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**SUBSTITUTE SENATE BILL 6349**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Ranker, Holmquist, Haugen, Hobbs, Becker, Shin, and Roach)

READ FIRST TIME 02/04/10.

1       AN ACT Relating to a farm internship program; amending RCW  
2 49.46.010 and 50.04.150; adding a new section to chapter 51.16 RCW; and  
3 adding a new chapter to Title 49 RCW.

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

5       NEW SECTION.   **Sec. 1.**   (1) The director shall provide for the  
6 employment of farm interns under special certificates issued pursuant  
7 to rules adopted by the department, at wages as specified in the  
8 application, if any, and subject to such limitations as to time,  
9 number, proportion, and length of service as prescribed by the  
10 department. Application for a certificate authorizing the employment  
11 of farm interns must be made by the farm upon forms made available by  
12 the director. The application must set forth: A description of the  
13 activities of the farm seeking the certificate; the type of work to be  
14 performed by the farm intern; a description of the intern program; the  
15 wages, if any, that will be paid to the farm intern; the total number  
16 of farm interns sought; and the total number of workers employed by the  
17 farm.

18       (2) Upon receipt of an application, the department shall review the

1 application and issue a certificate to the requesting farm within  
2 fifteen days if the department finds:

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

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

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

12 (d) The internship program is reasonably designed to provide the  
13 intern with vocational knowledge and skills about farming practices and  
14 activities. In making this determination, the department may consult  
15 with relevant university departments and extension programs and state  
16 and local government agencies involved in the regulation or development  
17 of agriculture.

18 (3) A certificate issued under this section must specify: The name  
19 of the farm; the nature of the internship program; the authorized  
20 subminimum wage rate, if any, and the period of time during which such  
21 wage rate may be paid; the total number of interns authorized to  
22 participate in the internship program; and any room and board,  
23 stipends, and other remuneration the employer will provide to the farm  
24 intern. A certificate is effective for a period to be designated by  
25 the director based on the internship program, and a farm intern  
26 employed under such a certificate may be paid at wages specified in the  
27 certificate only during the effective period of the certificate.

28 (4) If the department denies an application for a special  
29 certificate, notice of denial must be mailed to the farm. The farm  
30 listed on the application may, within fifteen days after notice of such  
31 action has been mailed, file with the director a petition for review of  
32 the denial, setting forth grounds for seeking such a review. If  
33 reasonable grounds exist, the director or the director's authorized  
34 representative may grant such a review and to the extent deemed  
35 appropriate afford all interested persons an opportunity to be heard on  
36 such review.

37 (5) Prior to the start of any farm internship program, the farm and

1 the intern must execute a written agreement and send a copy of the  
2 agreement to the department. The written agreement must, at a minimum:

3 (a) Describes the internship program offered by the farm, including  
4 the skills and objectives the program is designed to teach and the  
5 manner in which those skills and objectives will be taught;

6 (b) Explicitly states that the intern is not entitled to minimum  
7 wages for work and activities conducted pursuant to the internship  
8 program for the duration of the internship;

9 (c) Describes the responsibilities, expectations, and obligations  
10 of the intern and the farm including the anticipated number of hours of  
11 farm activities to be performed by the intern per week;

12 (d) Describes the activities of the farm seeking the certificate  
13 and the type of work to be performed by the farm intern; and

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

16 (6) The definitions in this subsection apply throughout this  
17 section unless the context clearly requires otherwise.

18 (a) "Department" means the department of labor and industries.

19 (b) "Director" means the director of the department.

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

23 (d) "Farm internship program" means an educational program that  
24 provides a curriculum of learning modules and supervised participation  
25 in farm work activities designed to teach farm interns about farming  
26 practices and farm enterprises.

27 (e) "Small farm" means a farm:

28 (i) Organized as a sole proprietorship, partnership, or  
29 corporation;

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

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

36 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.16 RCW  
37 to read as follows:

1           The department shall adopt rules to provide special workers'  
2 compensation risk class or classes for farm interns providing  
3 agricultural labor pursuant to a farm internship program. The rules  
4 must include any requirements for obtaining a special risk class that  
5 must be met by small farms.

6           **Sec. 3.** RCW 49.46.010 and 2002 c 354 s 231 are each amended to  
7 read as follows:

8           As used in this chapter:

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

10           (2) "Wage" means compensation due to an employee by reason of  
11 employment, payable in legal tender of the United States or checks on  
12 banks convertible into cash on demand at full face value, subject to  
13 such deductions, charges, or allowances as may be permitted by rules of  
14 the director;

15           (3) "Employ" includes to permit to work;

16           (4) "Employer" includes any individual, partnership, association,  
17 corporation, business trust, or any person or group of persons acting  
18 directly or indirectly in the interest of an employer in relation to an  
19 employee;

20           (5) "Employee" includes any individual employed by an employer but  
21 shall not include:

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

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

32           (c) Any individual employed in a bona fide executive,  
33 administrative, or professional capacity or in the capacity of outside  
34 salesman as those terms are defined and delimited by rules of the  
35 director. However, those terms shall be defined and delimited by the  
36 director of personnel pursuant to chapter 41.06 RCW for employees  
37 employed under the director of personnel's jurisdiction;

1 (d) Any individual engaged in the activities of an educational,  
2 charitable, religious, state or local governmental body or agency, or  
3 nonprofit organization where the employer-employee relationship does  
4 not in fact exist or where the services are rendered to such  
5 organizations gratuitously. If the individual receives reimbursement  
6 in lieu of compensation for normally incurred out-of-pocket expenses or  
7 receives a nominal amount of compensation per unit of voluntary service  
8 rendered, an employer-employee relationship is deemed not to exist for  
9 the purpose of this section or for purposes of membership or  
10 qualification in any state, local government or publicly supported  
11 retirement system other than that provided under chapter 41.24 RCW;

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

19 (f) Any newspaper vendor or carrier;

20 (g) Any carrier subject to regulation by Part 1 of the Interstate  
21 Commerce Act;

22 (h) Any individual engaged in forest protection and fire prevention  
23 activities;

24 (i) Any individual employed by any charitable institution charged  
25 with child care responsibilities engaged primarily in the development  
26 of character or citizenship or promoting health or physical fitness or  
27 providing or sponsoring recreational opportunities or facilities for  
28 young people or members of the armed forces of the United States;

29 (j) Any individual whose duties require that he or she reside or  
30 sleep at the place of his or her employment or who otherwise spends a  
31 substantial portion of his or her work time subject to call, and not  
32 engaged in the performance of active duties;

33 (k) Any resident, inmate, or patient of a state, county, or  
34 municipal correctional, detention, treatment or rehabilitative  
35 institution;

36 (l) Any individual who holds a public elective or appointive office  
37 of the state, any county, city, town, municipal corporation or quasi

1 municipal corporation, political subdivision, or any instrumentality  
2 thereof, or any employee of the state legislature;

3 (m) All vessel operating crews of the Washington state ferries  
4 operated by the department of transportation;

5 (n) Any individual employed as a seaman on a vessel other than an  
6 American vessel;

7 (o) Any farm intern providing his or her services under a farm  
8 internship program as established in section 1 of this act;

9 (6) "Occupation" means any occupation, service, trade, business,  
10 industry, or branch or group of industries or employment or class of  
11 employment in which employees are gainfully employed;

12 (7) "Retail or service establishment" means an establishment  
13 seventy-five percent of whose annual dollar volume of sales of goods or  
14 services, or both, is not for resale and is recognized as retail sales  
15 or services in the particular industry.

16 **Sec. 4.** RCW 50.04.150 and 1989 c 380 s 78 are each amended to read  
17 as follows:

18 Except as otherwise provided in RCW 50.04.155, the term  
19 "employment" shall not include service performed in agricultural labor  
20 by a farm intern providing his or her services under a farm internship  
21 program as established in section 1 of this act, or by individuals who  
22 are enrolled as students and regularly attending classes, or are  
23 between two successive academic years or terms, at an elementary  
24 school, a secondary school, or an institution of higher education as  
25 defined in RCW 50.44.037 and in the case of corporate farms not covered  
26 under RCW 50.04.155, the provisions regarding family employment in RCW  
27 50.04.180 shall apply.

28 Agricultural labor (~~(is defined as services performed)~~) includes:

29 (1) Services performed on a farm, in the employ of any person, in  
30 connection with the cultivation of the soil, or in connection with  
31 raising or harvesting any agricultural or horticultural commodity,  
32 including raising, shearing, feeding, caring for, training, and  
33 management of livestock, bees, poultry, and furbearing animals and wild  
34 life, or in the employ of the owner or tenant or other operator of a  
35 farm in connection with the operation, management, conservation,  
36 improvement, or maintenance of such farm and its tools and equipment;  
37 (~~(or)~~)

1           (2) Services performed in packing, packaging, grading, storing, or  
2 delivering to storage, or to market or to a carrier for transportation  
3 to market, any agricultural or horticultural commodity; but only if  
4 such service is performed as an incident to ordinary farming  
5 operations. The exclusions from the term "employment" provided in this  
6 ((paragraph)) subsection (2) shall not be deemed to be applicable with  
7 respect to commercial packing houses, commercial storage  
8 establishments, commercial canning, commercial freezing, or any other  
9 commercial processing or with respect to services performed in  
10 connection with the cultivation, raising, harvesting and processing of  
11 oysters or raising and harvesting of mushrooms or in connection with  
12 any agricultural or horticultural commodity after its delivery to a  
13 terminal market for distribution for consumption; or

14           (3) Direct local sales conducted by farm interns participating in  
15 a farm internship program as defined in section 1 of this act of any  
16 agricultural or horticultural commodity after its delivery to a  
17 terminal market for distribution or consumption.

18           NEW SECTION. Sec. 5. The department is authorized to adopt rules  
19 as necessary to implement the farm internship program.

20           NEW SECTION. Sec. 6. Sections 1 and 5 of this act constitute a  
21 new chapter in Title 49 RCW.

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