
Commerce & Labor Committee

HB 2623

Brief Description: Protecting agricultural workers.

Sponsors: Representatives Kenney, Conway, Ormsby, Wood, Hudgins, McCoy, Hasegawa, Sells, Hunt, Upthegrove, Clibborn, Simpson, Dickerson and Santos.

Brief Summary of Bill

- Modifies the state farm labor contractor law, including provisions on licensing, bonding, contractor duties, nondiscrimination, and transportation safety.
- Makes the state employment agency law applicable to farm labor contractors.
- Modifies state laws governing public disclosure of certain federal H-2A visa program records.

Hearing Date: 1/23/06

Staff: Jill Reinmuth (786-7134).

Background:

State laws provide for the regulation of farm labor contractors and employment agencies, as well as disclosure of public records.

I. Farm Labor Contractors

Farm labor contractors must be licensed by the Department of Labor and Industries. The definition of "farm labor contractor" is a person who, for a fee, recruits, solicits, employs, supplies, transports, or hires agricultural employees.

To obtain a farm labor contractor license for one or two years, an applicant must: submit a license application; pay a license fee; provide proof of liability insurance; file a surety bond or other security of at least \$5,000; disclose whether the applicant's license has ever been suspended, revoked or denied; and disclose whether the applicant has outstanding judgments in state or federal court. In addition, the director of the Department of Labor and Industries must be satisfied as to the applicant's "character, competency, and responsibility." The director may not issue a license to an applicant who sells intoxicating liquor where the applicant operates as a contractor, or whose license has been revoked in the past three years.

To renew both a one-year and a two-year farm labor contractor license, the contractor must pay the license fee and provide proof of a renewed surety bond. To renew a two-year license, the contractor must also file a written application disclosing certain information required in the original application.

To revoke, suspend, or refuse to issue or renew a license, the director of the Department of Labor and Industries must determine that the farm labor contractor: violated the state farm labor contractor law or other state laws regulating agricultural employment; made misrepresentations or false statements in its application; induced agricultural employees to violate existing employment contracts; or has unsatisfied judgments in state or federal court.

Any person may protest the grant or renewal of a license.

Farm labor contractors must give agricultural employees information about their compensation and conditions of employment, as well as other work-related information. Contractors must also keep employment records.

Farm labor contractors and agricultural employers are prohibited from discriminating against agricultural employees for pursuing their rights under the state farm labor contractor law.

Persons injured by violations of the state farm labor contractor law may bring a suit in court for damages.

II. Employment Agencies

Employment agencies must be licensed by the Department of Licensing, and must comply with certain requirements covering: the form and substance of contracts with customers; fees that may be charged for services; disclosure to customers of information about the agency; and customer's complaint procedures. An agency that operates without a license may be sued by its customers for amounts paid to the agency. A court may award the customer, as damages in a lawsuit, three times the amount paid and any attorney's fees and costs.

"Farm labor contractors" are expressly excluded from the definition of "employment agency." Therefore, they are not subject to the licensing and regulatory requirements and the penalty provisions applicable to employment agencies.

III. Public Records

Information and records concerning individuals or employers obtained by the Employment Security Department are private and confidential, including records in the Department's possession under the federal H-2A visa program.

IV. Federal Transportation Safety Standards

Federal transportation safety standards applicable to agricultural employees require that: vehicles comply with federal vehicle safety standards; drivers have valid motor vehicle operator's licenses; and vehicles are insured against liability for damages to persons or property. Although these standards apply to the transportation of most agricultural employees, they do not apply to: transportation on certain machinery or equipment while an agricultural employee is planting, cultivating or harvesting agricultural commodities or caring for livestock and poultry; transportation with immediate family members; transportation of H-2A workers; and certain car pools.

V. Federal H-2A Visa Program

The federal H-2A visa program allows agricultural employers to obtain visas for temporary, nonimmigrant workers (H-2A workers) to perform agricultural labor or services of a temporary or seasonal nature. Before being approved to participate in the program, agricultural employers must obtain a certification from the federal Department of Labor that a labor shortage exists and that bringing in foreign workers will not adversely affect the wages and working conditions of domestic workers. The federal Department of Labor's certification is based, in part, on the state Employment Security Department's certification that there is a shortage of agricultural laborers in the area.

Summary of Bill:

State laws providing for the regulation of farm labor contractors and employment agencies, as well as the disclosure of public records, are changed.

I. Farm Labor Contractors

The definition of "farm labor contractor" specifies that contractors subject to state law include those who perform farm labor contractor activities in Washington as well as those who perform such activities for employers in Washington.

The requirements for obtaining a one-year farm labor contractor license include executing a written application for each year, rather than only the first year, that the applicant seeks to operate as a contractor. (Two-year licenses are eliminated.) The applicant also must demonstrate full compliance with the state farm labor contractor law and other federal and state laws, and disclose whether the applicant has debts or outstanding judgments from administrative or judicial determinations in any state or country. Finally, if the applicant is participating in the federal H-2A visa program, the applicant must file a repatriation bond.

The grounds on which the director of the Department of Labor and Industries must deny an application include: misrepresentations or false statements in the application; debts or outstanding judgments from administrative or judicial determinations in any state or country; repeated violations of laws or agreements related to farm labor contractor activities; violations of the state farm labor contractor law in the prior calendar year; or an unsatisfactory character, competency, or responsibility.

The circumstances in which the director may immediately revoke or suspend a license include: debts or outstanding judgments from administrative or judicial determinations in any state or country; violations of laws or agreements related to farm labor contractor activities; an unsatisfactory character, competency, or responsibility; and violations of working arrangements with agricultural workers. The director also may immediately revoke or suspend a license if there is a danger to the public health, safety, or welfare from the contractor's continued operations. The director may permit a contractor to continue operating to complete contracts where workers have commenced work, so long as the director monitors the operations during that time.

Any person may protest any action or inaction by the director with respect to the issuance, renewal, revocation, or suspension of a farm labor contractor license.

The surety bond insures payment of sums owed to agricultural workers in the event of license revocation as well as compliance with the state farm labor contractor law. It is conditioned on payment of damages awarded in civil action as well as sums owed to workers under contract.

The repatriation bond is required if the farm labor contractor is participating in the federal H-2A visa program. It covers travel expenses for H-2A workers returning to their home in their country of origin, and their room, board, and other living expenses while awaiting repatriation, and is conditioned on timely repatriation of such workers. The director specifies the amount of the repatriation bond.

The duties of farm labor contractors include complying with all agreements, working arrangements, and contracts entered into between contractors and third persons.

Farm labor contractors, agricultural employers, and agricultural workers may not exempt themselves from the burdens or waive the benefits of the state farm labor contractor law, and any agreement or rule that does so is void. This prohibition must be described in the information that contractors must give to workers.

The persons who are prohibited from discriminating against agricultural workers for pursuing their rights under the state farm labor contractor law include agents and other persons working on behalf of contractors and agricultural employers. The actions which are prohibited specifically include intimidating, threatening, restraining, coercing, and blacklisting workers. A rebuttable presumption of a violation exists if the contractor took the prohibited action against the worker within 90 days of when the worker, or a government agency acting on the workers's behalf, engaged in the protected conduct.

The director of the Department of Labor and Industries is required to adopt transportation safety standards that are at least as effective as federal safety standards. Farm labor contractors, when using vehicles to transport agricultural workers, must ensure that vehicles conform to safety standards and that drivers have appropriate licenses. They also must have insurance or bonds that insure the contractor against liability for damages to persons or property. The safety standards do not apply to the transportation of workers on tractors and similar equipment while engaged in planting, cultivating, or harvesting commodities or while caring for livestock or poultry.

II. Employment Agencies

The definition of "employment agency" expressly includes, rather than excludes, farm labor contractors. Such contractors, therefore, are subject to the licensing and regulatory requirements and the penalty provisions applicable to employment agencies.

If requests for refunds of employment agency fees involving farm labor contractors are in dispute, the director of the Department of Licensing may hold a hearing in accordance with the Administrative Procedures Act, determine whether a refund is proper, and order the contractor to make the refund within 30 days. The state or a worker also may bring an action for the refund in court.

III. Public Records

Certain records in the Employment Security Department's possession under the federal H-2A visa program are not private and confidential, provided that the names and other private information of

specific workers are redacted. These records include: applications for H-2A certification; correspondence related to H-2A applications; documents regarding housing inspections and employer-provided transportation; and job orders listed in response to H-2A applications. Timelines for responding to requests for these records are established.

Rules Authority:

The director of the Department of Labor and Industries is required to adopt rules establishing safety standards applicable to the transportation of agricultural workers by farm labor contractors. The state transportation safety standards must be at least as effective as the federal transportation safety standards adopted by the federal Secretary of Labor.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.