

HB 2106 - H AMD 409

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, but not an agricultural employer who owns and operates a farm
16 and allows workers who are primarily employed on that farm to perform
17 agricultural work on another farm within a distance and for a duration
18 to be specified in rule by the department.

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

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

1 ~~((+5))~~ (6) "Agricultural ~~((employee))~~ worker" means any person who
2 seeks to render~~((s))~~ personal services to~~((r))~~ or is under the
3 direction of~~((r))~~ an agricultural employer in connection with the
4 employer's agricultural activity.

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

9 (8) This chapter shall not apply to the following:

10 (a) Employees of the employment security department acting in their
11 official capacity or their agents~~((, nor to))~~;

12 (b) Any common carrier or full time regular employees thereof while
13 transporting agricultural ~~((employees))~~ workers~~((, nor to))~~; or

14 (c) Any person who performs any of the services enumerated in
15 subsection ~~((+3))~~ (4) of this section only within the scope of his or
16 her regular employment for one agricultural employer on whose behalf he
17 or she is so acting, unless he or she is receiving a commission or fee,
18 which commission or fee is determined by the number of workers
19 recruited~~((, or to a nonprofit corporation or organization which~~
20 ~~performs the same functions for its members. Such nonprofit~~
21 ~~corporation or organization shall be one in which:~~

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

24 ~~(b) Membership dues and fees are used solely for the maintenance of~~
25 ~~the association or corporation)).~~

26 ~~((+7))~~ (9) "Fee" means:

27 (a) Any money or other valuable consideration paid or promised to
28 be paid for services rendered or to be rendered by a farm labor
29 contractor.

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

36 ~~((+8))~~ (10) "Director" as used in this chapter means the director
37 of the department of labor and industries of the state of Washington.

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

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

6 (1) Such person has executed a written application for each year
7 that the applicant seeks to operate as a farm labor contractor. The
8 written application shall be on a form prescribed by the director, be
9 subscribed and sworn to by the applicant, and contain(~~ing~~): (a) A
10 statement by the applicant of all facts required by the director
11 concerning the applicant's character, competency, responsibility, and
12 the manner and method by which he or she proposes to conduct operations
13 as a farm labor contractor if such license is issued(~~ed~~); and (b) the
14 names and addresses of all persons financially interested, either as
15 partners, stockholders, associates, profit sharers, or providers of
16 board or lodging to agricultural (~~employees~~) workers in the proposed
17 operation as a labor contractor, together with the amount of their
18 respective interests, and the names of all agents or subcontractors in
19 the proposed operation of the farm labor contractor who will engage in
20 farm labor contracting activities on behalf of the farm labor
21 contractor;

22 (2) The director, after investigation, is satisfied as to the
23 (~~character, competency, and responsibility of the applicant~~)
24 applicant's record of compliance with applicable laws and capacity to
25 meet the applicant's financial obligations;

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

36 (4) Effective January 1, 2009, the applicant has successfully
37 passed a qualifying examination as specified in this subsection.

1 (a) The examination shall be designed to test the applicant's
2 ability, knowledge, and proficiency to conduct and manage the business
3 of a farm labor contractor in compliance with applicable laws and
4 rules;

5 (b) The director shall require the applicant to successfully pass
6 the examination for issuance of an initial license or issuance of a
7 license following revocation of an applicant's state or federal farm
8 labor contractor license, and may require the applicant to successfully
9 pass the examination for renewal of a license; and

10 (c) The director shall adopt rules prescribing the requirements for
11 and the manner of testing the competency of license applicants;

12 (5) The applicant has filed proof satisfactory to the director of
13 the existence of a policy of insurance with any insurance carrier
14 authorized to do business in the state of Washington in an amount
15 satisfactory to the director, which insures the contractor against
16 liability for damage to persons or property arising out of the
17 contractor's operation of, or ownership of, any vehicle or vehicles for
18 the transportation of individuals in connection with the contractor's
19 business, activities, or operations as a farm labor contractor;

20 ~~((+5))~~ (6) The applicant has filed a surety bond or other security
21 which meets the requirements set forth in RCW 19.30.040;

22 ~~((+6))~~ (7) The applicant executes a written statement which shall
23 be subscribed and sworn to and shall contain the following declaration:

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

30 ~~((+7))~~ (8) The applicant has stated on his or her application
31 whether or not ~~((his or her contractor's license or the license of))~~
32 the applicant or any of ~~((his or her))~~ the applicant's agents,
33 partners, associates, stockholders, or profit sharers;

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

1 (b) Has any outstanding debts against him or her from final state
2 or federal administrative determinations or judgments in any state or
3 federal court arising out of activities as a farm labor contractor in
4 any state or country; and

5 (c) Has any outstanding debts against him or her from any
6 settlement agreements arising out of a state or federal court or
7 administrative action relating to activities as a farm labor contractor
8 in any state and whether any payments from any such settlement
9 agreement are past due.

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

12 SURETY BOND--SECURITY. (1) The director shall require the deposit
13 of a surety bond, or cash or other security as described in subsection
14 (6) of this section, by any person acting as a farm labor contractor
15 under this chapter to insure compliance with the provisions of this
16 chapter, including payment to workers of all sums owing in the event
17 that a license is revoked. (~~(Such bond shall be in an amount specified~~
18 ~~by the director in accordance with such criteria as the director adopts~~
19 ~~by rule but shall not be less than five thousand dollars.)~~) The amount
20 of the bond or other security shall be based on the maximum number of
21 workers the contractor will recruit, solicit, employ, supply,
22 transport, or hire at any time during the year; the scope of the
23 contractor's activities; the contractor's financial capacity;
24 subsections (2) and (3) of this section; and such criteria as the
25 director adopts by rule.

26 The bond shall be payable to the state of Washington and be
27 conditioned on payment of sums legally owing under contract and under
28 RCW 19.30.170 to ~~((an))~~ any agricultural ~~((employee))~~ workers. The
29 aggregate liability of the surety upon such bond for all claims which
30 may arise thereunder shall not exceed the face amount of the bond.

31 (a) If the contractor employs agricultural workers, the bond or
32 security shall be:

33 (i) Not less than ten thousand dollars if the contractor employs
34 from one to twenty agricultural workers;

35 (ii) Not less than twenty thousand dollars if the contractor
36 employs twenty-one to fifty agricultural workers;

1 (iii) Not less than thirty thousand dollars if the contractor
2 employs fifty-one or more agricultural workers;

3 (b) If the contractor employs no agricultural workers, the bond or
4 security shall be:

5 (i) Not less than five thousand dollars if the contractor performs
6 farm labor contracting activities with respect to no more than twenty
7 agricultural workers;

8 (ii) Not less than ten thousand dollars if the contractor performs
9 farm labor contracting activities with respect to more than twenty
10 agricultural workers.

11 (2) For purposes of this subsection, "repatriation costs" include
12 travel expenses for returning agricultural guest workers to their home
13 in their country of origin, and room, board, and other living expenses
14 for agricultural guest workers while they await repatriation if the
15 farm labor contractor fails to make timely repatriation of agricultural
16 guest workers.

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

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

37 (3) The amount of the bond may be raised or additional security
38 required by the director, upon his or her own motion or upon petition

1 to the director by any person, when it is shown that the security or
2 bond is insufficient to satisfy the contractor's potential liability
3 for the licensed period.

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

11 ~~((+4))~~ (5) Surety bonds may not be canceled or terminated during
12 the period in which the bond is executed unless thirty days' notice is
13 provided by the surety to the department. The bond is written for a
14 one-year term and may be renewed or extended by continuation
15 certification at the option of the surety.

16 ~~((+5))~~ (6) In lieu of the surety bond required by this section,
17 the contractor may file with the director a deposit consisting of cash
18 or other security acceptable to the director. ~~((The deposit shall not
19 be less than five thousand dollars in value.))~~ The security deposited
20 with the director in lieu of the surety bond shall be returned to the
21 contractor at the expiration of three years after the farm labor
22 contractor's license has expired or been revoked if no legal action has
23 been instituted against the contractor or on the security deposit at
24 the expiration of the three years.

25 ~~((+6))~~ (7) If a contractor has deposited a bond with the director
26 and has failed to comply with the conditions of the bond as provided by
27 this section, and has departed from this state, service may be made
28 upon the surety as prescribed in RCW 4.28.090.

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

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

33 (2) In accordance with the procedures in chapter 34.05 RCW, the
34 director shall deny an application for a license to operate as a farm
35 labor contractor ~~((shall be denied))~~ if the director determines that:

36 ~~((+1) To any person who))~~ (a) The applicant has made any material

1 misrepresentations or material false statements in his or her
2 application for a license;

3 (b) The applicant has failed to fully satisfy any outstanding debts
4 owing against him or her from final state or federal administrative
5 determinations or judgments in any state or federal court or to comply
6 with any payment terms of settlement agreements arising out of a state
7 or federal court or administrative action relating to 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. The director shall make this determination with reasonable
12 and practicable efforts;

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

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

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

24 (3) In accordance with the procedures in chapter 34.05 RCW, the
25 director may deny an application for a license to operate as a farm
26 labor contractor if the director determines that the applicant's farm
27 labor contractor license issued in another state was revoked within
28 three years from the date of application.

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

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

33 (2) In accordance with the procedures in chapter 34.05 RCW, the
34 director may revoke((τ)) or suspend((τ or refuse to issue or renew
35 any)) a license ((~~when it is shown~~)) to operate as a farm labor
36 contractor if the director determines that:

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

4 ~~(2)) (a) The farm labor contractor ((has made any~~
5 ~~misrepresentations or false statements in his or her application for a~~
6 ~~license;~~

7 ~~(3)) or any agent of the contractor has engaged in actions that~~
8 ~~would result in the denial or refusal of a license under RCW 19.30.050;~~

9 (b) The farm labor contractor's record of compliance with
10 applicable laws or capacity to meet the contractor's financial
11 obligations are not satisfactory;

12 (c) The conditions under which the license was issued have changed
13 or no longer exist;

14 ~~((4)) (d) The farm labor contractor, or any agent of the~~
15 ~~contractor, has violated or willfully aided or abetted any person in~~
16 ~~the violation of, or failed to comply with, any law of the state of~~
17 ~~Washington regulating employment in agriculture, the payment of wages~~
18 ~~to farm employees, or the conditions, terms, or places of employment~~
19 ~~affecting the health and safety of farm employees, which is applicable~~
20 ~~to the business activities, or operations of the contractor in his or~~
21 ~~her capacity as a farm labor contractor;~~

22 ~~((5)) (e) The farm labor contractor or any agent of the~~
23 ~~contractor has in recruiting ((farm labor)) agricultural workers~~
24 ~~solicited or induced the violation of any then existing contract of~~
25 ~~employment of such ((laborers; or~~

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

30 (f) There is a danger to the public health, safety, or welfare from
31 the continued operations of the farm labor contractor.

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

36 (b) If the director allows continuation of an existing contract
37 after revocation or suspension of a license, the farm labor contractor

1 may not represent that it is licensed as a farm labor contractor for
2 any purpose other than completing an existing contract as permitted by
3 the director.

4 (c) If the director does not permit the farm labor contractor to
5 continue to operate to complete an existing contract period under (b)
6 of this subsection, the farm labor contractor may appeal under RCW
7 34.05.479.

8 (d) The director shall monitor the contractor's compliance with
9 this chapter while the contractor completes any contracts under this
10 subsection (3).

11 (4) The director may order summary suspension of a license to
12 operate as a farm labor contractor in accordance with RCW 34.05.422.

13 (5) The director shall immediately suspend the license or
14 certificate of a person who has been certified pursuant to RCW
15 74.20A.320 by the department of social and health services as a person
16 who is not in compliance with a support order (~~or a residential or~~
17 ~~visitation order~~). If the person has continued to meet all other
18 requirements for reinstatement during the suspension, reissuance of the
19 license or certificate shall be automatic upon the director's receipt
20 of a release issued by the department of social and health services
21 stating that the licensee is in compliance with the order.

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

24 LICENSE--CONTENTS. Each license shall contain, on the face
25 thereof:

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

29 (2) The number, date of issuance, and date of expiration of the
30 license;

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

32 (4) The fact that the license may not be transferred or assigned;
33 and

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (a) The compensation to be paid and the method of computing the
14 rate of compensation;

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

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

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

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

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

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

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

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

36 (~~(i)~~) (j) The existence of a labor dispute at the worksite;

37 (~~(j)~~) (k) The name and address of the farm labor contractor;

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

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

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

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

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

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

28 (iii) The number of hours worked;

29 (iv) The total pay period earnings;

30 (v) The specific sums withheld and the purpose of each sum
31 withheld; and

32 (vi) The net pay; and

33 (b) Provide to any other farm labor contractor and to any user of
34 farm labor for whom he or she recruits, solicits, supplies, hires, or
35 employs workers copies of all records, with respect to each such
36 worker, which the contractor is required by this chapter to make, keep,
37 and preserve. The recipient of such records shall keep them for a
38 period of three years from the end of the period of employment. When

1 necessary to administer this chapter, the director may require that any
2 farm labor contractor provide the director with certified copies of his
3 or her payroll records for any payment period.

4 The record-keeping requirements of this chapter shall be met if
5 either the farm labor contractor or any user of the contractor's
6 services makes, keeps, and preserves for the requisite time period the
7 records required under this section, and so long as each worker
8 receives the written statements specified in subsection (8) of this
9 section. A farm labor contractor that is not engaged in employing,
10 supervising, or paying agricultural workers is not required to comply
11 with subsections (8) and (9) of this section if the user of the
12 contractor's services has certified in writing that the user will
13 provide the information required by subsection (8) of this section and
14 keep the records required by subsection (9) of this section.

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

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

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

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

27 (3) Charge, or knowingly allow his or her agent, partner,
28 associate, or any person with whom the farm labor contractor has an
29 agreement to provide labor to charge, any fees to an agricultural
30 worker that in total exceed twenty-five percent of gross wages to be
31 paid to the worker for his or her first one hundred eighty hours of
32 work, such wages to be calculated pursuant to the wage disclosure in
33 the written statement provided under RCW 19.30.110(7). The limitation
34 on fees under this subsection does not apply to charges for employee
35 benefits that are payable after the worker's date of hire and disclosed
36 pursuant to RCW 19.30.110(7).

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

3 (~~(4)~~) (5) Do any act in the capacity of a farm labor contractor,
4 or cause any act to be done, which constitutes a crime involving moral
5 turpitude under any law of the state of Washington.

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

8 CIVIL PENALTY--HEARING--COURT ACTION. (1) In addition to any
9 criminal penalty imposed under RCW 19.30.150, the director may assess
10 against any person who violates this chapter, or who violates any rule
11 adopted under this chapter, a civil penalty of not more than (~~one~~)
12 two thousand dollars for each violation.

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

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

24 (4) Without regard to other remedies provided in this chapter, the
25 department may bring suit upon the surety bond filed by the farm labor
26 contractor on behalf of a worker whose rights under this chapter have
27 been violated by the contractor. The action may be commenced in any
28 court of competent jurisdiction. In any such action, there shall be
29 compliance with the notice and service requirements set forth in RCW
30 19.30.170. The director shall also give notice of any such action to
31 agricultural employers for whom the farm labor contractor is known to
32 have performed any farm labor contracting activity during the current
33 year. The failure of the department to give notice of any such action
34 to any agricultural employers, however, does not bar the action.

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

1 CIVIL ACTIONS. (1) After filing a notice of a claim with the
2 director, in addition to any other penalty provided by law, any person
3 aggrieved by a violation of this chapter or any rule adopted under this
4 chapter may bring suit in any court of competent jurisdiction of the
5 county in which the claim arose, or in which either the plaintiff or
6 respondent resides, without regard to the amount in controversy and
7 without regard to exhaustion of any alternative administrative remedies
8 provided in this chapter. No such action may be commenced later than
9 three years after the date of the violation giving rise to the right of
10 action. In any such action the court may award to the prevailing
11 party, in addition to costs and disbursements, reasonable attorneys'
12 fees at trial and appeal.

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

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

26 (4) An action upon the bond or security deposit shall be commenced
27 by serving and filing the summons and complaint within three years from
28 the date of expiration or cancellation of the bond or expiration or
29 cancellation of the license, whichever is sooner, or in the case of a
30 security deposit, within three years of the date of expiration or
31 revocation of the license.

32 (5) A copy of the summons and complaint in any such action shall be
33 served upon the director at the time of commencement of the action and
34 the director shall maintain a record, available for public inspection,
35 of all suits so commenced. Such service shall constitute service on
36 the farm labor contractor and the surety for suit upon the bond and the
37 director shall transmit the complaint or a copy thereof to the
38 contractor at the address listed in his or her application and to the

1 surety within forty-eight hours after it has been received. The
2 director shall also give notice of any such action to agricultural
3 employers for whom the farm labor contractor is known to have performed
4 any farm labor contracting activity during the current year. The
5 failure of the department to give notice of any such action to any
6 agricultural employers, however, does not bar the action.

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

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

15 (a) Wages, including employee benefits;

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

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

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

25 (9) A claimant against a security deposit shall be entitled to
26 damages under subsection (2) of this section. If the farm labor
27 contractor has filed other security with the director in lieu of a
28 surety bond, any person having an unsatisfied final judgment against
29 the contractor for any violation of this chapter may execute upon the
30 security deposit held by the director by serving a certified copy of
31 the unsatisfied final judgment by registered or certified mail upon the
32 director. Upon the receipt of service of such certified copy, the
33 director shall pay or order paid from the deposit, through the registry
34 of the court which rendered judgment, towards the amount of the
35 unsatisfied judgment. The priority of payment by the director shall be
36 the order of receipt by the director, but the director shall have no
37 liability for payment in excess of the amount of the deposit.

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

3 NONDISCRIMINATION. No farm labor contractor or agricultural
4 employer or any agent acting on his or her behalf may intimidate,
5 threaten, restrain, coerce, blacklist, discharge, or in any other
6 manner discriminate against any ((~~employee~~)) agricultural worker
7 because:

8 (1) The ((~~employee~~)) worker has made a claim against the farm labor
9 contractor or agricultural employer for compensation for the
10 ((~~employee's~~)) worker's personal services.

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

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

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

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

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

1 occurred, the director's representative shall contact the complainant
2 for further information. If the director determines there are no
3 reasonable grounds to believe that a violation occurred, he or she
4 shall notify the party who is the subject of the complaint and the
5 worker or worker's representative in writing of such determination.

6 (2) The director shall, by rule, establish procedures for informal
7 review of any refusal by a representative of the director to issue a
8 citation with respect to any such alleged violation, and shall furnish
9 the worker or worker's representative requesting such a review and the
10 party who is the subject of the complaint a written statement of the
11 reasons for the director's final disposition of the case. The rules
12 shall provide that the party who is the subject of the complaint shall
13 have an opportunity to respond to the request for informal review. In
14 providing that opportunity, the director shall withhold personal
15 identifying information relating to the complainant, as provided in
16 subsection (1) of this section.

17 (3) The director may issue a citation under this chapter only if
18 the director or the director's representative has a sufficient basis,
19 without relying on information provided by a person whose identity is
20 protected from disclosure under this section, to determine that a
21 violation has occurred. In any appeal of a citation issued under this
22 chapter, the director may not rely on evidence provided by a person
23 whose identity is protected from disclosure under this section. Any
24 person whose identity is protected from disclosure under this section
25 may agree to release his or her identity in order to provide evidence
26 in support of a citation.

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

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

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

34 (b) Ensure that the driver of each vehicle used by the contractor
35 to transport agricultural workers has a valid license to operate the
36 vehicle;

1 (c) Ensure that the farm labor contractor has a valid farm labor
2 contractor's license specifying that the contractor is authorized to
3 transport agricultural workers;

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

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

8 (f) Have an insurance policy or a liability bond that is in effect
9 and that insures the farm labor contractor against liability for damage
10 to persons or property arising from the ownership, operation, or the
11 causing to be operated of any vehicle used to transport any
12 agricultural worker.

13 (2) The farm labor contractor shall demonstrate compliance with
14 this section at the time of application for issuance or renewal of a
15 license under this chapter and as required by the director pursuant to
16 a compliance review or inspection pursuant to a complaint.

17 (3) The director shall, to the extent possible, allow farm labor
18 contractors to demonstrate compliance with this section using the same
19 documents used to demonstrate compliance with the motor vehicle safety
20 provisions in section 401 of the federal migrant and seasonal
21 agricultural worker protection act (29 U.S.C. Sec. 1841). Such
22 documents shall include, but not be limited to, vehicle identification
23 and mechanical inspection reports, vehicle operators' licenses, and
24 proof of automobile liability insurance.

25 (4) This section applies to the transportation of any agricultural
26 worker by a farm labor contractor, but not to the transportation of any
27 agricultural worker on a tractor, combine, harvester, picker, or other
28 similar machinery and equipment while such worker is actually engaged
29 in the planting, cultivating, or harvesting of any agricultural
30 commodity or the care of livestock or poultry. Also excluded from this
31 section are private vehicles that are not registered to, or owned or
32 controlled by, the agricultural employer or farm labor contractor, that
33 are used by employees to travel from home to the job site or from one
34 job site to another in the course of employment.

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

37 NO EVASION OF BENEFITS OR BURDENS. Farm labor contractors,

1 agricultural employers, and agricultural workers may not exempt
2 themselves from the burdens or waive the benefits of this chapter by
3 any agreement, and any such agreement is void to the extent it allows
4 for such exemptions or waivers.

5 NEW SECTION. **Sec. 16.** This act applies to all transactions, acts,
6 and omissions of farm labor contractors and users of farm labor
7 contractors that are within the constitutional power of the state to
8 regulate, and not preempted by federal law, including but not limited
9 to the recruitment of workers in this state to perform work outside
10 this state, the recruitment of workers outside this state to perform
11 work in whole or in part in this state, the housing of workers in this
12 state for work in another state, the housing of workers from another
13 state in connection with work to be performed in this state, the
14 transportation of workers through this state, and the payment, terms
15 and conditions, disclosure, and recordkeeping required with respect to
16 work performed outside this state by workers recruited in this state.

17 NEW SECTION. **Sec. 17.** RCW 19.30.090 (License--Application for
18 renewal) and 1955 c 392 s 9 are each repealed.

19 NEW SECTION. **Sec. 18.** CAPTIONS. Captions used in this act are
20 not any part of the law."

EFFECT: Exemptions

Exempts certain farmers from licensing requirements. Specifies that these farmers are ones who allow their agricultural workers to work on other farms within a distance and for a duration determined by the director.

Licensing Requirements

Makes the examination mandatory for an initial license or a license following a revocation, and permissive for renewal of a license. Makes the examination requirement effective January 1, 2009.

Requires that an applicant's record of compliance with applicable laws and the applicant's capacity to meet financial obligations (rather

than the applicant's character, competency, and responsibility) be satisfactory.

Requires applicants to disclose whether they have outstanding debts from settlement agreements arising out of farm labor contractor activities (rather than whether they are not in compliance with the payment terms of such settlement agreements).

Requires that adverse licensing actions be taken in accordance with the Administrative Procedure Act, and authorizes summary suspension of a license in accordance with the APA, if the public health, safety, or welfare imperatively requires emergency action.

Bonding Requirements

Specifies the factors on which the amount of the surety bond is based, including: (1) The maximum number of workers with respect to whom the contractor performs farm labor contracting activities; (2) the scope of the contractor's activities; (3) the contractor's financial capacity; (4) the contractor's liability for guest worker repatriation costs; and (5) the sufficiency of the bond to satisfy the contractor's potential liability.

Specifies that, for contractors who employ no agricultural workers, the amount of the surety bond is: (1) Not less than \$5,000 if the contractor performs farm labor contracting activities with respect to no more than 20 agricultural workers; and (2) not less than \$10,000 if the contractor performs such activities with respect to more than 20 agricultural workers.

Makes the director's decision to raise the amount of the bond, like the director's decision as to the increased amount, subject to appeal.

Other Requirements

Exempts farm labor contractors who do not employ agricultural workers from recordkeeping requirements so long as another party keeps required records.

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