
SENATE BILL 6392

State of Washington

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By Senators Ranker, Kohl-Welles, Conway, and Shin

Read first time 01/20/12. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to a farm internship program; reenacting and
2 amending RCW 49.46.010; adding a new section to chapter 49.12 RCW;
3 adding a new section to chapter 51.16 RCW; adding a new section to
4 chapter 50.04 RCW; and providing an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.12 RCW
7 to read as follows:

8 (1) The director shall establish a farm internship pilot project
9 until December 1, 2017, for the employment of farm interns on small
10 farms under special certificates at wages, if any, as authorized by the
11 department and subject to such limitations as to time, number,
12 proportion, and length of service as provided in this section and as
13 prescribed by the department. The pilot project consists of the
14 following counties: San Juan, Skagit, King, Whatcom, Kitsap, Pierce,
15 Jefferson, Spokane, and Thurston.

16 (2) A small farm may employ no more than three interns at one time
17 under this section.

18 (3) A small farm must apply for a special certificate on a form
19 made available by the director. The application must set forth: The

1 name of the farm and a description of the farm seeking the certificate;
2 the type of work to be performed by a farm intern; a description of the
3 internship program; the period of time for which the certificate is
4 sought and the duration of an internship; the number of farm interns
5 for which a special certificate is sought; the wages, if any, that will
6 be paid to the farm intern; any room and board, stipends, and other
7 remuneration the farm will provide to a farm intern; and the total
8 number of workers employed by the farm.

9 (4) Upon receipt of an application, the department shall review the
10 application and issue a special certificate to the requesting farm
11 within fifteen days if the department finds that:

12 (a) The farm qualifies as a small farm;

13 (b) There have been no serious violations of chapter 49.46 RCW or
14 Title 51 RCW that provide reasonable grounds to believe that the terms
15 of an internship agreement may not be complied with;

16 (c) The issuance of a certificate will not create unfair
17 competitive labor cost advantages nor have the effect of impairing or
18 depressing wage or working standards established for experienced
19 workers for work of a like or comparable character in the industry or
20 occupation at which the intern is to be employed;

21 (d) A farm intern will not displace an experienced worker; and

22 (e) The farm demonstrates that the interns will perform work for
23 the farm under an internship program that: (i) Provides a curriculum
24 of learning modules and supervised participation in farm work
25 activities designed to teach farm interns about farming practices and
26 farm enterprises; (ii) is based on the bona fide curriculum of an
27 educational or vocational institution; and (iii) is reasonably designed
28 to provide the intern with vocational knowledge and skills about
29 farming practices and enterprises. In assessing an internship program,
30 the department may consult with relevant college and university
31 departments and extension programs and state and local government
32 agencies involved in the regulation or development of agriculture.

33 (5) A special certificate issued under this section must specify
34 the terms and conditions under which it is issued, including: The name
35 of the farm; the duration of the special certificate allowing the
36 employment of farm interns and the duration of an internship; the total
37 number of interns authorized under the special certificate; the
38 authorized wage rate, if any; and any room and board, stipends, and

1 other remuneration the farm will provide to the farm intern. A farm
2 worker may be paid at wages specified in the certificate only during
3 the effective period of the certificate and for the duration of the
4 internship.

5 (6) If the department denies an application for a special
6 certificate, notice of denial must be mailed to the farm. The farm
7 listed on the application may, within fifteen days after notice of such
8 action has been mailed, file with the director a petition for review of
9 the denial, setting forth grounds for seeking such a review. If
10 reasonable grounds exist, the director or the director's authorized
11 representative may grant such a review and, to the extent deemed
12 appropriate, afford all interested persons an opportunity to be heard
13 on such review.

14 (7) Before employing a farm intern, a farm must submit a statement
15 on a form made available by the director stating that the farm
16 understands: The requirements of the industrial welfare act, chapter
17 49.12 RCW, that apply to farm interns; that the farm must pay workers'
18 compensation premiums in the assigned intern risk class and must pay
19 workers' compensation premiums for nonintern work hours in the
20 applicable risk class; and that if the farm does not comply with
21 subsection (8) of this section, the director may revoke the special
22 certificate.

23 (8) The director may revoke a special certificate issued under this
24 section if a farm fails to: Comply with the requirements of the
25 industrial welfare act, chapter 49.12 RCW, that apply to farm interns;
26 pay workers' compensation premiums in the assigned intern risk class;
27 or pay workers' compensation premiums in the applicable risk class for
28 nonintern work hours.

29 (9) Before the start of a farm internship, the farm and the intern
30 must sign a written agreement and send a copy of the agreement to the
31 department. The written agreement must, at a minimum:

32 (a) Describe the internship program offered by the farm, including
33 the skills and objectives the program is designed to teach and the
34 manner in which those skills and objectives will be taught;

35 (b) Explicitly state that the intern is not entitled to minimum
36 wages for work and activities conducted pursuant to the internship
37 program for the duration of the internship;

1 (c) Describe the responsibilities, expectations, and obligations of
2 the intern and the farm, including the anticipated number of hours of
3 farm activities to be performed by the intern per week;

4 (d) Describe the activities of the farm and the type of work to be
5 performed by the farm intern; and

6 (e) Describes any wages, room and board, stipends, and other
7 remuneration the farm will provide to the farm intern.

8 (10) The definitions in this subsection apply throughout this
9 section unless the context clearly requires otherwise.

10 (a) "Farm intern" means an individual who provides services to a
11 small farm under a written agreement and primarily as a means of
12 learning about farming practices and farm enterprises.

13 (b) "Farm internship program" means an internship program described
14 under subsection (4)(e) of this section.

15 (c) "Small farm" means a farm:

16 (i) Organized as a sole proprietorship, partnership, or
17 corporation;

18 (ii) That reports on the applicant's schedule F of form 1040 or
19 other applicable form filed with the United States internal revenue
20 service annual sales less than two hundred fifty thousand dollars; and

21 (iii) Where all the owners or partners of the farm provide regular
22 labor to and participate in the management of the farm, and own or
23 lease the productive assets of the farm.

24 (11) The department shall monitor and evaluate the farm internships
25 authorized by this section and report to the appropriate committees of
26 the legislature by December 31, 2017. The report must include, but not
27 be limited to: The number of small farms that applied for and received
28 special certificates; the number of interns employed as farm interns;
29 the nature of the educational activities provided to the farm interns;
30 the wages and other remuneration paid to farm interns; the number of
31 and type of workers' compensation claims for farm interns; the
32 employment of farm interns following farm internships; and other
33 matters relevant to assessing farm internships authorized in this
34 section.

35 **Sec. 2.** RCW 49.46.010 and 2011 1st sp.s. c 43 s 462 are each
36 reenacted and amended to read as follows:

37 As used in this chapter:

1 (1) "Director" means the director of labor and industries;

2 (2) "Employ" includes to permit to work;

3 (3) "Employee" includes any individual employed by an employer but
4 shall not include:

5 (a) Any individual (i) employed as a hand harvest laborer and paid
6 on a piece rate basis in an operation which has been, and is generally
7 and customarily recognized as having been, paid on a piece rate basis
8 in the region of employment; (ii) who commutes daily from his or her
9 permanent residence to the farm on which he or she is employed; and
10 (iii) who has been employed in agriculture less than thirteen weeks
11 during the preceding calendar year;

12 (b) Any individual employed in casual labor in or about a private
13 home, unless performed in the course of the employer's trade, business,
14 or profession;

15 (c) Any individual employed in a bona fide executive,
16 administrative, or professional capacity or in the capacity of outside
17 salesperson as those terms are defined and delimited by rules of the
18 director. However, those terms shall be defined and delimited by the
19 human resources director pursuant to chapter 41.06 RCW for employees
20 employed under the director of personnel's jurisdiction;

21 (d) Any individual engaged in the activities of an educational,
22 charitable, religious, state or local governmental body or agency, or
23 nonprofit organization where the employer-employee relationship does
24 not in fact exist or where the services are rendered to such
25 organizations gratuitously. If the individual receives reimbursement
26 in lieu of compensation for normally incurred out-of-pocket expenses or
27 receives a nominal amount of compensation per unit of voluntary service
28 rendered, an employer-employee relationship is deemed not to exist for
29 the purpose of this section or for purposes of membership or
30 qualification in any state, local government, or publicly supported
31 retirement system other than that provided under chapter 41.24 RCW;

32 (e) Any individual employed full time by any state or local
33 governmental body or agency who provides voluntary services but only
34 with regard to the provision of the voluntary services. The voluntary
35 services and any compensation therefor shall not affect or add to
36 qualification, entitlement, or benefit rights under any state, local
37 government, or publicly supported retirement system other than that
38 provided under chapter 41.24 RCW;

- 1 (f) Any newspaper vendor or carrier;
- 2 (g) Any carrier subject to regulation by Part 1 of the Interstate
3 Commerce Act;
- 4 (h) Any individual engaged in forest protection and fire prevention
5 activities;
- 6 (i) Any individual employed by any charitable institution charged
7 with child care responsibilities engaged primarily in the development
8 of character or citizenship or promoting health or physical fitness or
9 providing or sponsoring recreational opportunities or facilities for
10 young people or members of the armed forces of the United States;
- 11 (j) Any individual whose duties require that he or she reside or
12 sleep at the place of his or her employment or who otherwise spends a
13 substantial portion of his or her work time subject to call, and not
14 engaged in the performance of active duties;
- 15 (k) Any resident, inmate, or patient of a state, county, or
16 municipal correctional, detention, treatment or rehabilitative
17 institution;
- 18 (l) Any individual who holds a public elective or appointive office
19 of the state, any county, city, town, municipal corporation or quasi
20 municipal corporation, political subdivision, or any instrumentality
21 thereof, or any employee of the state legislature;
- 22 (m) All vessel operating crews of the Washington state ferries
23 operated by the department of transportation;
- 24 (n) Any individual employed as a seaman on a vessel other than an
25 American vessel;
- 26 (o) Any farm intern providing his or her services to a small farm
27 which has a special certificate issued under section 1 of this act;
- 28 (4) "Employer" includes any individual, partnership, association,
29 corporation, business trust, or any person or group of persons acting
30 directly or indirectly in the interest of an employer in relation to an
31 employee;
- 32 (5) "Occupation" means any occupation, service, trade, business,
33 industry, or branch or group of industries or employment or class of
34 employment in which employees are gainfully employed;
- 35 (6) "Retail or service establishment" means an establishment
36 seventy-five percent of whose annual dollar volume of sales of goods or
37 services, or both, is not for resale and is recognized as retail sales
38 or services in the particular industry;

1 (7) "Wage" means compensation due to an employee by reason of
2 employment, payable in legal tender of the United States or checks on
3 banks convertible into cash on demand at full face value, subject to
4 such deductions, charges, or allowances as may be permitted by rules of
5 the director.

6 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.16 RCW
7 to read as follows:

8 The department shall adopt rules to provide special workers'
9 compensation risk class or classes for farm interns providing
10 agricultural labor pursuant to a farm internship program under section
11 1 of this act. The rules must include any requirements for obtaining
12 a special risk class that must be met by small farms.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 50.04 RCW
14 to read as follows:

15 (1) Except for services subject to RCW 50.44.010, 50.44.020,
16 50.44.030, or 50.50.010, the term "employment" does not include service
17 performed in agricultural labor by a farm intern providing his or her
18 services under a farm internship program as established in section 1 of
19 this act.

20 (2) For purposes of this section, "agricultural labor" means:

21 (a) Services performed on a farm, in the employ of any person, in
22 connection with the cultivation of the soil, or in connection with
23 raising or harvesting any agricultural or horticultural commodity,
24 including raising, shearing, feeding, caring for, training, and
25 management of livestock, bees, poultry, and furbearing animals and
26 wildlife, or in the employ of the owner or tenant or other operator of
27 a farm in connection with the operation, management, conservation,
28 improvement, or maintenance of such farm and its tools and equipment;

29 (b) Services performed in packing, packaging, grading, storing, or
30 delivering to storage, or to market or to a carrier for transportation
31 to market, any agricultural or horticultural commodity; but only if
32 such service is performed as an incident to ordinary farming
33 operations. The exclusions from the term "employment" provided in this
34 subsection (2)(b) are not applicable with respect to commercial packing
35 houses, commercial storage establishments, commercial canning,
36 commercial freezing, or any other commercial processing or with respect

1 to services performed in connection with the cultivation, raising,
2 harvesting and processing of oysters or raising and harvesting of
3 mushrooms; or

4 (c) Direct local sales of any agricultural or horticultural
5 commodity after its delivery to a terminal market for distribution or
6 consumption.

7 NEW SECTION. **Sec. 5.** This act expires December 31, 2017.

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