

HB 2623 - H AMD 1006

By Representative Kenney

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 19.30.010 and 1985 c 280 s 1 are each amended to read
4 as follows:

5 DEFINITIONS. As used in this chapter:

6 (1) "Person" includes any individual, firm, partnership,
7 association, corporation, or unit or agency of state or local
8 government.

9 (2) "Applicant" means any person who has submitted a written
10 application to operate as a farm labor contractor, but who has not yet
11 been issued a license to operate as a farm labor contractor, as
12 specified in RCW 19.30.030.

13 (3) "Farm labor contractor" means any person, or his or her agent
14 or subcontractor, who, for a fee, performs any farm labor contracting
15 activity either in the state of Washington or for agricultural
16 employers in the state of Washington.

17 ~~((3))~~ (4) "Farm labor contracting activity" means recruiting,
18 soliciting, employing, supplying, transporting, or hiring agricultural
19 ~~((employees))~~ workers.

20 ~~((4))~~ (5) "Agricultural employer" means any person engaged in
21 agricultural activity, including but not limited to: The growing,
22 producing, or harvesting of farm or nursery products(~~((or engaged~~
23 ~~in))~~); the forestation or reforestation of lands, (~~((which includes but~~
24 ~~is))~~ including but not limited to the planting, transplanting, tubing,
25 precommercial thinning, and thinning of trees and seedlings, the
26 clearing, piling, and disposal of brush and slash, and the harvest of
27 Christmas trees(~~((τ))~~); and other related activities.

28 ~~((5))~~ (6) "Agricultural ~~((employee))~~ worker" means any person who
29 seeks to render(~~((s))~~) personal services to(~~((τ))~~) or is under the

1 direction of(~~(7)~~) an agricultural employer in connection with the
2 employer's agricultural activity.

3 (~~(6)~~) (7) "Agricultural guest worker" is an agricultural worker
4 who is temporarily present in the United States as a nonimmigrant under
5 federal law, including but not limited to subparagraph (H)(ii) of
6 section 101(a)(15) of the federal immigration and naturalization act.

7 (8) This chapter shall not apply to employees of the employment
8 security department acting in their official capacity or their agents,
9 nor to any common carrier or full time regular employees thereof while
10 transporting agricultural (~~(employees)~~) workers, nor to any person who
11 performs any of the services enumerated in subsection (~~(3)~~) (4) of
12 this section only within the scope of his or her regular employment for
13 one agricultural employer on whose behalf he or she is so acting,
14 unless he or she is receiving a commission or fee, which commission or
15 fee is determined by the number of workers recruited, or to a nonprofit
16 corporation or organization which performs the same functions for its
17 members. Such nonprofit corporation or organization shall be one in
18 which:

19 (a) None of its directors, officers, or employees are deriving any
20 profit beyond a reasonable salary for services performed in its behalf.

21 (b) Membership dues and fees are used solely for the maintenance of
22 the association or corporation.

23 (~~(7)~~) (9) "Fee" means:

24 (a) Any money or other valuable consideration paid or promised to
25 be paid for services rendered or to be rendered by a farm labor
26 contractor.

27 (b) Any valuable consideration received or to be received by a farm
28 labor contractor for or in connection with any of the services
29 described in subsection (~~(3)~~) (4) of this section, and shall include
30 the difference between any amount received or to be received by him or
31 her, and the amount paid out by him or her for or in connection with
32 the rendering of such services.

33 (~~(8)~~) (10) "Director" as used in this chapter means the director
34 of the department of labor and industries of the state of Washington.

35 **Sec. 2.** RCW 19.30.030 and 1985 c 280 s 3 are each amended to read
36 as follows:

1 LICENSE--REQUIREMENTS FOR ISSUING. The director shall not issue to
2 any person a license to ~~((act))~~ operate as a farm labor contractor
3 until:

4 (1) Such person has executed a written application for each year
5 that the applicant seeks to operate as a farm labor contractor. The
6 written application shall be on a form prescribed by the director, be
7 subscribed and sworn to by the applicant, and contain~~((ing))~~: (a) A
8 statement by the applicant of all facts required by the director
9 concerning the applicant's character, competency, responsibility, and
10 the manner and method by which he or she proposes to conduct operations
11 as a farm labor contractor if such license is issued~~((t))~~; and (b) the
12 names and addresses of all persons financially interested, either as
13 partners, stockholders, associates, profit sharers, or providers of
14 board or lodging to agricultural ~~((employees))~~ workers in the proposed
15 operation as a labor contractor, together with the amount of their
16 respective interests;

17 (2) Such person demonstrates to the director that he or she is in
18 full compliance with all applicable state and federal laws;

19 (3) The director, after investigation, is satisfied as to the
20 character, competency, and responsibility of the applicant;

21 ~~((+3))~~ (4) The applicant has paid to the director a license fee
22 ~~((of: (1) Thirty five dollars in the case of a farm labor contractor~~
23 ~~not engaged in forestation or reforestation, or (2) one hundred dollars~~
24 ~~in the case of a farm labor contractor engaged in forestation or~~
25 ~~reforestation or such other sum as the director finds necessary, and~~
26 ~~adopts by rule, for the administrative costs of evaluating~~
27 ~~applications)).~~ The director shall determine the appropriate amount of
28 the license fee, not to exceed one hundred dollars for a farm labor
29 contractor not engaged in forestation or reforestation, and two hundred
30 dollars for a farm labor contractor engaged in forestation or
31 reforestation;

32 ~~((+4))~~ (5) The applicant has filed proof satisfactory to the
33 director of the existence of a policy of insurance with any insurance
34 carrier authorized to do business in the state of Washington in an
35 amount satisfactory to the director, which insures the contractor
36 against liability for damage to persons or property arising out of the
37 contractor's operation of, or ownership of, any vehicle or vehicles for

1 the transportation of individuals in connection with the contractor's
2 business, activities, or operations as a farm labor contractor;

3 ~~((+5))~~ (6) The applicant has filed a surety bond or other security
4 which meets the requirements set forth in RCW 19.30.040;

5 ~~((+6))~~ (7) The applicant executes a written statement which shall
6 be subscribed and sworn to and shall contain the following declaration:

7 "With regards to any action filed against me concerning my
8 activities as a farm labor contractor, I appoint the director of the
9 Washington department of labor and industries as my lawful agent to
10 accept service of summons when I am not present in the jurisdiction in
11 which the action is commenced or have in any other way become
12 unavailable to accept service"; and

13 ~~((+7))~~ (8) The applicant has stated on his or her application
14 whether or not ~~((his or her contractor's license or the license of))~~
15 the applicant or any of ((his or her)) the applicant's agents,
16 partners, associates, stockholders, or profit sharers:

17 (a) Has ever ((been)) had his or her license suspended, revoked, or
18 denied by any state or federal agency~~((, and whether or not there are~~
19 ~~any outstanding judgments against him or her or any of his or her~~
20 ~~agents, partners, associates, stockholders, or profit sharers))~~;

21 (b) Has any outstanding judgments against him or her from final
22 administrative or judicial determinations in any state or federal court
23 arising out of activities as a farm labor contractor in any state or
24 country; and

25 (c) Is not in compliance with the payment terms of a settlement
26 agreement arising out of activities as a farm labor contractor in any
27 state or country.

28 **Sec. 3.** RCW 19.30.040 and 1987 c 216 s 1 are each amended to read
29 as follows:

30 SURETY BOND--SECURITY. (1) The director shall require the deposit
31 of a surety bond by any person acting as a farm labor contractor under
32 this chapter to insure compliance with the provisions of this chapter,
33 including payment to workers of all sums owing in the event that a
34 license is revoked. Such bond shall be in an amount specified by the
35 director in accordance with such criteria as the director adopts by
36 rule but shall not be less than five thousand dollars. The bond shall
37 be payable to the state of Washington and be conditioned on payment of

1 sums legally owing under contract and under RCW 19.30.170 to an
2 agricultural ((employee)) worker. The aggregate liability of the
3 surety upon such bond for all claims which may arise thereunder shall
4 not exceed the face amount of the bond.

5 (2) The amount of the bond may be raised or additional security
6 required by the director, as specified in this subsection, to cover
7 repatriation costs. For purposes of this subsection "repatriation
8 costs" include travel expenses for returning agricultural guest workers
9 to their home in their country of origin, and room, board, and other
10 living expenses for agricultural guest workers while they await
11 repatriation if the farm labor contractor fails to make timely
12 repatriation of agricultural guest workers.

13 (a) The director shall raise the amount of the bond or require
14 additional security to be deposited by a farm labor contractor for the
15 first year that the contractor is participating or applying to
16 participate in an agricultural guest worker program and is liable under
17 law or contract for the reasonable cost of return transportation of the
18 agricultural guest worker abroad unless the contractor demonstrates to
19 the director that it has the financial capacity to return workers to
20 their homes in their country of origin and a record of operating in the
21 state as a farm labor contractor for at least two years in compliance
22 with applicable laws.

23 (b) The director is authorized to raise the amount of the surety
24 bond or require additional security to be deposited by a farm labor
25 contractor for the second and any subsequent year that a farm labor
26 contractor is participating or applying to participate in an
27 agricultural guest worker program, and is liable under law or contract
28 for the reasonable cost of return transportation of the agricultural
29 guest worker abroad. In deciding whether to raise the amount of the
30 surety bond or require additional security, the director shall consider
31 the farm labor contractor's character, competency, and responsibility,
32 and the farm labor contractor's record of compliance with this chapter
33 and other federal and state laws relating to farm labor contracting
34 activities.

35 (c) The director's decision to raise the amount of the bond or
36 require additional security, but not the director's decision as to the
37 increased amount, is final and not subject to appeal.

1 (3) The amount of the bond may be raised or additional security
2 required by the director, upon his or her own motion or upon petition
3 to the director by any person, when it is shown that the security or
4 bond is insufficient to satisfy the contractor's potential liability
5 for the licensed period.

6 ~~((+3+))~~ (4) No surety insurer may provide any bond, undertaking,
7 recognizance, or other obligation for the purpose of securing or
8 guaranteeing any act, duty, or obligation, or the refraining from any
9 act with respect to a contract using the services of a farm labor
10 contractor unless the farm labor contractor has made application for or
11 has a valid license issued under RCW 19.30.030 at the time of issuance
12 of the bond, undertaking, recognizance, or other obligation.

13 ~~((+4+))~~ (5) Surety bonds may not be canceled or terminated during
14 the period in which the bond is executed unless thirty days' notice is
15 provided by the surety to the department. The bond is written for a
16 one-year term and may be renewed or extended by continuation
17 certification at the option of the surety.

18 ~~((+5+))~~ (6) In lieu of the surety bond required by this section,
19 the contractor may file with the director a deposit consisting of cash
20 or other security acceptable to the director. The deposit shall not be
21 less than five thousand dollars in value. The security deposited with
22 the director in lieu of the surety bond shall be returned to the
23 contractor at the expiration of three years after the farm labor
24 contractor's license has expired or been revoked if no legal action has
25 been instituted against the contractor or on the security deposit at
26 the expiration of the three years.

27 ~~((+6+))~~ (7) If a contractor has deposited a bond with the director
28 and has failed to comply with the conditions of the bond as provided by
29 this section, and has departed from this state, service may be made
30 upon the surety as prescribed in RCW 4.28.090.

31 **Sec. 4.** RCW 19.30.050 and 1985 c 280 s 5 are each amended to read
32 as follows:

33 LICENSE--GROUNDS FOR DENYING. (1) Any person may protest the
34 issuance or renewal of a license under this section.

35 (2) The director shall deny an application for a license to operate
36 as a farm labor contractor ~~((shall be denied))~~ if the director
37 determines that:

1 ~~((1) To any person who))~~ (a) The applicant has made any material
2 misrepresentations or material false statements in his or her
3 application for a license;

4 (b) The applicant has failed to fully satisfy any outstanding
5 judgments against him or her from final administrative or judicial
6 determinations in any state or federal court or to comply with any
7 payment terms of settlement agreements arising out of activities as a
8 farm labor contractor in any state or country, including final
9 determinations and settlement agreements involving the applicant or any
10 of his or her agents, partners, associates, stockholders, or profit
11 sharers;

12 (c) A final administrative or judicial determination shows that the
13 applicant engaged in, or willfully aided or abetted, the violation of
14 one or more civil or criminal laws that, for one or more employees,
15 either resulted in serious financial harm or created the danger of
16 serious physical harm;

17 (d) The applicant sells or proposes to sell intoxicating liquors in
18 a building or on premises where he or she operates or proposes to
19 operate as a farm labor contractor~~((τ))~~; or

20 ~~((2) To a person whose))~~ (e) The applicant's farm labor contractor
21 license ~~((has been))~~ issued under this chapter or federal law was
22 revoked within three years from the date of application.

23 (3) The director may deny an application for a license to operate
24 as a farm labor contractor if the director determines that the
25 applicant's farm labor contractor license issued in another state was
26 revoked within three years from the date of application.

27 **Sec. 5.** RCW 19.30.060 and 1997 c 58 s 846 are each amended to read
28 as follows:

29 LICENSE--REVOCATION, SUSPENSION. (1) Any person may protest the
30 grant, continuation, or renewal of a license under this section.

31 (2) The director may immediately revoke~~((τ))~~ or suspend~~((τ—or~~
32 refuse to issue or renew any)) a license ~~((when it is shown))~~ to
33 operate as a farm labor contractor if the director determines that:

34 ~~((1) The farm labor contractor or any agent of the contractor has~~
35 ~~violated or failed to comply with any of the provisions of this~~
36 ~~chapter;~~

1 ~~(2)~~) (a) The farm labor contractor has made any material
2 misrepresentations or material false statements in his or her
3 application for a license;

4 ~~((3))~~ (b) The farm labor contractor has failed to fully satisfy
5 any outstanding judgments against him or her from final administrative
6 or judicial determinations in any state or federal court or to comply
7 with any payment terms of settlement agreements arising out of
8 activities as a farm labor contractor in any state or country,
9 including final determinations and settlement agreements involving the
10 applicant or any of his or her agents, partners, associates,
11 stockholders, or profit sharers;

12 (c) A final administrative or judicial determination shows that the
13 applicant engaged in, or willfully aided or abetted, the violation of
14 one or more civil or criminal laws that, for one or more employees,
15 either resulted in serious financial harm or created the danger of
16 serious physical harm;

17 (d) The farm labor contractor's character, competency, or
18 responsibility are not satisfactory;

19 (e) The conditions under which the license was issued have changed
20 or no longer exist;

21 ~~((4))~~ (f) The farm labor contractor, or any agent of the
22 contractor, has violated or wilfully aided or abetted any person in the
23 violation of, or failed to comply with, any law of the state of
24 Washington regulating employment in agriculture, the payment of wages
25 to farm employees, or the conditions, terms, or places of employment
26 affecting the health and safety of farm employees, which is applicable
27 to the business activities, or operations of the contractor in his or
28 her capacity as a farm labor contractor;

29 ~~((5))~~ (g) The farm labor contractor ~~((or any agent of the~~
30 ~~contractor))~~ has in recruiting ~~((farm labor))~~ agricultural workers
31 solicited or induced the violation of any then existing contract of
32 employment of such ~~((laborers; or~~

33 ~~(6) The farm labor contractor or any agent of the contractor has an~~
34 ~~unsatisfied judgment against him or her in any state or federal court,~~
35 ~~arising out of his or her farm labor contracting activities))~~ workers;
36 or

37 (h) There is a danger to the public health, safety, or welfare from
38 the continued operations of the farm labor contractor.

1 (3)(a) If the director revokes or suspends a license, the director
2 may permit the farm labor contractor to continue to operate within the
3 period of licensure solely to complete an existing contract period for
4 which agricultural workers have commenced work.

5 (b) If the director allows continuation of an existing contract
6 after revocation or suspension of a license, the farm labor contractor
7 may not represent that it is licensed as a farm labor contractor for
8 any purpose other than completing an existing contract as permitted by
9 the director.

10 (c) If the director does not permit the farm labor contractor to
11 continue to operate to complete an existing contract period under (b)
12 of this subsection, the farm labor contractor may appeal under RCW
13 34.05.479.

14 (d) The director shall monitor the contractor's compliance with
15 this chapter while the contractor completes any contracts under this
16 subsection (3).

17 (4) The director shall immediately suspend the license or
18 certificate of a person who has been certified pursuant to RCW
19 74.20A.320 by the department of social and health services as a person
20 who is not in compliance with a support order (~~or a residential or~~
21 visitation order)). If the person has continued to meet all other
22 requirements for reinstatement during the suspension, reissuance of the
23 license or certificate shall be automatic upon the director's receipt
24 of a release issued by the department of social and health services
25 stating that the licensee is in compliance with the order.

26 **Sec. 6.** RCW 19.30.070 and 1985 c 280 s 7 are each amended to read
27 as follows:

28 LICENSE--CONTENTS. Each license shall contain, on the face
29 thereof:

30 (1) The name and address of the licensee and the fact that he or
31 she is licensed to (~~act~~) operate as a farm labor contractor for the
32 period upon the face of the license only;

33 (2) The number, date of issuance, and date of expiration of the
34 license;

35 (3) The amount of the surety bond deposited by the licensee;

36 (4) The fact that the license may not be transferred or assigned;

37 and

1 (5) A statement that the licensee is or is not licensed to
2 transport workers.

3 **Sec. 7.** RCW 19.30.081 and 1987 c 216 s 3 are each amended to read
4 as follows:

5 LICENSE--DURATION. (~~Farm labor contractors may hold either~~) The
6 director may issue a one-year license (~~or a two-year license~~) to
7 operate as a farm labor contractor, at the director's discretion. The
8 one-year license (~~shall run to and include~~) expires on the 31st day
9 of December next following the date thereof unless sooner revoked by
10 the director. (~~A license may be renewed each year upon the payment of~~
11 ~~the annual license fee, but the director shall require that evidence of~~
12 ~~a renewed bond be submitted and that the contractor have a bond in full~~
13 ~~force and effect.~~

14 ~~The two-year license shall run to and include the 31st day of~~
15 ~~December of the year following the year of issuance unless sooner~~
16 ~~revoked by the director. This license may be renewed every two years~~
17 ~~under the same terms as the one-year license, except that a farm labor~~
18 ~~contractor possessing a two-year license shall have evidence of a bond~~
19 ~~in full force and effect, and file an application on which he or she~~
20 ~~shall disclose all information required by RCW 19.30.030 (1)(b), (4),~~
21 ~~and (7).)~~

22 **Sec. 8.** RCW 19.30.110 and 1985 c 280 s 9 are each amended to read
23 as follows:

24 FARM LABOR CONTRACTOR--DUTIES. Every person acting as a farm labor
25 contractor shall:

26 (1) Carry a current farm labor contractor's license at all times
27 and exhibit it to all persons with whom the contractor intends to deal
28 in the capacity of a farm labor contractor prior to so dealing.

29 (2) Disclose to every person with whom he or she deals in the
30 capacity of a farm labor contractor the amount of his or her bond and
31 the existence and amount of any claims against the bond.

32 (3) File at the United States post office serving the address of
33 the contractor, as noted on the face of the farm labor contractor's
34 license, a correct change of address immediately upon each occasion the
35 contractor permanently moves his or her address, and notify the
36 director within ten days after an address change is made.

1 (4) Promptly when due, pay or distribute to the individuals
2 entitled thereto all moneys or other things of value entrusted to the
3 contractor by any third person for such purpose.

4 (5) Comply with the terms and provisions of all legal and valid
5 agreements (~~(and)~~), contracts, and conditions of employment entered
6 into between the contractor in the capacity of a farm labor contractor
7 and third persons.

8 (6) File information regarding work offers with the nearest
9 employment service office, such information to include wages and work
10 to be performed and any other information prescribed by the director.

11 (7) On a form prescribed by the director, furnish to each worker,
12 at the time of hiring, recruiting, soliciting, or supplying, whichever
13 occurs first, a written statement in English and any other language
14 common to workers who are not fluent or literate in English that
15 contains a description of:

16 (a) The compensation to be paid and the method of computing the
17 rate of compensation;

18 (b) The terms and conditions of any bonus offered, including the
19 manner of determining when the bonus is earned;

20 (c) The terms and conditions of any loan made to the worker;

21 (d) The amount of all fees charged or to be charged the worker, not
22 to exceed the amount allowed under RCW 19.30.120, and the method of
23 such payment or reimbursement;

24 (e) The conditions of any transportation, housing, board, health,
25 and day care services or any other employee benefit to be provided by
26 the farm labor contractor (~~(or by his or her agents)~~), and the costs to
27 be charged for each of them;

28 (~~(e)~~) (f) The terms and conditions of employment, including the
29 approximate length of season or period of employment and the
30 approximate starting and ending dates thereof, and the crops on which
31 and kinds of activities in which the worker may be employed;

32 (~~(f)~~) (g) The terms and conditions under which the worker is
33 furnished clothing or equipment;

34 (~~(g)~~) (h) The place of employment;

35 (~~(h)~~) (i) The name and address of the owner of all operations, or
36 the owner's agent, where the worker will be working as a result of
37 being recruited, solicited, supplied, or employed by the farm labor
38 contractor;

1 ~~((i))~~ (j) The existence of a labor dispute at the worksite;
2 ~~((j))~~ (k) The name and address of the farm labor contractor;
3 ~~((k))~~ (l) The existence of any arrangements with any owner or
4 agent of any establishment at the place of employment under which the
5 farm labor contractor is to receive a fee or any other benefit
6 resulting from any sales by such establishment to the workers; ~~(and~~
7 ~~(l))~~ (m) The name and address of the surety on the contractor's
8 bond and the workers' right to claim against the bond; and
9 (n) A statement that section 15 of this act prohibits farm labor
10 contractors, agricultural employers, and agricultural workers from
11 exempting themselves from the burdens or waiving the benefits of this
12 chapter by any agreement, and that section 15 of this act provides that
13 any such agreement is void to the extent it allows for such exemptions
14 or waivers.

15 (8) Furnish to the worker each time the worker receives a
16 compensation payment from the farm labor contractor, a written
17 statement itemizing the total payment and the amount and purpose of
18 each deduction therefrom, hours worked, rate of pay, and pieces done if
19 the work is done on a piece rate basis, and if the work is done under
20 the Service Contract Act (41 U.S.C. Secs. 351 through 401) or related
21 federal or state law, a written statement of any applicable prevailing
22 wage.

23 (9) With respect to each worker recruited, solicited, employed,
24 supplied, or hired by the farm labor contractor:

25 (a) Make, keep, and preserve for three years a record of the
26 following information:

27 (i) The basis on which wages are paid;

28 (ii) The number of piecework units earned, if paid on a piecework
29 basis;

30 (iii) The number of hours worked;

31 (iv) The total pay period earnings;

32 (v) The specific sums withheld and the purpose of each sum
33 withheld; and

34 (vi) The net pay; and

35 (b) Provide to any other farm labor contractor and to any user of
36 farm labor for whom he or she recruits, solicits, supplies, hires, or
37 employs workers copies of all records, with respect to each such
38 worker, which the contractor is required by this chapter to make, keep,

1 and preserve. The recipient of such records shall keep them for a
2 period of three years from the end of the period of employment. When
3 necessary to administer this chapter, the director may require that any
4 farm labor contractor provide the director with certified copies of his
5 or her payroll records for any payment period.

6 The record-keeping requirements of this chapter shall be met if
7 either the farm labor contractor or any user of the contractor's
8 services makes, keeps, and preserves for the requisite time period the
9 records required under this section, and so long as each worker
10 receives the written statements specified in subsection (8) of this
11 section.

12 **Sec. 9.** RCW 19.30.120 and 1985 c 280 s 10 are each amended to read
13 as follows:

14 FARM LABOR CONTRACTOR--PROHIBITED ACTS. No person acting as a farm
15 labor contractor shall:

16 (1) Make any misrepresentation or false statement in an application
17 for a license.

18 (2) Make or cause to be made, to any person, any false, fraudulent,
19 or misleading representation, or publish or circulate or cause to be
20 published or circulated any false, fraudulent, or misleading
21 information concerning the terms or conditions or existence of
22 employment at any place or places, or by any person or persons, or of
23 any individual or individuals.

24 (3) Charge, or allow his or her agent, partner, associate, or any
25 persons or business the farm labor contractor has an agreement or
26 contract with to provide labor to charge, any types of fees to an
27 agricultural worker that in total exceed twenty-five percent of gross
28 wages to be paid to the worker as indicated in the written statement
29 provided under RCW 19.30.110(7) for his or her first one hundred eighty
30 hours of work.

31 (4) Send or transport any worker to any place where the farm labor
32 contractor knows a strike or lockout exists.

33 ((+4)) (5) Do any act in the capacity of a farm labor contractor,
34 or cause any act to be done, which constitutes a crime involving moral
35 turpitude under any law of the state of Washington.

1 **Sec. 10.** RCW 19.30.160 and 1987 c 216 s 4 are each amended to read
2 as follows:

3 CIVIL PENALTY--HEARING--COURT ACTION. (1) In addition to any
4 criminal penalty imposed under RCW 19.30.150, the director may assess
5 against any person who violates this chapter, or any rule adopted under
6 this chapter, a civil penalty of not more than one thousand dollars for
7 each violation.

8 (2) The person shall be afforded the opportunity for a hearing,
9 upon request to the director made within thirty days after the date of
10 issuance of the notice of assessment. The hearing shall be conducted
11 in accordance with chapter 34.05 RCW.

12 (3) If any person fails to pay an assessment after it has become a
13 final and unappealable order, or after the court has entered final
14 judgment in favor of the agency, the director shall refer the matter to
15 the state attorney general, who shall recover the amount assessed by
16 action in the appropriate superior court. In such action, the validity
17 and appropriateness of the final order imposing the penalty shall not
18 be subject to review.

19 (4) Without regard to other remedies provided in this chapter, the
20 department may bring suit upon the surety bond filed by the farm labor
21 contractor on behalf of a worker whose rights under this chapter have
22 been violated by the contractor. The action may be commenced in any
23 court of competent jurisdiction. In any such action, there shall be
24 compliance with the notice and service requirements set forth in RCW
25 19.30.170. The department shall also give notice of any such action to
26 agricultural employers for whom the farm labor contractor is known to
27 have performed any farm labor contracting activity during the current
28 year. The failure of the department to give notice of any such action
29 to any agricultural employers, however, does not bar the action.

30 **Sec. 11.** RCW 19.30.170 and 1987 c 216 s 5 are each amended to read
31 as follows:

32 CIVIL ACTIONS. (1) After filing a notice of a claim with the
33 director, in addition to any other penalty provided by law, any person
34 aggrieved by a violation of this chapter or any rule adopted under this
35 chapter may bring suit in any court of competent jurisdiction of the
36 county in which the claim arose, or in which either the plaintiff or
37 respondent resides, without regard to the amount in controversy and

1 without regard to exhaustion of any alternative administrative remedies
2 provided in this chapter. No such action may be commenced later than
3 three years after the date of the violation giving rise to the right of
4 action. In any such action the court may award to the prevailing
5 party, in addition to costs and disbursements, reasonable attorneys'
6 fees at trial and appeal.

7 (2) In any action under subsection (1) of this section, if the
8 court finds that the respondent has violated this chapter or any rule
9 adopted under this chapter, it may award damages up to and including an
10 amount equal to the amount of actual damages, or statutory damages of
11 five hundred dollars per plaintiff per violation, whichever is greater,
12 or other equitable relief.

13 (3) Without regard to other remedies provided in this chapter, a
14 person having a claim against the farm labor contractor for any
15 violation of this chapter may bring suit against the farm labor
16 contractor and the surety bond or security deposit filed by the
17 contractor pursuant to RCW 19.30.040, in any court of competent
18 jurisdiction of the county in which the claim arose, or in which either
19 the claimant or contractor resides.

20 (4) An action upon the bond or security deposit shall be commenced
21 by serving and filing the summons and complaint within three years from
22 the date of expiration or cancellation of the bond or expiration or
23 cancellation of the license, whichever is sooner, or in the case of a
24 security deposit, within three years of the date of expiration or
25 revocation of the license.

26 (5) A copy of the summons and complaint in any such action shall be
27 served upon the director at the time of commencement of the action and
28 the director shall maintain a record, available for public inspection,
29 of all suits so commenced. Such service shall constitute service on
30 the farm labor contractor and the surety for suit upon the bond and the
31 director shall transmit the complaint or a copy thereof to the
32 contractor at the address listed in his or her application and to the
33 surety within forty-eight hours after it has been received.

34 (6) The surety upon the bond may, upon notice to the director and
35 the parties, tender to the clerk of the court having jurisdiction of
36 the action an amount equal to the claims or the amount of the bond less
37 the amount of judgments, if any, previously satisfied therefrom and to
38 the extent of such tender the surety upon the bond shall be exonerated.

1 (7) If the actions commenced and pending at any one time exceed the
2 amount of the bond then unimpaired, the claims shall be satisfied from
3 the bond in the following order:

4 (a) Wages, including employee benefits;

5 (b) Other contractual damage owed to the ((employee)) worker;

6 (c) Any costs and attorneys' fees the claimant may be entitled to
7 recover by contract or statute.

8 (8) If any final judgment impairs the bond so furnished so that
9 there is not in effect a bond undertaking in the full amount prescribed
10 by the director, the director shall suspend the license of the
11 contractor until the bond liability in the required amount unimpaired
12 by unsatisfied judgment claims has been furnished. If such bond
13 becomes fully impaired, a new bond must be furnished.

14 (9) A claimant against a security deposit shall be entitled to
15 damages under subsection (2) of this section. If the farm labor
16 contractor has filed other security with the director in lieu of a
17 surety bond, any person having an unsatisfied final judgment against
18 the contractor for any violation of this chapter may execute upon the
19 security deposit held by the director by serving a certified copy of
20 the unsatisfied final judgment by registered or certified mail upon the
21 director. Upon the receipt of service of such certified copy, the
22 director shall pay or order paid from the deposit, through the registry
23 of the court which rendered judgment, towards the amount of the
24 unsatisfied judgment. The priority of payment by the director shall be
25 the order of receipt by the director, but the director shall have no
26 liability for payment in excess of the amount of the deposit.

27 **Sec. 12.** RCW 19.30.190 and 1985 c 280 s 13 are each amended to
28 read as follows:

29 NONDISCRIMINATION. No farm labor contractor or agricultural
30 employer or any agent or person acting on his or her behalf may
31 intimidate, threaten, restrain, coerce, blacklist, discharge, or in any
32 other manner discriminate against any ((employee)) agricultural worker
33 because:

34 (1) The ((employee)) worker has made a claim against the farm labor
35 contractor or agricultural employer for compensation for the
36 ((employee's)) worker's personal services.

1 (2) The ((employee)) worker has caused to be instituted any
2 proceedings under ((~~or related to RCW 19.30.180~~)) this chapter.

3 (3) The ((employee)) worker has testified or is about to testify in
4 any ((such)) proceedings under this chapter.

5 (4) The ((employee)) worker has discussed or consulted with anyone
6 concerning the ((employee's)) worker's rights under this chapter.

7 NEW SECTION. Sec. 13. A new section is added to chapter 19.30 RCW
8 to read as follows:

9 COMPLAINTS. (1) Any agricultural worker, or representative of such
10 worker, who in good faith believes that a violation of this chapter
11 occurred may request a compliance investigation by giving notice to the
12 director or his or her authorized representative of such violation.
13 Any such notice shall be reduced to writing by the worker, worker's
14 representative, or director's representative, and shall set forth with
15 reasonable particularity the grounds for the notice. A copy of the
16 notice shall be provided to the party who is the subject of the
17 complaint or his or her agent no later than at the time of
18 investigation, except that, upon the request of the person giving such
19 notice, his personal identifying information and such information for
20 individual workers referred to therein shall not appear in such copy or
21 on any record published, released, or made available pursuant to any
22 provision of this chapter or under chapter 42.17 RCW. If upon receipt
23 of such notification the director determines that there are reasonable
24 grounds to believe that such violation occurred, he or she shall
25 conduct an investigation as soon as practicable, to determine if such
26 violation occurred. If the written complaint lacks sufficient clarity
27 or detail to provide reasonable grounds to believe that a violation
28 occurred, the director's representative shall contact the complainant
29 for further information. If the director determines there are no
30 reasonable grounds to believe that a violation occurred, he or she
31 shall notify the party who is the subject of the complaint and the
32 worker or worker's representative in writing of such determination.

33 (2) The director shall, by rule, establish procedures for informal
34 review of any refusal by a representative of the director to issue a
35 citation with respect to any such alleged violation, and shall furnish
36 the worker or worker's representative requesting such a review a

1 written statement of the reasons for the director's final disposition
2 of the case.

3 (3) The director may issue a citation under this chapter only if
4 the director or the director's representative has a sufficient basis,
5 without relying on information provided by a person whose identity is
6 protected from disclosure under this section, to determine that a
7 violation has occurred. In any appeal of a citation issued under this
8 chapter, the director may not rely on evidence provided by a person
9 whose identity is protected from disclosure under this section. Any
10 person whose identity is protected from disclosure under this section
11 may agree to release his or her identity in order to provide evidence
12 in support of a citation.

13 NEW SECTION. **Sec. 14.** A new section is added to chapter 19.30 RCW
14 to read as follows:

15 TRANSPORTATION SAFETY STANDARDS. (1) When using, or causing to be
16 used, any vehicle for the transportation of any agricultural worker for
17 a fee, a farm labor contractor shall:

18 (a) Ensure that the vehicle conforms to applicable federal and
19 state safety standards;

20 (b) Ensure that the driver of each vehicle used by the contractor
21 to transport agricultural workers has a valid license to operate the
22 vehicle;

23 (c) Ensure that the farm labor contractor has a valid farm labor
24 contractor's license specifying that the contractor is authorized to
25 transport agricultural workers;

26 (d) Ensure that each occupant has a seat that is properly secured
27 to the vehicle pursuant to the manufacturer's specifications or design;

28 (e) Ensure that there is a properly functioning seat belt for each
29 occupant of the vehicle; and

30 (f) Have an insurance policy or a liability bond that is in effect
31 and that insures the farm labor contractor against liability for damage
32 to persons or property arising from the ownership, operations, or the
33 causing to be operated of any vehicle used to transport any
34 agricultural worker.

35 (2) The farm labor contractor shall demonstrate compliance with
36 this section at the time of application for issuance or renewal of a

1 license under this chapter and as required by the director pursuant to
2 a compliance review or inspection pursuant to a complaint.

3 (3) The director shall adopt rules that, to the extent possible,
4 allow farm labor contractors to demonstrate compliance with this
5 section using the same documents used to demonstrate compliance with
6 the motor vehicle safety provisions in section 401 of the federal
7 migrant and seasonal agricultural worker protection act (29 U.S.C. Sec.
8 1841). Such documents shall include, but not be limited to, vehicle
9 identification and mechanical inspection reports, vehicle operators'
10 licenses, and proof of automobile liability insurance.

11 (4) This section applies to the transportation of any agricultural
12 worker by a farm labor contractor, but not to the transportation of any
13 agricultural worker on a tractor, combine, harvester, picker, or other
14 similar machinery and equipment while such worker is actually engaged
15 in the planting, cultivating, or harvesting of any agricultural
16 commodity or the care of livestock or poultry. Also excluded from this
17 section are private vehicles that are not registered to, or owned or
18 controlled by, the agricultural employer or farm labor contractor, that
19 are used by employees to travel from home to the job site or from one
20 job site to another in the course of employment.

21 NEW SECTION. **Sec. 15.** A new section is added to chapter 19.30 RCW
22 to read as follows:

23 NO EVASION OF BENEFITS OR BURDENS. Farm labor contractors,
24 agricultural employers, and agricultural workers may not exempt
25 themselves from the burdens or waive the benefits of this chapter by
26 any agreement, and any such agreement is void to the extent it allows
27 for such exemptions or waivers.

28 NEW SECTION. **Sec. 16.** RCW 19.30.090 (License--Application for
29 renewal) and 1955 c 392 s 9 are each repealed.

30 NEW SECTION. **Sec. 17.** CAPTIONS. Captions used in this act are
31 not any part of the law."

1 On page 1, line 3 of the title, after "contractors;" strike the
2 remainder of the title and insert "amending RCW 19.30.010, 19.30.030,
3 19.30.040, 19.30.050, 19.30.060, 19.30.070, 19.30.081, 19.30.110,
4 19.30.120, 19.30.160, 19.30.170, and 19.30.190; adding new sections to
5 chapter 19.30 RCW; creating a new section; and repealing RCW
6 19.30.090."

EFFECT: License--Requirements for Issuing: Requires the director of the Department of Labor and Industries to determine the amount of the license fee, not to exceed \$100 for farm labor contractors not engaged in forestation or reforestation and \$200 for contractors engaged in forestation or reforestation. Clarifies that the applicant must disclose whether he or she is not in compliance with the payment terms of settlement agreements arising from farm labor contractor activities, rather than all debts arising from such activities.

License--Grounds for Denying: Modifies mandatory grounds for denying an application, which include: (1) A failure to comply with the payment terms of settlement agreements arising from farm labor contractor activities, rather than a failure to fully satisfy all debts arising from such activities; (2) a final determination showing that the applicant violated laws that, for one or more employees, either resulted in serious financial harm or created the danger of serious physical harm (rather than repeated violations of any laws related to farm labor contracting activities); and (3) the revocation of a farm labor contractor license issued under Washington or federal law within 3 years of the application date. Adds permissive grounds for denying an application, which is the revocation of a farm labor contractor license issued under the law of another state within 3 years of the application date. Also modifies the grounds to exclude: (1) Violations of the state farm labor contractor law in the prior calendar year; or (2) an unsatisfactory character, competency, or responsibility.

License--Revocation, Suspension: Permits any person to protest the grant, continuation, or renewal of a license (rather than any action or inaction by the director). Modifies the permissive grounds for immediately revoking or suspending a license, like the grounds for denying a license, to include: (1) A failure to comply with the payment terms of settlement agreements arising from farm labor

contractor activities, rather than a failure to fully satisfy all debts arising from such activities; (2) a final determination showing that the applicant violated laws that, for one or more employees, either resulted in serious financial harm or created the danger of serious physical harm (rather than repeated violations of any laws related to farm labor contracting activities). Also modifies the grounds to exclude violations of working arrangements with agricultural workers. Clarifies that, if the director revokes or suspends a license, but does not permit the farm labor contractor to continue to operate to complete an existing contract period, the contractor may appeal under the Administrative Procedure Act.

Farm Labor Contractor--Duties and Prohibited Acts: Requires farm labor contractors to comply with conditions of employment entered into between farm labor contractors and third persons (rather than working arrangements). Requires farm labor contractors to furnish workers with a description of the amount of fees charged to the worker and the method of such payment or reimbursement. Prohibits farm labor contractors from charging fees to agricultural workers that exceed 25 percent of gross wages to be paid for the first 180 hours of work.

Civil Actions: Requires the Department of Labor and Industries, when bringing suit upon the farm labor contractor's surety bond, to give notice of the action to agricultural employers for whom the contractor performed any farm labor contracting activity. Specifies that the failure to give such notice does not bar the action.

Nondiscrimination: Deletes a provision creating a rebuttable presumption of prohibited discriminatory action.

Complaints: Adds a section describing the process for filing and investigating a confidential complaint, giving notice to the party who is the subject of the complaint, and issuing a citation to the party. Specifies that the director may issue the citation only if there is a sufficient basis without relying on information provided by a person whose identity is protected from disclosure.

Transportation Safety Standards: Requires the director to adopt rules allowing farm labor contractors to demonstrate compliance with transportation safety standards using the same documents used to demonstrate compliance with federal motor vehicle safety provisions (rather than requiring the director to adopt transportation safety standards). Requires farm labor contractors to ensure that: (1) Their licenses specify that they are authorized to transport agricultural workers; and (2) each occupant has a properly secured seat and a properly functioning seatbelt. Specifies that transportation safety standards do not apply to private vehicles not registered to, or owned or controlled by, agricultural employers or farm labor contractors.

Surety Bond and Repatriation Bond: Deletes a provision requiring a separate repatriation bond. Authorizes the director of the Department of Labor and Industries to raise the amount of the surety bond or require additional security to cover repatriation costs as follows: (1) The director must raise the amount of the surety bond for the first year that the farm labor contractor is participating in an agricultural guest worker program unless the contractor demonstrates a specified financial capacity and operating record; and (2) the director

may raise the amount for the second and any subsequent year that the farm labor contractor is participating in an agricultural guest worker program after considering the contractor's character, competency, responsibility, and compliance record. Specifies that the director's decision to raise the amount is final and not subject to appeal.

Definitions: Substitutes "agricultural guest worker" for "H-2A worker," and defines "agricultural guest worker" as an agricultural worker who is temporarily present in the U.S. as a nonimmigrant under federal law, including but not limited to the federal H-2A visa program.

Employment Agencies: Deletes sections making the state employment agency law applicable to farm labor contractors.

H-2A Program Information: Deletes section modifying state laws governing public disclosure of certain federal H-2A visa program records.

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