natural persons, corporations, limited liability companies,  
15 partnerships, or other such entities which engage in the  
16 practices described in this part within this state, between this

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17 state and another state, or between this state and a foreign  
18 country.

19 450.4021 Exemption.--This part does not apply to any  
20 employee of a person described in s. 450.403(2) who performs  
21 activities solely on the behalf of that employer and is not an  
22 independent contractor.

23 450.4022 Administration.--Existing funds provided under  
24 part III of this chapter may be used by the department to  
25 administer this part.

26 450.403 Definitions.--As used in this part:

27 (1) "Department" means the Department of Business and  
28 Professional Regulation.

29 (2) "Foreign labor contractor" means:

30 (a) Any person who, for a fee or other valuable  
31 consideration, recruits, transports into, out of, or within the  
32 state, supplies, or hires at any one time in any calendar year  
33 one or more foreign workers to work for, or under the direction,  
34 supervision, or control of, a third person; or

35 (b) Any person who recruits, transports into, out of, or  
36 within the state, supplies, or hires at any one time in any  
37 calendar year one or more foreign workers and who, for a fee or  
38 other valuable consideration, directs, supervises, or controls  
39 all or any part of the work of such workers.

40 (3) "Foreign worker" means an individual holding an H2B  
41 temporary work visa issued by the United States Government.

42 (4) "Major violation" means a violation of a specific  
43 state or federal law or rule that results in economic or  
44 physical harm to any foreign worker recruited, transported,

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45 supplied, or hired by a foreign labor contractor or creates a  
46 significant threat of such harm. The term also includes failure  
47 to register as a foreign labor contractor as provided in this  
48 part.

49 (5) "Minor violation" means a violation of a specific  
50 state or federal law or rule that does not result in economic or  
51 physical harm to any foreign worker recruited, transported,  
52 supplied, or hired by a foreign labor contractor or create a  
53 significant threat of such harm.

54 (6) "Registrant" means a person who has obtained a  
55 certificate of registration under this part.

56 450.404 Requirement of certificate of registration.--

57 (1) No person may act as a foreign labor contractor until  
58 a certificate of registration has been issued to such person by  
59 the department and unless such certificate is in full force and  
60 effect and is in his or her possession.

61 (2) No certificate of registration may be transferred or  
62 assigned.

63 (3) Unless sooner revoked, each certificate of  
64 registration, regardless of the date of issuance, shall be  
65 renewed on the last day of the birth month of the registrant  
66 following the date of issuance and, thereafter, each year on the  
67 last day of the birth month of the registrant. The date of  
68 formation shall be used in lieu of birthdate for registrants  
69 that are not natural persons. Applications for certificates of  
70 registration and renewal thereof shall be on a form prescribed  
71 by the department.

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72       (4) The department may adopt rules pursuant to ss.  
73 120.536(1) and 120.54 prescribing the procedures to be followed  
74 to register as a foreign labor contractor.

75       450.405 Issuance, revocation, and suspension of, and  
76 refusal to issue or renew certificate of, registration.--

77       (1) The department shall not issue to any person a  
78 certificate of registration as a foreign labor contractor, nor  
79 shall it renew such certificate, until:

80       (a) Such person has executed a written application, signed  
81 under oath, in a form and pursuant to rules adopted by the  
82 department and has submitted such information as the department  
83 may prescribe.

84       (b) Such person pays to the department, by cashier's  
85 check, certified check, or money order, a nonrefundable  
86 application fee of \$125. Fees collected by the department under  
87 this subsection shall be deposited in the State Treasury into  
88 the Professional Regulation Trust Fund.

89       (c) Such person has designated an agent to receive service  
90 of process and other official or legal documents. The agent must  
91 be available during regular business hours, Monday through  
92 Friday, to accept service on behalf of the foreign labor  
93 contractor.

94       (d) Such person has provided proof of liability insurance  
95 in an amount not less than \$1,000,000. The foreign labor  
96 contractor must maintain the liability insurance in effect as  
97 long as the registration is in effect.

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98       (2) The department may revoke, suspend, or refuse to issue  
99 or renew any certificate of registration when it is shown that  
100 the foreign labor contractor has:

101       (a) Violated or failed to comply with any provision of  
102 this part or the rules adopted pursuant to this part;

103       (b) Made any misrepresentation or false statement in his  
104 or her application for a certificate of registration;

105       (c) Given false or misleading information concerning  
106 terms, conditions, or existence of employment to persons who are  
107 recruited or hired to work;

108       (d) Been assessed a civil fine by the department for which  
109 payment is overdue;

110       (e) Failed to pay unemployment compensation taxes as  
111 determined by the Agency for Workforce Innovation;

112       (f) Been denied, or had suspended or revoked, a federal  
113 certificate of registration as a foreign labor contractor; or

114       (g) Failed to pay federal employee taxes as determined by  
115 the Internal Revenue Service.

116       (3) The revocation, suspension of, or refusal to renew any  
117 permit pursuant to this section will not render any then-current  
118 and valid contract invalid nor affect the terms of such contract  
119 then in progress.

120       (4) The department may refuse to issue or renew, or may  
121 suspend or revoke, a certificate of registration if the  
122 applicant or holder is not the real party in interest in the  
123 application or certificate of registration and the real party in  
124 interest is a person who has been refused issuance or renewal of

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125 a certificate, has had a certificate suspended or revoked, or  
126 does not qualify under this section for a certificate.

127 (5) The department may permanently revoke or refuse to  
128 issue or renew a certificate of registration if such applicant  
129 or registrant has been convicted within the preceding 5 years  
130 of:

131 (a) A crime under state or federal law:

132 1. Relating to gambling, or to the sale, distribution, or  
133 possession of alcoholic beverages; and

134 2. Committed in connection with, or incident to, any  
135 foreign labor contracting activities, including employment of  
136 undocumented aliens and aiding or abetting such unlawful  
137 employment;

138 (b) Any felony under state or federal law involving  
139 robbery, bribery, extortion, embezzlement, fraud, grand larceny,  
140 burglary, or arson;

141 (c) A violation of narcotics laws, murder, rape, assault  
142 with intent to kill, assault that inflicts grievous bodily  
143 injury, prostitution, peonage, smuggling, or harboring  
144 individuals who have entered the country illegally; or

145 (d) A major violation under this part.

146 (6) A person may not act as a foreign labor contractor  
147 after the expiration, cancellation, suspension, or revocation of  
148 his or her registration.

149 450.406 Duties of foreign labor contractor.--Every foreign  
150 labor contractor must:

151 (1) Exhibit the certificate of registration to all persons  
152 with whom the foreign labor contractor intends to deal in his or

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153 her capacity as a foreign labor contractor before so dealing  
154 and, upon request, to persons designated by the department.

155 (2) Pay or distribute promptly, when due, to the  
156 individuals entitled thereto all moneys or other things of value  
157 entrusted to the registrant by any third person for such  
158 purpose.

159 (3) Comply with the terms and provisions of all legal and  
160 valid agreements and contracts entered into between a foreign  
161 labor contractor and a third person in connection with, or  
162 incident to, any foreign labor contracting activities.

163 (4) Take out an insurance policy with any insurance  
164 carrier which policy insures such registrant against liability  
165 for damage to persons or property arising out of the operation  
166 or ownership of any vehicle or vehicles for the transportation  
167 of individuals in connection with his or her business,  
168 activities, or operations as a foreign labor contractor. In no  
169 event may the amount of such liability insurance be less than  
170 that required by the provisions of the financial responsibility  
171 law of this state. Any insurance carrier that is licensed to  
172 operate in this state and that has issued a policy of liability  
173 insurance to operate a vehicle used to transport foreign workers  
174 shall notify the department when it intends to cancel such  
175 policy.

176 (5) Maintain such records as may be designated by the  
177 department.

178 (6) Comply with all applicable statutes, rules, and  
179 regulations of the United States and of the state for the  
180 protection or benefit of labor, including, but not limited to,

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181 those providing for wages, hours, fair labor standards, social  
182 security, workers' compensation, unemployment compensation,  
183 child labor, and transportation.

184 450.407 Prohibited acts of foreign labor contractor.--A  
185 registrantlicensee may not:

186 (1) Make any misrepresentation or false statement in his  
187 or her application for a certificate of registration.

188 (2) Make or cause to be made to any person any false,  
189 fraudulent, or misleading representation or publish or circulate  
190 or cause to be published or circulated any false, fraudulent, or  
191 misleading information concerning the terms, conditions, or  
192 existence of employment at any place or places, by any person or  
193 persons, or of any individual or individuals.

194 (3) Retaliate against any person that has filed a  
195 complaint or aided an investigation pursuant to this part.

196 (4) Contract with or employ any person acting in the  
197 capacity of a foreign labor contractor, or performing activities  
198 defined in s. 450.403, when that person does not have a current  
199 certificate of registration issued by the department pursuant to  
200 the requirements of this part.

201 450.409 Rules.--The department may adopt rules pursuant to  
202 ss. 120.536(1) and 120.54 to implement this part.

203 450.410 Cooperation with state and federal agencies.--The  
204 department shall, whenever appropriate, cooperate with any  
205 federal agency. The department may cooperate with and enter into  
206 agreements with any other state agency to administer this  
207 chapter or secure uniform rules.

208 450.411 Enforcement of foreign labor laws.--

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209       (1) In addition to any other remedies provided in this  
210 part, the department may impose a civil penalty against any  
211 person, firm, association, or corporation that commits a  
212 violation of this part or of any rule adopted pursuant to this  
213 part, and such person, firm, association, or corporation may be  
214 assessed a civil penalty of not more than \$2,500 for each such  
215 violation. Such assessed penalties shall be paid by cashier's  
216 check, certified check, or money order and shall be deposited  
217 into the General Revenue Fund. The department shall not  
218 institute or maintain any administrative proceeding to assess a  
219 civil penalty under this subsection when the violation is the  
220 subject of a criminal indictment or information under this  
221 section which results in a criminal penalty being imposed or  
222 when the violation is the subject of a criminal, civil, or  
223 administrative proceeding by the United States Government or an  
224 agency thereof which results in a criminal or civil penalty  
225 being imposed. The department may adopt rules prescribing the  
226 criteria to be used to determine the amount of the civil penalty  
227 and to provide notification to persons assessed a civil penalty  
228 under this subsection.

229       (2) Upon a complaint of the department being filed in the  
230 circuit court of the county in which the foreign labor  
231 contractor resides or may be doing business, any foreign labor  
232 contractor who fails to obtain a certificate of registration as  
233 required by this part may, in addition to such penalties, be  
234 enjoined from engaging in any activity which requires the  
235 foreign labor contractor to possess a certificate of  
236 registration.

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237       (3) For the purpose of any investigation or proceeding  
238 conducted by the department, the secretary of the department or  
239 the secretary's designee shall have the power to administer  
240 oaths, take depositions, make inspections when authorized by  
241 statute, issue subpoenas which shall be supported by affidavit,  
242 serve subpoenas and other process, and compel the attendance of  
243 witnesses and the production of books, papers, documents, and  
244 other evidence. The secretary of the department or the  
245 secretary's designee shall exercise this power on the  
246 secretary's own initiative.

247       (4) A foreign labor contractor who commits a minor  
248 violation of this part shall be issued a warning for the first  
249 violation. A civil penalty in increments of \$250 may be assessed  
250 for each successive violation of a specific statute or rule of  
251 this part up to a maximum of \$2,500.

252       (5) A foreign labor contractor who commits a major  
253 violation of a specific statute or rule of this part shall be  
254 assessed a civil penalty of up to \$2,500 in accordance with the  
255 criteria established by the department pursuant to this section.

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259                   **T I T L E   A M E N D M E N T**

260           Remove line 132 and insert:

261   department; creating part IV of ch. 450, F.S., relating to  
262   foreign labor contractor registration; providing a short title;  
263   providing applicability; providing an exemption; specifying  
264   funds for administration of the part by the department;

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265 providing definitions; requiring a certificate of registration;  
266 prohibiting transferability or assignment of the certificate of  
267 registration; providing for renewal date; providing for rules;  
268 providing eligibility requirements for issuance of a certificate  
269 of registration; providing grounds for revocation, suspension,  
270 or refusal to issue or renew any certificate of registration;  
271 providing duties of a foreign labor contractor; delineating  
272 prohibited acts; authorizing the department to adopt rules to  
273 implement the provisions of this part; providing for cooperation  
274 with state and federal agencies; providing for enforcement and  
275 penalties; providing for assessment of civil penalties; amending  
276 s. 455.203, F.S.; authorizing the

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