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HOUSE BILL 2432

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State of Washington

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By Representatives Prentice, Heavey, G. Cole, R. King, Franklin, Jones and Anderson

Read first time 01/16/92. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to the Washington agricultural workers protection  
2 act; amending RCW 19.30.010, 19.30.045, 19.30.110, 19.30.120,  
3 19.30.170, and 19.30.200; and adding new sections to chapter 19.30 RCW.

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

5 **Sec. 1.** RCW 19.30.010 and 1985 c 280 s 1 are each amended to read  
6 as follows:

7 As used in this chapter:

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

11 (2) "Farm labor contractor" means any person, or his or her agent  
12 or subcontractor, who, for a fee, performs any farm labor contracting  
13 activity, except the following persons:

14 (a) Any agricultural employer;

1        (b) Any agricultural association; or

2        (c) Any employee of agricultural employers or agricultural  
3 associations who perform the services enumerated in subsection (3) of  
4 this section only within the scope of his or her regular employment for  
5 one agricultural employer or one agricultural association on whose  
6 behalf he or she is so acting, unless he or she is receiving a  
7 commission or fee, that commission or fee being determined by the  
8 number of workers recruited.

9        (3) "Farm labor contracting activity" means recruiting, soliciting,  
10 employing, supplying, transporting, or hiring agricultural employees.

11        (4) "Agricultural association" means any nonprofit or cooperative  
12 association of farmers, growers, ranchers, or persons engaged in  
13 forestation or reforestation of lands, and includes nonprofit or  
14 cooperative entities formed for the purpose of promoting one or more  
15 agricultural commodities.

16        (5) "Agricultural employer" means any person engaged in  
17 agricultural activity, including the growing, producing, or harvesting  
18 of farm or nursery products, or engaged in the forestation or  
19 reforestation of lands, which includes but is not limited to the  
20 planting, transplanting, tubing, precommercial thinning, and thinning  
21 of trees and seedlings, the clearing, piling, and disposal of brush and  
22 slash, the harvest of Christmas trees, and other related activities.

23        ~~((5))~~ (6) "Agricultural employee" means any person who renders  
24 personal services to, or under the direction of, an agricultural  
25 employer in connection with the employer's agricultural activity.

26        ~~((6) This chapter shall not apply to employees of the employment~~  
27 ~~security department acting in their official capacity or their agents,~~  
28 ~~nor to any common carrier or full time regular employees thereof while~~  
29 ~~transporting agricultural employees, nor to any person who performs any~~  
30 ~~of the services enumerated in subsection (3) of this section only~~

1 within the scope of his or her regular employment for one agricultural  
2 employer on whose behalf he or she is so acting, unless he or she is  
3 receiving a commission or fee, which commission or fee is determined by  
4 the number of workers recruited, or to a nonprofit corporation or  
5 organization which performs the same functions for its members. Such  
6 nonprofit corporation or organization shall be one in which:

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

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

11 (7) "Fee" means:

12 (a) Any money or other valuable consideration paid or promised to  
13 be paid for services rendered or to be rendered by a farm labor  
14 contractor.

15 (b) Any valuable consideration received or to be received by a farm  
16 labor contractor for or in connection with any of the services  
17 described in subsection (3) of this section, and shall include the  
18 difference between any amount received or to be received by him, and  
19 the amount paid out by him for or in connection with the rendering of  
20 such services.

21 (8) "Director" ((as used in this chapter)) means the director of  
22 the department of labor and industries of the state of Washington.

23 **Sec. 2.** RCW 19.30.045 and 1987 c 216 s 2 are each amended to read  
24 as follows:

25 (1) Any person, having a claim against a farm labor contractor for  
26 wages, employee benefits, or contract damages pursuant to this chapter  
27 may bring suit upon the surety bond or security deposit filed by the  
28 contractor pursuant to RCW 19.30.040, in any court of competent

1 jurisdiction of the county in which the claim arose, or in which either  
2 the claimant or contractor resides.

3 (2) The right of action is assignable in the name of the director  
4 or any other person.

5 **Sec. 3.** RCW 19.30.110 and 1985 c 280 s 9 are each amended to read  
6 as follows:

7 Every person acting as a farm labor contractor shall:

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

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

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

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

22 ~~(5) ((Comply with the terms and provisions of all legal and valid  
23 agreements and contracts entered into between the contractor in the  
24 capacity of a farm labor contractor and third persons.~~

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

28 ~~((7) On a form prescribed by the director, furnish to each worker,  
29 at the time of hiring, recruiting, soliciting, or supplying, whichever~~

1 occurs first, a written statement in English and any other language  
2 common to workers who are not fluent or literate in English that  
3 contains a description of:

4 (a) The compensation to be paid and the method of computing the  
5 rate of compensation;

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

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

9 (d) The conditions of any transportation, housing, board, health,  
10 and day care services or any other employee benefit to be provided by  
11 the farm labor contractor or by his or her agents, and the costs to be  
12 charged for each of them;

13 (e) The terms and conditions of employment, including the  
14 approximate length of season or period of employment and the  
15 approximate starting and ending dates thereof, and the crops on which  
16 and kinds of activities in which the worker may be employed;

17 (f) The terms and conditions under which the worker is furnished  
18 clothing or equipment;

19 (g) The place of employment;

20 (h) The name and address of the owner of all operations, or the  
21 owner's agent, where the worker will be working as a result of being  
22 recruited, solicited, supplied, or employed by the farm labor  
23 contractor;

24 (i) The existence of a labor dispute at the worksite;

25 (j) The name and address of the farm labor contractor;

26 (k) The existence of any arrangements with any owner or agent of  
27 any establishment at the place of employment under which the farm labor  
28 contractor is to receive a fee or any other benefit resulting from any  
29 sales by such establishment to the workers; and

1       ~~(1) The name and address of the surety on the contractor's bond and~~  
2 ~~the workers' right to claim against the bond.~~

3       ~~(8) Furnish to the worker each time the worker receives a~~  
4 ~~compensation payment from the farm labor contractor, a written~~  
5 ~~statement itemizing the total payment and the amount and purpose of~~  
6 ~~each deduction therefrom, hours worked, rate of pay, and pieces done if~~  
7 ~~the work is done on a piece rate basis, and if the work is done under~~  
8 ~~the Service Contract Act (41 U.S.C. Secs. 351 through 401) or related~~  
9 ~~federal or state law, a written statement of any applicable prevailing~~  
10 ~~wage.~~

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

13       ~~(a) Make, keep, and preserve for three years a record of the~~  
14 ~~following information:~~

15           ~~(i) The basis on which wages are paid;~~

16           ~~(ii) The number of piecework units earned, if paid on a piecework~~  
17 ~~basis;~~

18           ~~(iii) The number of hours worked;~~

19           ~~(iv) The total pay period earnings;~~

20           ~~(v) The specific sums withheld and the purpose of each sum~~  
21 ~~withheld; and~~

22           ~~(vi) The net pay; and~~

23       ~~(b))~~ (6) Provide to any other farm labor contractor and to any  
24 user of farm labor for whom he or she recruits, solicits, supplies,  
25 hires, or employs workers copies of all records, with respect to each  
26 such worker, which the contractor is required by this chapter to make,  
27 keep, and preserve. The recipient of such records shall keep them for  
28 a period of three years from the end of the period of employment. When  
29 necessary to administer this chapter, the director may require that any

1 farm labor contractor provide the director with certified copies of his  
2 or her payroll records for any payment period.

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

9 **Sec. 4.** RCW 19.30.120 and 1985 c 280 s 10 are each amended to read  
10 as follows:

11 No person acting as a farm labor contractor shall:

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

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

20 ~~(3))~~ Send or transport any worker to any place where the farm  
21 labor contractor knows a strike or lockout exists.

22 ~~((4))~~ (3) Do any act in the capacity of a farm labor contractor,  
23 or cause any act to be done, which constitutes a crime involving moral  
24 turpitude under any law of the state of Washington.

25 **Sec. 5.** RCW 19.30.170 and 1987 c 216 s 5 are each amended to read  
26 as follows:

27 (1) After filing a notice of a claim with the director, in addition  
28 to any other penalty provided by law, any person aggrieved by a

1 violation of this chapter or any rule adopted under this chapter may  
2 bring suit in any court of competent jurisdiction of the county in  
3 which the claim arose, or in which either the plaintiff or respondent  
4 resides, without regard to the amount in controversy and without regard  
5 to exhaustion of any alternative administrative remedies provided in  
6 this chapter. No such action may be commenced later than three years  
7 after the date of the violation giving rise to the right of action. In  
8 any such action the court may award to the prevailing party, in  
9 addition to costs and disbursements, reasonable attorney fees at trial  
10 and appeal.

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

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

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

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

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

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

17 (a) Wages, including employee benefits;

18 (b) Other contractual damage owed to the employee;

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

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

27 (9) A claimant against a security deposit shall be entitled to  
28 damages under subsection (2) of this section. If the farm labor  
29 contractor has filed other security with the director in lieu of a  
30 surety bond, any person having an unsatisfied final judgment against

1 the contractor for any violation of this chapter may execute upon the  
2 security deposit held by the director by serving a certified copy of  
3 the unsatisfied final judgment by registered or certified mail upon the  
4 director. Upon the receipt of service of such certified copy, the  
5 director shall pay or order paid from the deposit, through the registry  
6 of the court which rendered judgment, towards the amount of the  
7 unsatisfied judgment. The priority of payment by the director shall be  
8 the order of receipt by the director, but the director shall have no  
9 liability for payment in excess of the amount of the deposit.

10 **Sec. 6.** RCW 19.30.200 and 1985 c 280 s 14 are each amended to read  
11 as follows:

12 (1) Any person who knowingly uses the services of an unlicensed  
13 farm labor contractor or who employs agricultural employees jointly  
14 with a farm labor contractor shall be personally, jointly, and  
15 severally liable with the person acting as a farm labor contractor to  
16 the same extent and in the same manner as provided in this chapter.

17 (2) In making determinations (~~(under this subsection [section])~~)  
18 concerning the license of a farm labor contractor, any user may rely  
19 upon either the license issued by the director to the farm labor  
20 contractor under RCW 19.30.030 or the director's representation that  
21 such contractor is licensed as required by this chapter.

22 NEW SECTION. **Sec. 7.** This chapter does not apply to employees  
23 of the employment security department acting in their official capacity  
24 or their agents, nor to any common carrier or full-time regular  
25 employees thereof while transporting agricultural employees.

26 NEW SECTION. **Sec. 8.** A farm labor contractor, agricultural  
27 employer, or agricultural association that hires, recruits, solicits,

1 or supplies any agricultural employee shall, on a form prescribed by  
2 the director, furnish to each worker, at the time of hiring,  
3 recruiting, soliciting, or supplying, whichever occurs first, a written  
4 statement in English and any other language common to workers who are  
5 not fluent or literate in English that contains a description of:

6 (1) The compensation to be paid and the method of computing the  
7 rate of compensation; and, if compensation is based on a produce  
8 grading system, the maximum percentage that will be deducted from the  
9 worker's pay as a result of the grading system or, in the alternative,  
10 the average reduction from total pay resulting from the operation of  
11 the grading system in the prior year;

12 (2) The terms and conditions of any bonus offered, including the  
13 manner of determining when the bonus is earned and when the bonus is  
14 forfeited;

15 (3) The terms and conditions of any loan made to the worker;

16 (4) The conditions of any transportation, housing, board, health,  
17 and day care services or any other employee benefit to be provided by  
18 the farm labor contractor, agricultural employer, or agricultural  
19 association, or by agents thereof, and the costs to be charged for each  
20 benefit or service;

21 (5) The terms and conditions of employment, including the  
22 approximate length of season or period of employment and the  
23 approximate starting and ending dates thereof, the approximate number  
24 of hours per week involved in the employment, and the crops on which  
25 and kinds of activities in which the worker may be employed;

26 (6) The terms and conditions under which the worker is furnished  
27 clothing or equipment;

28 (7) The place of employment;

29 (8) The name and address of the owner of all operations, or the  
30 owner's agent, where the worker will be working as a result of being

1 recruited, solicited, supplied, or employed by the farm labor  
2 contractor, agricultural employer, or agricultural association;

3 (9) The existence of a labor dispute at the worksite;

4 (10) The name and address of the farm labor contractor,  
5 agricultural employer, or agricultural association that hired,  
6 recruited, solicited, or supplied the agricultural employee;

7 (11) The existence of an arrangement with an owner or agent of an  
8 establishment at the place of employment under which the farm labor  
9 contractor, agricultural employer, or agricultural association is to  
10 receive a fee or other benefit resulting from sales by the  
11 establishment to the workers; and

12 (12) The name and address of the surety on any contractor's bond  
13 required by this chapter and the worker's right to claim against the  
14 bond.

15 NEW SECTION. **Sec. 9.** A farm labor contractor, agricultural  
16 employer, or agricultural association that employs any agricultural  
17 employee shall:

18 (1) Furnish to the worker each time the worker receives a  
19 compensation payment a written statement identifying the employer and  
20 employee and itemizing the total payment and the amount and purpose of  
21 each deduction therefrom, hours worked, rate of pay, and pieces done if  
22 the work is done on a piece rate basis, and if the work is done under  
23 the service contract act (41 U.S.C. Secs. 351-401) or related federal  
24 or state law a written statement of any applicable prevailing wage.

25 (2) With respect to each worker, make, keep, and preserve for three  
26 years a record of the following information:

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

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

1 (c) The number of hours worked;

2 (d) The total pay period earnings;

3 (e) The specific sums withheld and the purpose of each sum  
4 withheld; and

5 (f) The net pay.

6 (3) Pay the wages, including bonuses, to each agricultural employee  
7 when due. For the purpose of this subsection:

8 (a) Bonuses are due when the agricultural employee has fulfilled  
9 the conditions of the bonus arrangement or when working conditions are  
10 inconsistent with the terms disclosed pursuant to section 8 of this act  
11 or in violation of state or federal law;

12 (b) When an agricultural employee's employment has terminated,  
13 wages are due within twenty-four hours of the termination.

14 NEW SECTION. **Sec. 10.** No farm labor contractor, agricultural  
15 employer, or agricultural association may:

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

22 (2) Violate the terms of a working arrangement made by that  
23 contractor, employer, or association with an agricultural employee.

24 (3) Require an agricultural employee to purchase goods or services  
25 solely from that farm labor contractor, agricultural employer, or  
26 agricultural association, or require an agricultural employee or  
27 potential employee to pay a sum or valuable consideration as a  
28 condition of obtaining or maintaining employment.

1 (4) Offer or provide housing to agricultural employees in  
2 connection with their employment unless the housing meets the standards  
3 developed under the Washington industrial safety and health act of 1973  
4 in chapter 49.17 RCW as relates to sanitation and temporary labor camps  
5 and unless a state or local health authority has certified that the  
6 housing meets applicable safety and health standards.

7 NEW SECTION. **Sec. 11.** This chapter applies to all  
8 transactions, acts, and omissions of farm labor contractors,  
9 agricultural employers, and agricultural associations that are within  
10 the constitutional power of this state to regulate, including but not  
11 limited to the recruitment of workers in this state to perform work  
12 outside this state, the recruitment of workers outside this state to  
13 perform work in whole or in part within this state, the housing of  
14 workers in this state for work in another state, the housing of workers  
15 in another state in connection with work to be performed in this state,  
16 and the payment, terms, and conditions of employment, disclosure, and  
17 recordkeeping for workers employed outside this state and recruited in  
18 this state.

19 NEW SECTION. **Sec. 12.** If a farm labor contractor, agricultural  
20 employer, or agricultural association recruits or solicits a worker to  
21 travel from one place to another for the purpose of working at a time  
22 prior to the availability of that employment, the contractor shall  
23 furnish to the worker, at no charge, lodging and an adequate supply of  
24 food until employment begins, in compliance with rules adopted by the  
25 department of labor and industries. If employment does not begin  
26 within thirty days from the date the contractor, employer, or  
27 association represented employment would become available, the  
28 contractor, employer, or association shall refund to the worker all

1 sums paid by the worker to the contractor, employer, or association and  
2 provide the worker the costs of transportation, including meals and  
3 lodging in transit, to either return the worker to the place from which  
4 the worker was induced to travel or to another worksite selected by the  
5 worker, whichever costs less. For the purposes of this section  
6 "recruits or solicits" does not include the mere provision of housing  
7 or employment to a person who has not otherwise been recruited or  
8 solicited by the contractor, employer, or association or an agent  
9 thereof prior to the person's arrival at the place of housing or  
10 employment. A worker who arrives at the place of employment prior to  
11 the date the worker was requested to arrive is not entitled to the  
12 benefits of this subsection until the date the worker was requested to  
13 arrive. The relief provided under this section shall supplement, and  
14 not supplant, damages provided under RCW 19.30.170(2).

15 NEW SECTION. **Sec. 13.** This chapter may be known and cited as  
16 the Washington agricultural workers protection act.

17 NEW SECTION. **Sec. 14.** Sections 7 through 13 of this act are  
18 each added to chapter 19.30 RCW.

19 NEW SECTION. **Sec. 15.** If any provision of this act or its  
20 application to any person or circumstance is held invalid, the  
21 remainder of the act or the application of the provision to other  
22 persons or circumstances is not affected.