MODERN SLAVERY AND TRANSPARENCY LEGISLATION IN THE U.S. – STATES MAY FOLLOW SUIT

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Global Ethical Supply Chains Alert

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In January 2012, California's *Transparency in Supply Chains Act of 2010* took effect, and many non-California businesses simply shrugged. The California law could easily be cast as an outlier: It was one of the first supply chain transparency laws in the world. It was also unique in the United States, but that could change. Earlier this year, Washington Senate Bill 5693 – 2019-20 "Transparency in agricultural supply chains act"[1] ("SB 5693") was introduced, and it survived executive action last month in the Washington Senate Committee on Labor and Commerce, its first hurdle on the way to becoming law. While the Senate Rules Committee placed the bill in the "X" file on March 18, 2019, signaling that it will not progress, this bill is far from an outlier. It is merely the latest indicator of a new focus as both consumers and governments take aim at the issue of modern slavery.

MODERN SLAVERY AND SUPPLY CHAIN TRANSPARENCY LAWS

Slavery is a real and growing problem throughout the world—including in the United States—and exists in many forms, including forced labor, involuntary servitude, debt bondage, human trafficking, and child labor. It is a $150 billion per year industry and is estimated to involve as many as 16 million victims of forced labor who are exploited in the private sector, including in global supply chains.[2] Countries (and states—as illustrated by the example of SB 5693), however, are beginning to make stepped-up efforts to combat this problem. In the wake of California's 2012 law, the UK[3] and Australia[4] each enacted their own supply chain transparency laws in 2015 and 2018, respectively. Now Canada may be poised to follow in their footsteps.[5] In the United States Congress, too, a number of similar bills have been proposed, and further efforts to pass a supply chain transparency law appear to be likely.[6] Washington State, however, is a special case, as it was the first state in the nation to have criminalized human trafficking, making it a recognized national pioneer in the anti-human trafficking space. As such, it is not surprising to see Washington take the lead among U.S. states in proposing this type of legislation.

WASHINGTON'S PROPOSED TRANSPARENCY IN AGRICULTURAL SUPPLY CHAINS ACT

SB 5693 would have generally required large retailers of agricultural goods to disclose to consumers their efforts to eradicate slavery and human trafficking from their supply chains, as well as the measures they have in place to

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comply with U.S. employment laws.[7] Drawing heavily on its California, UK, and Australian forbearers, the legislation targeted larger businesses and would have primarily required certain public disclosures. However, the proposed law went farther than these current laws by addressing not only forced labor or other forms of modern slavery, but also requiring suppliers of a covered retailer to disclose to the retailer any violations of other employment laws. The following chart summarizes some of the key provisions in the bill:

Legislative Vitals: SB 5693 – Committee Version
Who: 1. Retail seller of named agricultural products; [8] 2. Doing business in Washington State; and 3. Having annual worldwide gross receipts of $200 million [9] or more. **What:** 4. Require its suppliers to annually report violations of employment-related laws and/or incidents of slavery; and 5. Make an annual disclosure of any required information reported from its suppliers *and* the retail entity's efforts to (a) evaluate and address slavery risks in its supply chain; (b) ensure compliance employment laws; and (c) respect workers' human rights. **Where:** On its web site with a “conspicuous and easily understood link” **When:** January 1, 2020 **Possible Penalties:** 6. $500 to $7,000 for each violation; 7. Punitive damages for willful violations; 8. Reasonable costs and attorneys' fees; and 9. Declaratory or injunctive relief.

Notably, the original version of the bill would have created a private civil right of action to allow Washington residents *“without regard to whether the resident has suffered specific injury or damage”* to stand in the shoes of the state's attorney general and file a civil action. This provision, however, was removed from the bill in Committee, but the broad “private right of action” described in the original version of the bill may foreshadow a more aggressive approach for states (or national governments) to take in crafting supply chain transparency bills. Even without that provision, the bill still sought to impose significant obligations on covered retailers and their suppliers.

PRACTICAL PREPAREDNESS

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Even if SB 5693 is not enacted, the growth of this type of legislation around the world suggests that companies—particularly large companies in "high-risk" industries like agriculture, manufacturing, oil and gas, construction, and textiles—may benefit from voluntarily taking steps to eradicate modern slavery from their supply chains. An ounce of preparation (as the saying goes) may, too, pay immediate benefits as consumers grow more and more accustomed to "voting with their dollars" and supporting companies that emphasize ethical and human rights considerations within their business. Companies that are interested in being out in front of this gathering storm can consider a number of steps, including:

- Inventory present-day efforts (if any) to prevent modern slavery and human trafficking;
- Evaluate first-in-chain suppliers to identify "highest-risk" supply chains and possibly further supply chain mapping (i.e., conduct an appropriate risk assessment of the company's operations);
- Implement (or update) a corporate social responsibility policy or code of conduct to address slavery and human trafficking;
- Update agreements to include the company's expectation that its suppliers will not use forced labor or child labor; flow down those requirements to next-in-chain suppliers;
- Appoint a responsible corporate officer to oversee the program; and
- Provide relevant employee training.

Notes

[1] Available at https://app.leg.wa.gov/billsummary?BillNumber=5693&Year=2019.
[2] *See* International Labour Organization statistics at https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm.
[3] Modern Slavery Act 2015 (United Kingdom). *See Modern Slavery Act 2015* (K&L Gates Legal Insight) by Paul Callegari, James G. Millward, 29 September 2015, at http://www.klgates.com/modern-slavery-act-2015-09-22-2015/.
[4] Modern Slavery Act 2018 (Cth) (Federal Act). *See Australia passes the Modern Slavery Bill 2018 – What Do You Need to Do?* (K&L Gates Legal Insight) by Jack Tipple, Bryan Belling, Eric Boone, Adam Levine, Nyomi Gunasekera, 30 November 2018, at http://www.klgates.com/australia-passes-the-modern-slavery-bill-2018--what-do-you-need-to-do-11-30-2018/.
[5] *See* 19th Report of the Standing Committee on Foreign Affairs & International Development, 8 February 2019, at https://www.ourcommons.ca/content/Committee/421/FAAE/GovResponse/RP10314755/421_FAAE_Rpt19_GR/421_FAAE_Rpt19_GR-e.pdf; *see also Modern Slavery Act*, Bill C-423 (Can.), at http://www.parl.ca/DocumentViewer/en/42-1/bill/C-423/first-reading.
[6] In October 2018, Representative Carolyn Maloney (D-NY) from the U.S. House of Representatives introduced H.R. 7089, the "Business Supply Chain Transparency on Trafficking and Slavery Act of 2018." The bill expired at the end of the 115th Congress, but Rep. Maloney has committed to re-introducing the bill in the 116th Congress.
[7] SB 5693, Section 4, at http://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/Senate%20Bills/5693-S.pdf.
[8] "Agricultural product" was defined to mean only "cocoa, dairy, coffee, sugar, and fruit products" and to exclude

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“wheat, potato, onions, asparagus, or other vegetable products.”
[9] The original bill set the bar at only $100 million.

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