

AMENDED IN ASSEMBLY JUNE 5, 2013

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 ~~1140.4~~, 1164, 1164.3, 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.

This bill would permit the filing of a declaration as described above without having to meet the 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.

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.~~  
15 ~~(b) The term “agricultural employee” or “employee” shall mean~~  
16 ~~one engaged in agriculture, as such term is defined in subdivision~~  
17 ~~(a). However, nothing in this subdivision shall be construed to~~  
18 ~~include any person other than those employees excluded from the~~  
19 ~~coverage of the National Labor Relations Act, as amended, as~~  
20 ~~agricultural employees, pursuant to Section 2(3) of the Labor~~  
21 ~~Management Relations Act (Section 152(3), Title 29, United States~~  
22 ~~Code), and Section 3(f) of the Fair Labor Standards Act (Section~~  
23 ~~203(f), Title 29, United States Code).~~  
24 ~~Further, nothing in this part shall apply, or be construed to apply,~~  
25 ~~to any employee who performs work to be done at the site of the~~

1 construction, alteration, painting, or repair of a building, structure,  
 2 or other work (as these terms have been construed under Section  
 3 8(e) of the Labor Management Relations Act, 29 U.S.C. Sec.  
 4 158(e)) or logging or timber-clearing operations in initial  
 5 preparation of land for farming, or who does land leveling or only  
 6 land surveying for any of the above.

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

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

24 “Agricultural employer” shall also include a person, party, entity,  
 25 or corporate form that directly or indirectly controls all or a part  
 26 of an agricultural operation in any form, or a person, party, entity,  
 27 or corporate form that purchases, assumes management of, or  
 28 otherwise directly or indirectly controls all or a part of an  
 29 agricultural operation in any form, where the previous or selling  
 30 employer had an obligation to bargain under this act.

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

36 (e) The term “representatives” includes any individual or labor  
 37 organization.

38 (f) The term “labor organization” means any organization of  
 39 any kind, or any agency or employee representation committee or  
 40 plan, in which employees participate and which exists, in whole

1 or in part, for the purpose of dealing with employers concerning  
2 grievances, labor disputes, wages, rates of pay, hours of  
3 employment, or conditions of work for agricultural employees.

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

7 (h) The term “labor dispute” includes any controversy  
8 concerning terms, tenure, or conditions of employment, or  
9 concerning the association or representation of persons in  
10 negotiating, fixing, maintaining, changing, or seeking to arrange  
11 terms or conditions of employment, regardless of whether the  
12 disputants stand in the proximate relation of employer and  
13 employee.

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

15 (j) The term “supervisor” means any individual having the  
16 authority, in the interest of the employer, to hire, transfer, suspend,  
17 lay off, recall, promote, discharge, assign, reward, or discipline  
18 other employees, or the responsibility to direct them, or to adjust  
19 their grievances, or effectively to recommend such action, if, in  
20 connection with the foregoing, the exercise of such authority is  
21 not of a merely routine or clerical nature, but requires the use of  
22 independent judgment.

23 ~~SEC. 2.~~

24 *SECTION 1.* Section 1164 of the Labor Code is amended to  
25 read:

26 1164. (a) An agricultural employer or a labor organization  
27 certified as the exclusive bargaining agent of a bargaining unit of  
28 agricultural employees may file with the board, at any time  
29 following (1) 90 days after a renewed demand to bargain by an  
30 agricultural employer or a labor organization certified prior to  
31 January 1, 2003, which meets the conditions specified in Section  
32 1164.11, (2) 90 days after a request to bargain by an agricultural  
33 employer or a labor organization certified after January 1, 2003,  
34 (3) 60 days after the board has certified the labor organization  
35 pursuant to subdivision (f) of Section 1156.3, or (4) 60 days after  
36 the board has dismissed a decertification petition upon a finding  
37 that the employer has unlawfully initiated, supported, sponsored,  
38 or assisted in the filing of a decertification petition a declaration  
39 that the parties have failed to reach a collective bargaining  
40 agreement and a request that the board issue an order directing the

1 parties to mandatory mediation and conciliation of their issues.  
2 “Agricultural employer,” for purposes of this chapter, means an  
3 agricultural employer, as defined in subdivision (c) of Section  
4 1140.4, who has employed or engaged 25 or more agricultural  
5 employees during any calendar week in the year preceding the  
6 filing of a declaration pursuant to this subdivision.

7 (b) Upon receipt of a declaration pursuant to subdivision (a),  
8 the board shall immediately issue an order directing the parties to  
9 mandatory mediation and conciliation of their issues. The board  
10 shall request from the California State Mediation and Conciliation  
11 Service a list of nine mediators who have experience in labor  
12 mediation. The California State Mediation and Conciliation Service  
13 may include names chosen from its own mediators, or from a list  
14 of names supplied by the American Arbitration Association or the  
15 Federal Mediation Service. The parties shall select a mediator from  
16 the list within seven days of receipt of the list. If the parties cannot  
17 agree on a mediator, they shall strike names from the list until a  
18 mediator is chosen by process of elimination. If a party refuses to  
19 participate in selecting a mediator, the other party may choose a  
20 mediator from the list. The costs of mediation and conciliation  
21 shall be borne equally by the parties.

22 (c) Upon appointment, the mediator shall immediately schedule  
23 meetings at a time and location reasonably accessible to the parties.  
24 Mediation shall proceed for a period of 30 days. Upon expiration  
25 of the 30-day period, if the parties do not resolve the issues to their  
26 mutual satisfaction, the mediator shall certify that the mediation  
27 process has been exhausted. Upon mutual agreement of the parties,  
28 the mediator may extend the mediation period for an additional  
29 30 days.

30 (d) Within 21 days, the mediator shall file a report with the  
31 board that resolves all of the issues between the parties and  
32 establishes the final terms of a collective bargaining agreement,  
33 including all issues subject to mediation and all issues resolved by  
34 the parties prior to the certification of the exhaustion of the  
35 mediation process. With respect to any issues in dispute between  
36 the parties, the report shall include the basis for the mediator’s  
37 determination. The mediator’s determination shall be supported  
38 by the record.

1 (e) In resolving the issues in dispute, the mediator may consider  
2 those factors commonly considered in similar proceedings,  
3 including:

4 (1) The stipulations of the parties.

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

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

11 (4) The corresponding wages, benefits, and terms and conditions  
12 of employment prevailing in comparable firms or industries in  
13 geographical areas with similar economic conditions, taking into  
14 account the size of the employer, the skills, experience, and training  
15 required of the employees, and the difficulty and nature of the  
16 work performed.

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

20 ~~SEC. 3.~~

21 *SEC. 2.* Section 1164.3 of the Labor Code is amended to read:

22 1164.3. (a) Either party, within seven days of the filing of the  
23 report by the mediator, may petition the board for review of the  
24 report. The petitioning party shall, in the petition, specify the  
25 particular provisions of the mediator's report for which it is seeking  
26 review by the board and shall specify the specific grounds  
27 authorizing review by the board. The board, within 10 days of  
28 receipt of a petition, may accept for review those portions of the  
29 petition for which a prima facie case has been established that (1)  
30 a provision of the collective bargaining agreement set forth in the  
31 mediator's report is unrelated to wages, hours, or other conditions  
32 of employment within the meaning of Section 1155.2, (2) a  
33 provision of the collective bargaining agreement set forth in the  
34 mediator's report is based on clearly erroneous findings of material  
35 fact, or (3) a provision of the collective bargaining agreement set  
36 forth in the mediator's report is arbitrary or capricious in light of  
37 the mediator's findings of fact.

38 (b) If it finds grounds exist to grant review within the meaning  
39 of subdivision (a), the board shall order the provisions of the report  
40 that are not the subject of the petition for review into effect as a

1 final order of the board. If the board does not accept a petition for  
2 review or no petition for review is filed, then the mediator's report  
3 shall become a final order of the board.

4 (c) The board shall issue a decision concerning the petition and  
5 if it determines that a provision of the collective bargaining  
6 agreement contained in the mediator's report violates the provisions  
7 of subdivision (a), it shall, within 21 days, issue an order requiring  
8 the mediator to modify the terms of the collective bargaining  
9 agreement. The mediator shall meet with the parties for additional  
10 mediation for a period not to exceed 30 days. At the expiration of  
11 this mediation period, the mediator shall prepare a second report  
12 resolving any outstanding issues. The second report shall be filed  
13 with the board.

14 (d) Either party, within seven days of the filing of the mediator's  
15 second report, may petition the board for a review of the mediator's  
16 second report pursuant to the procedures specified in subdivision  
17 (a). If no petition is filed, the mediator's report shall take immediate  
18 effect as a final order of the board. If a petition is filed, the board  
19 shall issue an order confirming the mediator's report and order it  
20 into immediate effect, unless it finds that the report is subject to  
21 review for any of the grounds specified in subdivision (a), in which  
22 case the board shall determine the issues and shall issue a final  
23 order of the board.

24 (e) Either party, within seven days of the filing of the report by  
25 the mediator, may petition the board to set aside the report if a  
26 prima facie case is established that any of the following have  
27 occurred: (1) the mediator's report was procured by corruption,  
28 fraud, or other undue means, (2) there was corruption in the  
29 mediator, or (3) the rights of the petitioning party were substantially  
30 prejudiced by the misconduct of the mediator. For the sole purpose  
31 of interpreting the terms of paragraphs (1), (2), and (3), case law  
32 that interprets similar terms used in Section 1286.2 of the Code of  
33 Civil Procedure shall apply. If the board finds that any of these  
34 grounds exist, the board shall within 10 days vacate the report of  
35 the mediator and shall order the selection and appointment of a  
36 new mediator, and an additional mediation period of 30 days,  
37 pursuant to Section 1164.

38 (f) Within 60 days after the order of the board takes effect, even  
39 if a party seeks appellate review of the order of the board, either  
40 party or the board may file an action to enforce the order of the

1 board, in the superior court for the County of Sacramento or in the  
2 county where either party's principal place of business is located.  
3 During the pendency of a petition for a writ of review by a party,  
4 the parties shall be required to implement the terms of the board's  
5 order immediately upon issuance of the order. No final order of  
6 the board shall be stayed during any review sought under this  
7 section, unless the court finds and states in its initial findings that  
8 (1) the appellant has demonstrated, by clear and convincing  
9 evidence, that he or she will be irreparably harmed by the  
10 implementation of the board's order, and (2) the appellant has  
11 demonstrated, by clear and convincing evidence, a likelihood of  
12 success on appeal. For purposes of this section, the court deciding  
13 the stay shall provide written findings and analysis supporting the  
14 decision to grant a stay.

15 ~~SEC. 4.~~

16 *SEC. 3.* Section 1164.11 of the Labor Code is amended to read:

17 1164.11. A demand made pursuant to paragraph (1) of  
18 subdivision (a) of Section 1164 may be made only in cases which  
19 meet all of the following criteria: (a) the parties have failed to  
20 reach agreement for at least one year after the date on which the  
21 labor organization made its initial request to bargain, and (b) the  
22 employer has committed an unfair labor practice.