

AMENDED IN SENATE APRIL 25, 2013

**SENATE BILL**

**No. 25**

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**Introduced by Senator Steinberg**

December 3, 2012

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An act to amend Sections ~~1164 and 1140.4, 1164, 1164.3 of, and to repeal Section 1164.11 of, and 1164.11~~ of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 25, as amended, Steinberg. Agricultural labor relations: contract dispute resolution.

Existing law specifies the time for filing a declaration by an agricultural employer, *as defined*, or a certified labor organization representing agricultural employees that the parties have failed to reach a collective bargaining agreement, thus triggering mandatory mediation. Under existing law, the declaration may be filed *under specified circumstances, including* 90 days after a renewed demand to bargain where the parties have failed to reach agreement for at least one year, the employer committed an unfair labor practice, and the parties have not previously had a binding contract between them ~~or 180 days after an initial request to bargain~~.

This bill would permit the filing of a declaration *as described above* without having to meet the ~~prior bargaining and time requirements and would condition that the parties have not previously had a binding contract between them~~. The bill would also expand the definition of an agricultural employer to include subsequent purchasers of an agricultural employer's business where the original employer had an obligation to bargain with its workers.

Existing law provides that within 60 days of a decision by the Agricultural Labor Relations Board taking effect, a party may file an action to enforce the order, using specified procedures. Existing law provides that during the pendency of any appeal of the board's order, the order may not be stayed unless the appellant demonstrates that he or she is likely to prevail on the merits and that he or she will be irreparably harmed by implementation of the board's order.

This bill would provide that an action to enforce the order of the board may be filed within 60 days whether or not the other party is seeking judicial review of the order. The bill would also increase the evidentiary threshold for the court to grant a stay of the board's order and require the court to make written findings supporting any order granting a stay of the order during the pendency of the appeal.

~~Existing law requires that before a specified declaration and request can be filed by an agricultural employer or by the bargaining agent of agricultural employees, specified criteria must be met, including, demonstrating that the parties have been unable to reach an agreement for one year after the initial request to bargain was made.~~

~~This bill would repeal the criteria required before a declaration could be filed.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1140.4 of the Labor Code is amended to  
2     read:  
3     1140.4. As used in this part:  
4     (a) The term "agriculture" includes farming in all its branches,  
5     and, among other things, includes the cultivation and tillage of the  
6     soil, dairying, the production, cultivation, growing, and harvesting  
7     of any agricultural or horticultural commodities (including  
8     commodities defined as agricultural commodities in Section  
9     1141j(g) of Title 12 of the United States Code), the raising of  
10    livestock, bees, furbearing animals, or poultry, and any practices  
11    (including any forestry or lumbering operations) performed by a  
12    farmer or on a farm as an incident to or in conjunction with such  
13    farming operations, including preparation for market and delivery  
14    to storage or to market or to carriers for transportation to market.

(b) The term “agricultural employee” or “employee” shall mean one engaged in agriculture, as such term is defined in subdivision (a). However, nothing in this subdivision shall be construed to include any person other than those employees excluded from the coverage of the National Labor Relations Act, as amended, as agricultural employees, pursuant to Section 2(3) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code), and Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code).

Further, nothing in this part shall apply, or be construed to apply, to any employee who performs work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work (as these terms have been construed under Section 8(e) of the Labor Management Relations Act, 29 U.S.C. Sec. 158(e)) or logging or timber-clearing operations in initial preparation of land for farming, or who does land leveling or only land surveying for any of the above.

As used in this subdivision, “land leveling” shall include only major land moving operations changing the contour of the land, but shall not include annual or seasonal tillage or preparation of land for cultivation.

(c) The term “agricultural employer” shall be liberally construed to include any person acting directly or indirectly in the interest of an employer in relation to an agricultural employee, any individual grower, corporate grower, cooperative grower, harvesting association, hiring association, land management group, any association of persons or cooperatives engaged in agriculture, and shall include any person who owns or leases or manages land used for agricultural purposes, but shall exclude any person supplying agricultural workers to an employer, any farm labor contractor as defined by Section 1682, and any person functioning in the capacity of a labor contractor. The employer engaging such labor contractor or person shall be deemed the employer for all purposes under this part.

*“Agricultural employer” shall also include a person, party, entity, or corporate form that directly or indirectly controls all or a part of an agricultural operation in any form, or a person, party, entity, or corporate form that purchases, assumes management of, or otherwise directly or indirectly controls all or a part of an*

1 *agricultural operation in any form, where the previous or selling*  
2 *employer had an obligation to bargain under this act.*

3 (d) The term “person” shall mean one or more individuals,  
4 corporations, partnerships, limited liability companies, associations,  
5 legal representatives, trustees in bankruptcy, receivers, or any other  
6 legal entity, employer, or labor organization having an interest in  
7 the outcome of a proceeding under this part.

8 (e) The term “representatives” includes any individual or labor  
9 organization.

10 (f) The term “labor organization” means any organization of  
11 any kind, or any agency or employee representation committee or  
12 plan, in which employees participate and which exists, in whole  
13 or in part, for the purpose of dealing with employers concerning  
14 grievances, labor disputes, wages, rates of pay, hours of  
15 employment, or conditions of work for agricultural employees.

16 (g) The term “unfair labor practice” means any unfair labor  
17 practice specified in Chapter 4 (commencing with Section 1153)  
18 of this part.

19 (h) The term “labor dispute” includes any controversy  
20 concerning terms, tenure, or conditions of employment, or  
21 concerning the association or representation of persons in  
22 negotiating, fixing, maintaining, changing, or seeking to arrange  
23 terms or conditions of employment, regardless of whether the  
24 disputants stand in the proximate relation of employer and  
25 employee.

26 (i) The term “board” means Agricultural Labor Relations Board.

27 (j) The term “supervisor” means any individual having the  
28 authority, in the interest of the employer, to hire, transfer, suspend,  
29 lay off, recall, promote, discharge, assign, reward, or discipline  
30 other employees, or the responsibility to direct them, or to adjust  
31 their grievances, or effectively to recommend such action, if, in  
32 connection with the foregoing, the exercise of such authority is  
33 not of a merely routine or clerical nature, but requires the use of  
34 independent judgment.

35 **SECTION 1.**

36 **SEC. 2.** Section 1164 of the Labor Code is amended to read:

37 1164. (a) An agricultural employer or a labor organization  
38 certified as the exclusive bargaining agent of a bargaining unit of  
39 agricultural employees may file with the board, at any time  
40 following (1) 90 days after a *renewed* demand to bargain by an

1 agricultural employer or a labor organization certified prior to  
 2 January 1, 2003, *which meets the conditions specified in Section*  
 3 *1164.11*, (2) 90 days after ~~an initial~~ a request to bargain by an  
 4 agricultural employer or a labor organization certified after January  
 5 1, 2003, (3) 60 days after the board has certified the labor  
 6 organization pursuant to subdivision (f) of Section 1156.3, or (4)  
 7 60 days after the board has dismissed a decertification petition  
 8 upon a finding that the employer has unlawfully initiated,  
 9 supported, sponsored, or assisted in the filing of a decertification  
 10 petition a declaration that the parties have failed to reach a  
 11 collective bargaining agreement and a request that the board issue  
 12 an order directing the parties to mandatory mediation and  
 13 conciliation of their issues. “Agricultural employer,” for purposes  
 14 of this chapter, means an agricultural employer, as defined in  
 15 subdivision (c) of Section 1140.4, who has employed or engaged  
 16 25 or more agricultural employees during any calendar week in  
 17 the year preceding the filing of a declaration pursuant to this  
 18 subdivision. ~~For purposes of this section, “agricultural employer”~~  
 19 ~~also includes any person, party, entity, or employer that purchased~~  
 20 ~~all or part of an employer business, where the selling employer~~  
 21 ~~had an obligation to bargain under this chapter.~~

22 (b) Upon receipt of a declaration pursuant to subdivision (a),  
 23 the board shall immediately issue an order directing the parties to  
 24 mandatory mediation and conciliation of their issues. The board  
 25 shall request from the California State Mediation and Conciliation  
 26 Service a list of nine mediators who have experience in labor  
 27 mediation. The California State Mediation and Conciliation Service  
 28 may include names chosen from its own mediators, or from a list  
 29 of names supplied by the American Arbitration Association or the  
 30 Federal Mediation Service. The parties shall select a mediator from  
 31 the list within seven days of receipt of the list. If the parties cannot  
 32 agree on a mediator, they shall strike names from the list until a  
 33 mediator is chosen by process of elimination. If a party refuses to  
 34 participate in selecting a mediator, the other party may choose a  
 35 mediator from the list. The costs of mediation and conciliation  
 36 shall be borne equally by the parties.

37 (c) Upon appointment, the mediator shall immediately schedule  
 38 meetings at a time and location reasonably accessible to the parties.  
 39 Mediation shall proceed for a period of 30 days. Upon expiration  
 40 of the 30-day period, if the parties do not resolve the issues to their

1 mutual satisfaction, the mediator shall certify that the mediation  
2 process has been exhausted. Upon mutual agreement of the parties,  
3 the mediator may extend the mediation period for an additional  
4 30 days.

5 (d) Within 21 days, the mediator shall file a report with the  
6 board that resolves all of the issues between the parties and  
7 establishes the final terms of a collective bargaining agreement,  
8 including all issues subject to mediation and all issues resolved by  
9 the parties prior to the certification of the exhaustion of the  
10 mediation process. With respect to any issues in dispute between  
11 the parties, the report shall include the basis for the mediator's  
12 determination. The mediator's determination shall be supported  
13 by the record.

14 (e) In resolving the issues in dispute, the mediator may consider  
15 those factors commonly considered in similar proceedings,  
16 including:

17 (1) The stipulations of the parties.

18 (2) The financial condition of the employer and its ability to  
19 meet the costs of the contract in those instances where the employer  
20 claims an inability to meet the union's wage and benefit demands.

21 (3) The corresponding wages, benefits, and terms and conditions  
22 of employment in other collective bargaining agreements covering  
23 similar agricultural operations with similar labor requirements.

24 (4) The corresponding wages, benefits, and terms and conditions  
25 of employment prevailing in comparable firms or industries in  
26 geographical areas with similar economic conditions, taking into  
27 account the size of the employer, the skills, experience, and training  
28 required of the employees, and the difficulty and nature of the  
29 work performed.

30 (5) The average consumer prices for goods and services  
31 according to the California Consumer Price Index, and the overall  
32 cost of living, in the area where the work is performed.

33 ~~SEC. 2.~~

34 *SEC. 3.* Section 1164.3 of the Labor Code is amended to read:

35 1164.3. (a) Either party, within seven days of the filing of the  
36 report by the mediator, may petition the board for review of the  
37 report. The petitioning party shall, in the petition, specify the  
38 particular provisions of the mediator's report for which it is seeking  
39 review by the board and shall specify the specific grounds  
40 authorizing review by the board. The board, within 10 days of

1 receipt of a petition, may accept for review those portions of the  
2 petition for which a prima facie case has been established that (1)  
3 a provision of the collective bargaining agreement set forth in the  
4 mediator's report is unrelated to wages, hours, or other conditions  
5 of employment within the meaning of Section 1155.2, (2) a  
6 provision of the collective bargaining agreement set forth in the  
7 mediator's report is based on clearly erroneous findings of material  
8 fact, or (3) a provision of the collective bargaining agreement set  
9 forth in the mediator's report is arbitrary or capricious in light of  
10 the mediator's findings of fact.

11 (b) If it finds grounds exist to grant review within the meaning  
12 of subdivision (a), the board shall order the provisions of the report  
13 that are not the subject of the petition for review into effect as a  
14 final order of the board. If the board does not accept a petition for  
15 review or no petition for review is filed, then the mediator's report  
16 shall become a final order of the board.

17 (c) The board shall issue a decision concerning the petition and  
18 if it determines that a provision of the collective bargaining  
19 agreement contained in the mediator's report violates the provisions  
20 of subdivision (a), it shall, within 21 days, issue an order requiring  
21 the mediator to modify the terms of the collective bargaining  
22 agreement. The mediator shall meet with the parties for additional  
23 mediation for a period not to exceed 30 days. At the expiration of  
24 this mediation period, the mediator shall prepare a second report  
25 resolving any outstanding issues. The second report shall be filed  
26 with the board.

27 (d) Either party, within seven days of the filing of the mediator's  
28 second report, may petition the board for a review of the mediator's  
29 second report pursuant to the procedures specified in subdivision  
30 (a). If no petition is filed, the mediator's report shall take immediate  
31 effect as a final order of the board. If a petition is filed, the board  
32 shall issue an order confirming the mediator's report and order it  
33 into immediate effect, unless it finds that the report is subject to  
34 review for any of the grounds specified in subdivision (a), in which  
35 case the board shall determine the issues and shall issue a final  
36 order of the board.

37 (e) Either party, within seven days of the filing of the report by  
38 the mediator, may petition the board to set aside the report if a  
39 prima facie case is established that any of the following have  
40 occurred: (1) the mediator's report was procured by corruption,

1 fraud, or other undue means, (2) there was corruption in the  
2 mediator, or (3) the rights of the petitioning party were substantially  
3 prejudiced by the misconduct of the mediator. For the sole purpose  
4 of interpreting the terms of paragraphs (1), (2), and (3), case law  
5 that interprets similar terms used in Section 1286.2 of the Code of  
6 Civil Procedure shall apply. If the board finds that any of these  
7 grounds exist, the board shall within 10 days vacate the report of  
8 the mediator and shall order the selection and appointment of a  
9 new mediator, and an additional mediation period of 30 days,  
10 pursuant to Section 1164.

11 (f) Within 60 days after the order of the board takes effect, even  
12 if a party seeks appellate review of the order of the board, either  
13 party or the board may file an action to enforce the order of the  
14 board, in the superior court for the County of Sacramento or in the  
15 county where either party's principal place of business is located.  
16 During the pendency of a petition for a writ of review by a party,  
17 the parties shall be required to implement the terms of the board's  
18 order immediately upon issuance of the order. No final order of  
19 the board shall be stayed during any review sought under this  
20 section, unless the court finds and states in its initial findings that  
21 (1) the appellant has demonstrated, by clear and convincing  
22 evidence, that he or she will be irreparably harmed by the  
23 implementation of the board's order, and (2) the appellant has  
24 demonstrated, by clear and convincing evidence, a likelihood of  
25 success on appeal. For purposes of this section, the court deciding  
26 the stay shall provide written findings and analysis supporting the  
27 decision to grant a stay.

28 ~~SEC. 3. Section 1164.11 of the Labor Code is repealed.~~

29 *SEC. 4. Section 1164.11 of the Labor Code is amended to*  
30 *read:*

31 1164.11. A demand made pursuant to paragraph (1) of  
32 subdivision (a) of Section 1164 may be made only in cases which  
33 meet all of the following criteria: (a) the parties have failed to  
34 reach agreement for at least one year after the date on which the  
35 labor organization made its initial request to bargain, *and* (b) the  
36 employer has committed an unfair labor ~~practice, and (c) the parties~~  
37 ~~have not previously had a binding contract between them.~~ *practice.*