

SB 5693, shifting the burden of proof by implying that Washington state grocers, farmers and ranchers are involved in slavery and human trafficking

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Key Findings

1. **SB 5693 would harm agricultural retailers and their suppliers by implying they are engaged in human trafficking, peonage, and slavery.**
2. **Agricultural retailers that were unable to collect data from their international suppliers would be held liable for their suppliers' employment practices.**
3. **The bill would require targeted employers to report activities that are already illegal, thus harming their public reputation.**
4. **The bill undermines public confidence that, in a democracy, the Legislature will treat all citizens with fairness and respect.**

Introduction

A new bill, SB 5693, singles out Washington state agricultural retailers and their suppliers by making them prove they are not engaging in slavery and human trafficking. In addition, under the bill Washington ag retailers and their suppliers would face punishment if someone in their overseas supply chain is accused of human trafficking or slavery.

SB 5693 would require supermarkets, grocery stores, and other retailers of agricultural goods and their suppliers to investigate, collect, and report the presence of human trafficking, peonage, and slavery within their own employment practices. These practices are already illegal in the United States, and employers are required to report to law enforcement any discovery that a crime has occurred.

This Legislative Memo describes the provisions of the bill, assesses the effect it

would have, if any, on stopping slavery or human trafficking, and the implied attack it makes against Washington state grocery retailers, food suppliers, and farmers.

The text of SB 5693

The legislation would require retailers of agricultural goods with global sales receipts of \$200 million or more to report publicly incidents of slavery, human trafficking, peonage, or forced labor by its suppliers on an annual basis.¹ The bill would require retailers to report even when no such practices exist.

In addition to reporting any of the above violations, retailers would also have to collect and report data regarding any “violations of employment related laws,” court or arbitration rulings, or citations by government agencies. Additional reporting of all steps retailers had taken to mitigate incidences of human trafficking, peonage, or slavery in their supply chains would also be mandatory.

Retailers would have to require their domestic and international suppliers of cocoa, dairy, coffee, sugar, and fruit comply with the reporting policies imposed by the legislation. In Washington state, the bill would apply particularly to dairy and fruit producers and would require retailers to ask their international suppliers of cocoa, coffee, and sugar to provide the same information.

Reports compiled by retailers would have to be “posted on the retail seller’s internet web site with a conspicuous and easily understood link” or, in the absence of a web site, made available within 30 days of any public records request.

¹ SB 5693, Creating Transparency in Agricultural Supply Chains, Washington State Legislature, Jan. 28, 2019 at <https://app.leg.wa.gov/bills/summary?BillNumber=5693&Year=2019&Initiative=false>.

Any retailer or supplier that failed to comply with any part of SB 5693 would be subject to a civil suit from the state attorney general's office. A verdict imposed against a retailer, supplier, or farmer would come with a penalty of no less than \$500 and no more than \$7,000 per violation. Because the provisions of the bill are so broad, perceived reporting violations could quickly add up to millions of dollars.

Asking the classic prejudicial question

By requiring the reporting of activities that are already illegal, SB 5693 conveys the implication that Washington state retailers, suppliers, and farmers are criminally engaged in slavery and human trafficking.

Slavery and peonage were abolished in the United States in 1865.² Further, human trafficking was outlawed in Washington in 2003 and throughout the remainder of the country shortly thereafter.³

The sponsors of SB 5693 would harm grocers, farmers, and other employers involved in growing and selling food for labor practices that are already illegal. The state Department of Labor and Industries, the Department of Health, and the Department of Employment Security, as well as the law-abiding standards and personal ethics of employers, already work to stop labor abuses and ensure that agricultural workers in Washington are treated with dignity and respect.

SB 5693 poses the classic prejudicial question: "Do you – or anyone you associate with – still beat your wife?" If agricultural groups oppose the legislation, they will be accused of having something to hide. If they don't support the legislation, they would be admitting that Washington state farmers and ranchers are somehow involved in slavery and human trafficking.

Forcing farmers, ranchers, orchardists, and other food producers to advertise

unsubstantiated accusations made against them goes against the most basic principle of fairness in democracy: that all persons are presumed innocent until proven guilty in a court of law. The bill levels the same accusation against supermarkets, grocery stores, and other food retailers; it assumes they are guilty until they are able to report they are innocent.

Conclusion

Slavery and peonage were outlawed in the United States by the 13th Amendment to the Constitution with the exception of instances in which labor is imposed as part of a criminal punishment. Human trafficking is also illegal in all 50 states.

SB 5693 seeks to impugn the public reputation of retailers, farmers, and ranchers by implying that they are engaging in illegal and unethical labor practices. The bill unfairly shifts the burden of proof to people engaged in the agricultural industry in Washington state by requiring retailers and suppliers to collect and report data related to human trafficking, peonage, and slavery, without evidence that such activities actually exist.

As policy, the bill works against the principle of equality in democracy by undermining public confidence in the Legislature's ability to treat all citizens fairly and with respect.

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Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body

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- 2 U.S. Constitution, 13th Amendment, Legal Information Institute, at <https://www.law.cornell.edu/constitution/amendmentxiii>.
- 3 "What is Human Trafficking?" Washington State Office of the Attorney General at <https://www.atg.wa.gov/human-trafficking>