
HOUSE BILL 2623

State of Washington 59th Legislature 2006 Regular Session

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

Read first time 01/11/2006. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to protecting agricultural workers who are
2 recruited, solicited, employed, supplied, transported, or hired by farm
3 labor contractors; amending RCW 19.30.010, 19.30.030, 19.30.040,
4 19.30.050, 19.30.060, 19.30.070, 19.30.081, 19.30.110, 19.30.170,
5 19.30.190, 19.31.020, and 19.31.170; adding new sections to chapter
6 19.30 RCW; adding a new section to chapter 50.13 RCW; creating a new
7 section; and repealing RCW 19.30.090.

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

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

11 DEFINITIONS. As used in this chapter:

12 (1) "Person" includes any individual, firm, partnership,
13 association, corporation, or unit or agency of state or local
14 government.

15 (2) "Applicant" means any person who has submitted a written
16 application to operate as a farm labor contractor, but who has not yet
17 been issued a license to operate as a farm labor contractor, as
18 specified in RCW 19.30.030.

1 (3) "Farm labor contractor" means any person, or his or her agent
2 or subcontractor, who, for a fee, performs any farm labor contracting
3 activity either in the state of Washington or for agricultural
4 employers in the state of Washington.

5 ~~((+3))~~ (4) "Farm labor contracting activity" means recruiting,
6 soliciting, employing, supplying, transporting, or hiring agricultural
7 ~~((employees))~~ workers.

8 ~~((+4))~~ (5) "Agricultural employer" means any person engaged in
9 agricultural activity, including but not limited to: The growing,
10 producing, or harvesting of farm or nursery products(~~((or engaged~~
11 in)); the forestation or reforestation of lands, (~~((which includes but~~
12 is)) including but not limited to the planting, transplanting, tubing,
13 precommercial thinning, and thinning of trees and seedlings, the
14 clearing, piling, and disposal of brush and slash, and the harvest of
15 Christmas trees(~~((r))~~); and other related activities.

16 ~~((+5))~~ (6) "Agricultural ~~((employee))~~ worker" means any person who
17 seeks to render(~~((s))~~ personal services to(~~((r))~~ or is under the
18 direction of(~~((r))~~ an agricultural employer in connection with the
19 employer's agricultural activity.

20 ~~((+6))~~ (7) "H-2A worker" is an agricultural worker who is
21 temporarily present in the United States as a nonimmigrant under
22 subparagraph (H)(ii) of section 101(a)(15) of the federal immigration
23 and naturalization act.

24 (8) This chapter shall not apply to employees of the employment
25 security department acting in their official capacity or their agents,
26 nor to any common carrier or full time regular employees thereof while
27 transporting agricultural ~~((employees))~~ workers, nor to any person who
28 performs any of the services enumerated in subsection ~~((+3))~~ (4) of
29 this section only within the scope of his or her regular employment for
30 one agricultural employer on whose behalf he or she is so acting,
31 unless he or she is receiving a commission or fee, which commission or
32 fee is determined by the number of workers recruited, or to a nonprofit
33 corporation or organization which performs the same functions for its
34 members. Such nonprofit corporation or organization shall be one in
35 which:

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

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

3 ((+7)) (9) "Fee" means:

4 (a) Any money or other valuable consideration paid or promised to
5 be paid for services rendered or to be rendered by a farm labor
6 contractor.

7 (b) Any valuable consideration received or to be received by a farm
8 labor contractor for or in connection with any of the services
9 described in subsection ((+3)) (4) of this section, and shall include
10 the difference between any amount received or to be received by him or
11 her, and the amount paid out by him or her for or in connection with
12 the rendering of such services.

13 ((+8)) (10) "Director" as used in this chapter means the director
14 of the department of labor and industries of the state of Washington.

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

17 LICENSE; REQUIREMENTS FOR ISSUING. The director shall not issue to
18 any person a license to ((act)) operate as a farm labor contractor
19 until:

20 (1) Such person has executed a written application for each year
21 that the applicant seeks to operate as a farm labor contractor. The
22 written application shall be on a form prescribed by the director, be
23 subscribed and sworn to by the applicant, and contain((ing)): (a) A
24 statement by the applicant of all facts required by the director
25 concerning the applicant's character, competency, responsibility, and
26 the manner and method by which he or she proposes to conduct operations
27 as a farm labor contractor if such license is issued((r)); and (b) the
28 names and addresses of all persons financially interested, either as
29 partners, stockholders, associates, profit sharers, or providers of
30 board or lodging to agricultural ((employees)) workers in the proposed
31 operation as a labor contractor, together with the amount of their
32 respective interests;

33 (2) ((The director, after investigation, is satisfied as to the
34 character, competency, and responsibility of the applicant)) Such
35 person demonstrates that the applicant is in full compliance with this
36 chapter and other federal and state laws;

1 (3) The applicant has paid to the director a license fee of:
2 ~~((+1))~~ (a) Thirty-five dollars in the case of a farm labor contractor
3 not engaged in forestation or reforestation~~((7))~~; or ~~((+2))~~ (b) one
4 hundred dollars in the case of a farm labor contractor engaged in
5 forestation or reforestation or such other sum as the director finds
6 necessary, and adopts by rule, for the administrative costs of
7 evaluating applications;

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

16 (5) The applicant has filed a surety bond or other security which
17 meets the requirements set forth in RCW 19.30.040;

18 (6) The applicant has filed a repatriation bond, if required under
19 section 4 of this act, which meets the requirements set forth in
20 section 4 of this act;

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

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

29 ~~((+7))~~ (8) The applicant has stated on his or her application
30 whether or not his or her contractor's license or the license of any of
31 his or her agents, partners, associates, stockholders, or profit
32 sharers has ever been suspended, revoked, or denied by any state or
33 federal agency, and whether or not there are any debts owed by or
34 outstanding judgments from administrative or judicial determinations
35 against him or her or any of his or her agents, partners, associates,
36 stockholders, or profit sharers ~~((in any state or federal court))~~
37 arising out of activities as a farm labor contractor in any state or
38 country.

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

3 SURETY BOND; SECURITY. (1) The director shall require the deposit
4 of a surety bond by any person acting as a farm labor contractor under
5 this chapter to insure compliance with the provisions of this chapter,
6 including payment to workers of all sums owing in the event that a
7 license is revoked. Such bond shall be in an amount specified by the
8 director in accordance with such criteria as the director adopts by
9 rule but shall not be less than five thousand dollars. The bond shall
10 be payable to the state of Washington and be conditioned on payment of
11 sums legally owing under contract and under RCW 19.30.170 to an
12 agricultural ((employee)) worker. The aggregate liability of the
13 surety upon such bond for all claims which may arise thereunder shall
14 not exceed the face amount of the bond.

15 (2) The amount of the bond may be raised or additional security
16 required by the director, upon his or her own motion or upon petition
17 to the director by any person, when it is shown that the security or
18 bond is insufficient to satisfy the contractor's potential liability
19 for the licensed period.

20 (3) No surety insurer may provide any bond, undertaking,
21 recognizance, or other obligation for the purpose of securing or
22 guaranteeing any act, duty, or obligation, or the refraining from any
23 act with respect to a contract using the services of a farm labor
24 contractor unless the farm labor contractor has made application for or
25 has a valid license issued under RCW 19.30.030 at the time of issuance
26 of the bond, undertaking, recognizance, or other obligation.

27 (4) Surety bonds may not be canceled or terminated during the
28 period in which the bond is executed unless thirty days' notice is
29 provided by the surety to the department. The bond is written for a
30 one-year term and may be renewed or extended by continuation
31 certification at the option of the surety.

32 (5) In lieu of the surety bond required by this section, the
33 contractor may file with the director a deposit consisting of cash or
34 other security acceptable to the director. The deposit shall not be
35 less than five thousand dollars in value. The security deposited with
36 the director in lieu of the surety bond shall be returned to the
37 contractor at the expiration of three years after the farm labor

1 contractor's license has expired or been revoked if no legal action has
2 been instituted against the contractor or on the security deposit at
3 the expiration of the three years.

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

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.30 RCW
9 to read as follows:

10 REPATRIATION BOND. (1) In addition to the surety bond required
11 under RCW 19.30.040, the director shall require the deposit of a
12 separate repatriation bond by any person acting as a farm labor
13 contractor under this chapter and participating or applying to
14 participate in the federal H-2A visa program established under section
15 218 of the federal immigration and nationality act of 1952 as amended
16 (8 U.S.C. Sec. 1101, 1184, and 1188). The purpose of the repatriation
17 bond is to cover travel expenses for returning H-2A workers to their
18 home in their country of origin, and room, board, and other living
19 expenses for H-2A workers while they await repatriation if the farm
20 labor contractor fails to make timely repatriation of H-2A workers when
21 appropriate. The amount of the repatriation bond shall be specified by
22 the director, and must be sufficient to cover the expenses for each H-
23 2A worker described in this subsection. The bond shall be payable to
24 the state of Washington and be conditioned on timely repatriation of H-
25 2A workers. The aggregate liability of the surety upon the bond for
26 all claims which may arise thereunder shall not exceed the face amount
27 of the bond.

28 (2) The amount of the bond may be raised or additional security
29 required by the director, upon his or her own motion or upon petition
30 to the director by any person, when it is shown that the security or
31 bond is insufficient to satisfy the contractor's potential liability
32 for repatriation of H-2A workers.

33 (3) No insurer may provide any bond, undertaking, recognizance, or
34 other obligation for the purpose of securing or guaranteeing any act,
35 duty, or obligation, or the refraining from any act with respect to a
36 contract using the services of a farm labor contractor unless the farm

1 labor contractor has made application for or has a valid license issued
2 under RCW 19.30.030 at the time of issuance of the bond, undertaking,
3 recognizance, or other obligation.

4 (4) The repatriation bond shall be written for a one-year term and
5 may be renewed or extended by continuation certification at the option
6 of the insurer.

7 (5)(a) In lieu of the repatriation bond required by this section,
8 the farm labor contractor may file with the director a deposit
9 consisting of cash or other security acceptable to the director. The
10 deposit shall not be less than one thousand dollars per H-2A worker in
11 value. The security deposited with the director in lieu of the
12 repatriation bond shall be returned to the farm labor contractor at the
13 expiration of three years after the farm labor contractor's license has
14 expired or been revoked if no legal action has been instituted against
15 the farm labor contractor or on the security deposit at the expiration
16 of the three years.

17 (b) If a farm labor contractor has filed with the director a
18 deposit as set forth in (a) of this subsection and has failed to comply
19 with the conditions of the bond as provided by this section:

20 (i) The director may hold a hearing in accordance with chapter
21 34.05 RCW or issue a written decision, determine whether the H-2A
22 worker is a proven claimant under the repatriation bond, and distribute
23 the proceeds of the repatriation bond to a proven claimant.

24 (ii) The state or an H-2A worker may also bring an action against
25 the deposit in any court of competent jurisdiction of the county in
26 which the claim arose, or in which either the claimant or contractor
27 resides.

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

30 LICENSE; GROUNDS FOR DENYING. Any person may protest the issuance
31 or renewal of a license under this section. The director shall not
32 issue a license to operate as a farm labor contractor ((shall be
33 denied)) if the director determines that:

34 (1) ((To any person who)) The applicant has made any
35 misrepresentations or false statements in his or her application for a
36 license;

1 (2) The applicant owes any debts or has any outstanding judgments
2 from administrative or judicial determinations against him or her or
3 any of his or her agents, partners, associates, stockholders, or profit
4 sharers arising out of his or her farm labor contracting activities in
5 this or any other state or country;

6 (3) The applicant has repeatedly violated, or willfully aided or
7 abetted any person in the violation of, any laws, including
8 international laws, federal or state laws, or laws of other nations, or
9 any agreements with agricultural workers or third parties, related to
10 his or her farm labor contracting activities in this or any other state
11 or country;

12 (4) The applicant's character, competency, or responsibility are
13 not satisfactory;

14 (5) The applicant violated this chapter on or after January 1st of
15 the year preceding the year of application;

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

19 ~~((2) To a person whose))~~ (7) The applicant's license has been
20 revoked within three years from the date of application.

21 **Sec. 6.** RCW 19.30.060 and 1997 c 58 s 846 are each amended to read
22 as follows:

23 LICENSE; REVOCATION, SUSPENSION. (1) Any person may protest ((the
24 grant or renewal of a license)) any action or inaction by the director
25 under this section.

26 (2) The director may immediately revoke((τ)) or suspend((τ—or
27 refuse to issue or renew any)) a license ((when it is shown)) to
28 operate as a farm labor contractor if the director determines that:

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

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

34 ~~((3))~~ (b) The farm labor contractor owes any debts or has any
35 outstanding judgments from administrative or judicial determinations
36 against him or her, or any of his or her agents, partners, associates,

1 stockholders, or profit sharers arising out of his or her farm labor
2 contracting activities in this or any other state or country;

3 (c) The farm labor contractor has violated, or willfully aided or
4 abetted any person in the violation of, any laws, including
5 international laws, federal or state laws, or laws of other nations, or
6 any agreements with agricultural workers or third parties, related to
7 his or her farm labor contracting activities in this or any other state
8 or country;

9 (d) The farm labor contractor's character, competency, or
10 responsibility are not satisfactory;

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

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

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

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

28 (g) The farm labor contractor has violated or failed to comply with
29 the terms of any working arrangement with an agricultural worker; or

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

32 (3) If the director revokes or suspends a license, the director may
33 permit the farm labor contractor to continue to operate solely to
34 complete any existing contract period where agricultural workers have
35 commenced work. In this event, the contractor may not represent that
36 it is licensed as a farm labor contractor for any purpose other than
37 completing existing contracts. The director shall monitor the
38 contractor's compliance with this chapter while the contractor

1 completes any contracts under this subsection. The existing contract
2 period may not extend beyond the end of the current crop or activity
3 season or the calendar year in which the revocation or suspension
4 occurs, as determined by the director.

5 (4) The director shall immediately suspend the license or
6 certificate of a person who has been certified pursuant to RCW
7 74.20A.320 by the department of social and health services as a person
8 who is not in compliance with a support order (~~(or a residential or~~
9 ~~visitation order)~~). If the person has continued to meet all other
10 requirements for reinstatement during the suspension, reissuance of the
11 license or certificate shall be automatic upon the director's receipt
12 of a release issued by the department of social and health services
13 stating that the licensee is in compliance with the order.

14 **Sec. 7.** RCW 19.30.070 and 1985 c 280 s 7 are each amended to read
15 as follows:

16 LICENSE; CONTENTS. Each license shall contain, on the face
17 thereof:

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

21 (2) The number, date of issuance, and date of expiration of the
22 license;

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

24 (4) The amount of the repatriation bond, if required under section
25 4 of this act, deposited by the licensee;

26 (5) The fact that the license may not be transferred or assigned;
27 and

28 (~~(+5)~~) (6) A statement that the licensee is or is not licensed to
29 transport workers.

30 **Sec. 8.** RCW 19.30.081 and 1987 c 216 s 3 are each amended to read
31 as follows:

32 LICENSE; DURATION. (~~Farm labor contractors may hold either~~) The
33 director may issue a one-year license (~~or a two-year license~~) to
34 operate as a farm labor contractor, at the director's discretion. The
35 one-year license (~~shall run to and include~~) expires on the 31st day
36 of December next following the date thereof unless sooner revoked by

1 the director. (~~A license may be renewed each year upon the payment of~~
2 ~~the annual license fee, but the director shall require that evidence of~~
3 ~~a renewed bond be submitted and that the contractor have a bond in full~~
4 ~~force and effect.~~

5 ~~The two year license shall run to and include the 31st day of~~
6 ~~December of the year following the year of issuance unless sooner~~
7 ~~revoked by the director. This license may be renewed every two years~~
8 ~~under the same terms as the one year license, except that a farm labor~~
9 ~~contractor possessing a two year license shall have evidence of a bond~~
10 ~~in full force and effect, and file an application on which he or she~~
11 ~~shall disclose all information required by RCW 19.30.030 (1)(b), (4),~~
12 ~~and (7).)~~

13 **Sec. 9.** RCW 19.30.110 and 1985 c 280 s 9 are each amended to read
14 as follows:

15 FARM LABOR CONTRACTOR; DUTIES. Every person acting as a farm labor
16 contractor shall:

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

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

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

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

31 (5) Comply with the terms and provisions of all (~~legal and valid~~)
32 agreements, working arrangements, and contracts entered into between
33 the contractor in the capacity of a farm labor contractor and third
34 persons.

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

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

6 (a) The compensation to be paid and the method of computing the
7 rate of compensation;

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

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

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

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

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

21 (g) The place of employment;

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

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

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

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

32 (l) The name and address of the surety on the contractor's bond and
33 the workers' right to claim against the bond; and

34 (m) A statement that section 13 of this act prohibits farm labor
35 contractors, agricultural employers, and agricultural workers from
36 exempting themselves from the burdens or waiving the benefits of this
37 chapter by any contract, agreement, rule, or regulation, and that

1 section 13 of this act provides that any such contract, agreement,
2 rule, or regulation is void to the extent it allows for such exemptions
3 or waivers.

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

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

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

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

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

19 (iii) The number of hours worked;

20 (iv) The total pay period earnings;

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

23 (vi) The net pay; and

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

33 The record-keeping requirements of this chapter shall be met if
34 either the farm labor contractor or any user of the contractor's
35 services makes, keeps, and preserves for the requisite time period the
36 records required under this section, and so long as each worker
37 receives the written statements specified in subsection (8) of this
38 section.

1 **Sec. 10.** RCW 19.30.170 and 1987 c 216 s 5 are each amended to read
2 as follows:

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

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

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

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

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

1 director shall transmit the complaint or a copy thereof to the
2 contractor at the address listed in his or her application and to the
3 surety within forty-eight hours after it has been received.

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

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

12 (a) Wages, including employee benefits;

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

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

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

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

35 **Sec. 11.** RCW 19.30.190 and 1985 c 280 s 13 are each amended to
36 read as follows:

37 NONDISCRIMINATION. (1) No farm labor contractor or agricultural

1 employer or any agent or person working on his or her behalf may
2 intimidate, threaten, restrain, coerce, blacklist, discharge, or in any
3 other manner discriminate against any ~~((employee))~~ worker because:

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

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

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

11 ~~((4))~~ (d) The ~~((employee))~~ worker has discussed or consulted with
12 anyone concerning the ~~((employee's))~~ worker's rights under this
13 chapter.

14 (2) If any person takes any action described under subsection (1)
15 of this section against any worker within ninety days of the worker, or
16 a government agency acting on behalf of a worker, engaging in conduct
17 protected under subsection (1) of this section, a rebuttable
18 presumption is created that such action is in violation of this
19 section.

20 NEW SECTION. Sec. 12. A new section is added to chapter 19.30 RCW
21 to read as follows:

22 TRANSPORTATION SAFETY STANDARDS. (1) The director shall adopt
23 rules establishing safety standards applicable to the transportation of
24 agricultural workers by farm labor contractors. The standards shall be
25 at least as effective as those adopted or recognized by the United
26 States secretary of labor under the authority of 18 U.S.C. Sec. 1841.

27 (2) When using, or causing to be used, any vehicle for the
28 transportation of any agricultural worker, a farm labor contractor
29 shall:

30 (a) Ensure that the vehicle conforms to applicable federal and
31 state safety standards, including the standards adopted by the director
32 under subsection (1) of this section;

33 (b) Ensure that the driver of the vehicle has a valid and
34 appropriate license to operate the vehicle; and

35 (c) Have an insurance policy or a liability bond that is in effect
36 and that insures the farm labor contractor against liability for damage

1 to persons or property arising from the ownership, operations, or the
2 causing to be operated of any vehicle used to transport any
3 agricultural worker.

4 (3) This section applies to the transportation of any agricultural
5 worker by a farm labor contractor, but not to the transportation of any
6 agricultural worker on a tractor, combine, harvester, picker, or other
7 similar machinery and equipment while such worker is actually engaged
8 in the planting, cultivating, or harvesting of any agricultural
9 commodity or the care of livestock or poultry.

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

12 NO EVASION OF BENEFITS OR BURDENS. Farm labor contractors,
13 agricultural employers, and agricultural workers may not exempt
14 themselves from the burdens or waive the benefits of this chapter by
15 any contract, agreement, rule, or regulation, and any such contract,
16 agreement, rule, or regulation is void to the extent it allows for such
17 exemptions or waivers.

18 **Sec. 14.** RCW 19.31.020 and 1998 c 228 s 1 are each amended to read
19 as follows:

20 EMPLOYMENT AGENCY DEFINITIONS. Unless a different meaning is
21 clearly required by the context, the following words and phrases, as
22 hereinafter used in this chapter, shall have the following meanings:

23 (1) "Employment agency" is synonymous with "agency" and (~~shall~~)
24 means any business in which any part of the business gross or net
25 income is derived from a fee received from applicants, and in which any
26 of the following activities are engaged in:

27 (a) The offering, promising, procuring, or attempting to procure
28 employment for applicants;

29 (b) The giving of information regarding where and from whom
30 employment may be obtained; or

31 (c) The sale of a list of jobs or a list of names of persons or
32 companies accepting applications for specific positions, in any form.

33 In addition the term "employment agency" (~~shall~~) means and
34 includes any person, bureau, employment listing service, employment
35 directory, farm labor contractor, organization, or school which for
36 profit, by advertisement or otherwise, offers, as one of its main

1 objects or purposes, to procure employment for any person who pays for
2 its services, or which collects tuition, or charges for service of any
3 nature, where the main object of the person paying the same is to
4 secure employment. It also includes any business that provides a
5 resume to an individual and provides that person with a list of names
6 to whom the resume may be sent or provides that person with
7 preaddressed envelopes to be mailed by the individual or by the
8 business itself, if the list of names or the preaddressed envelopes
9 have been compiled and are represented by the business as having job
10 openings. The term "employment agency" shall not include labor union
11 organizations, temporary service contractors, proprietary schools
12 operating within the scope of activities for which the school is
13 licensed under chapter 28C.10 RCW, nonprofit schools and colleges,
14 career guidance and counseling services, employment directories that
15 are sold in a manner that allows the applicant to examine the directory
16 before purchase, theatrical agencies, (~~(farm labor contractors,)~~) or
17 the Washington state employment agency.

18 (2) "Temporary service contractors" (~~(shall)~~) means any person,
19 firm, association, or corporation conducting a business which consists
20 of employing individuals directly for the purpose of furnishing such
21 individuals on a part time or temporary help basis to others.

22 (3) "Theatrical agency" means any person who, for a fee or
23 commission, procures on behalf of an individual or individuals,
24 employment or engagements for circus, vaudeville, the variety field,
25 the legitimate theater, motion pictures, radio, television, phonograph
26 recordings, transcriptions, opera, concert, ballet, modeling, or other
27 entertainments, exhibitions, or performances. The term "theatrical
28 agency" does not include any person charging an applicant a fee prior
29 to or in advance of:

30 (a) Procuring employment for the applicant;

31 (b) Giving or providing the applicant information regarding where
32 or from whom employment may be obtained;

33 (c) Allowing or requiring the applicant to participate in any
34 instructional class, audition, or career guidance or counseling; or

35 (d) Allowing the applicant to be eligible for employment through
36 the person.

37 (4) "Farm labor contractor" (~~(means any person, or his agent, who,~~
38 ~~for a fee, employs workers to render personal services in connection~~

1 ~~with the production of any farm products, to, for, or under the~~
2 ~~direction of an employer engaged in the growing, producing, or~~
3 ~~harvesting of farm products, or who recruits, solicits, supplies, or~~
4 ~~hires workers on behalf of an employer engaged in the growing,~~
5 ~~producing, or harvesting of farm products or who provides in connection~~
6 ~~with recruiting, soliciting, supplying, or hiring workers engaged in~~
7 ~~the growing, producing, or harvesting of farm products, one or more of~~
8 ~~the following services: Furnishes board, lodging, or transportation~~
9 ~~for such workers, supervises, times, checks, counts, sizes, or~~
10 ~~otherwise directs or measures their work; or disburses wage payments to~~
11 ~~such persons)) has the meaning provided in RCW 19.30.010.~~

12 (5) "Employer" means any person, firm, corporation, partnership, or
13 association employing or seeking to enter into an arrangement to employ
14 a person through the medium or service of an employment agency.

15 (6) "Applicant", except when used to describe an applicant for an
16 employment agency license, means any person, whether employed or
17 unemployed, seeking or entering into any arrangement for his or her
18 employment or change of his or her employment through the medium or
19 service of an employment agency.

20 (7) "Person" includes any individual, firm, corporation,
21 partnership, association, company, society, manager, contractor,
22 subcontractor, bureau, agency, service, office, or an agent or employee
23 of any of the foregoing.

24 (8) "Director" (~~shall~~) means the director of licensing.

25 (9) "Resume" means a document of the applicant's employment history
26 that is approved, received, and paid for by the applicant.

27 (10) "Fee" means anything of value. The term includes money or
28 other valuable consideration or services or the promise of money or
29 other valuable consideration or services, received directly or
30 indirectly by an employment agency from a person seeking employment, in
31 payment for the service.

32 (11) "Employment listing service" means any business operated by
33 any person that provides in any form, including written or verbal,
34 lists of specified positions of employment available with any employer
35 other than itself or that holds itself out to applicants as able to
36 provide information about specific positions of employment available
37 with any employer other than itself, and that charges a fee to the

1 applicant for its services and does not set up interviews or otherwise
2 intercede between employer and applicant.

3 (12) "Employment directory" means any business operated by any
4 person that provides in any form, including written or verbal, lists of
5 employers, does not provide lists of specified positions of employment,
6 that holds itself out to applicants as able to provide information on
7 employment in specific industries or geographical areas, and that
8 charges a fee to the applicant for its services.

9 (13) "Career guidance and counseling service" means any person,
10 firm, association, or corporation conducting a business that engages in
11 any of the following activities:

12 (a) Career assessment, planning, or testing through individual
13 counseling or group seminars, classes, or workshops;

14 (b) Skills analysis, resume writing, and preparation through
15 individual counseling or group seminars, classes, or workshops;

16 (c) Training in job search or interviewing skills through
17 individual counseling or group seminars, classes, or workshops(~~(+~~
18 ~~PROVIDED, That~~)). However, the career guidance and counseling service
19 does not engage in any of the following activities:

20 (i) Contacts employers on behalf of an applicant or in any way
21 intercedes between employer and applicant;

22 (ii) Provides information on specific job openings;

23 (iii) Holds itself out as able to provide referrals to specific
24 companies or individuals who have specific job openings.

25 **Sec. 15.** RCW 19.31.170 and 1993 c 499 s 6 are each amended to read
26 as follows:

27 EMPLOYMENT AGENCY; LIMITATIONS ON FEE AMOUNTS. (1) If an applicant
28 accepts employment by agreement with an employer and thereafter never
29 reports for work, the gross fee charged to the applicant shall not
30 exceed: (a) Ten percent of what the first month's gross salary or
31 wages would be, if known; or (b) ten percent of the first month's
32 drawing account. If the employment was to have been on a commission
33 basis without any drawing account, then no fee may be charged in the
34 event that the applicant never reports for work.

35 (2) If an applicant accepts employment on a commission basis
36 without any drawing account, then the gross fee charged such applicant
37 shall be a percentage of commissions actually earned.

1 (3) If an applicant accepts employment and if within sixty days of
2 his or her reporting for work the employment is terminated, then the
3 gross fee charged such applicant shall not exceed twenty percent of the
4 gross salary, wages or commission received by him or her.

5 (4) If an applicant accepts temporary employment as a domestic,
6 household employee, baby sitter, agricultural worker, or day laborer,
7 then the gross fee charged such applicant shall not be in excess of
8 twenty-five percent of the first full month's gross salary or wages(~~(+~~
9 ~~PROVIDED, That~~)). However, where an applicant accepts employment as a
10 domestic or household employee for a period of less than one month,
11 then the gross fee charged such applicant shall not exceed twenty-five
12 percent of the gross salary or wages paid.

13 (5) Any applicant requesting a refund of a fee paid to an
14 employment agency in accordance with the terms of the approved fee
15 schedule of the employment agency pursuant to this section shall file
16 with the employment agency a form requesting such refund on which shall
17 be set forth information reasonably needed and requested by the
18 employment agency, including but not limited to the following:
19 Circumstances under which employment was terminated, dates of
20 employment, and gross earnings of the applicant.

21 ~~((+6+))~~ (a) Refund requests which are not in dispute shall be made
22 by the employment agency within thirty days of receipt.

23 ~~((+7+))~~ (b) If a refund request involving a farm labor contractor
24 is in dispute, the director may hold a hearing in accordance with
25 chapter 34.05 RCW, determine whether a refund of a fee paid to the farm
26 labor contractor is proper, and order the farm labor contractor to make
27 the refund within thirty days. The state or an agricultural worker may
28 also bring an action for the refund against the farm labor contractor
29 in any court of competent jurisdiction of the county in which the claim
30 arose, or in which either the claimant or contractor resides.

31 (6) Subsections (1) through ~~((+6+))~~ (5) of this section do not
32 apply to employment listing services or employment directories.

33 NEW SECTION. Sec. 16. A new section is added to chapter 50.13 RCW
34 to read as follows:

35 H-2A PROGRAM INFORMATION. (1) The following records concerning an
36 agricultural employer or the employer's agent that are in the
37 possession of the employment security department under the federal H-2A

1 visa program, provided that the names or any other private information
2 of any specific worker is redacted, shall not be deemed private and
3 confidential under this chapter:

4 (a) Applications submitted by an agricultural employer or the
5 employer's agent for H-2A certification for temporary or seasonal
6 agricultural work and received by the department;

7 (b) Any correspondence between the department and the agricultural
8 employer or the employer's agent related to an H-2A application that
9 exists at the time of a written request;

10 (c) Any documents regarding housing inspections and
11 employer-provided transportation, if applicable, that exist at the time
12 of the written request; and

13 (d) Any job orders listed with the department in response to an
14 H-2A application for H-2A certification for temporary or seasonal
15 agricultural work.

16 (2) If applicable, RCW 42.56.210 applies to these records.

17 (3) If a request for these records relates to an H-2A application
18 for which workers are being recruited or employed at the time of the
19 request or may be recruited or employed in the future, the department
20 shall respond to a request for these records within five business days
21 by providing the requested records by facsimile or in scanned form in
22 an electronic mail to the requesting party, unless additional time is
23 required to respond to a request based upon the need to clarify the
24 intent of the request, to locate and assemble the requested records, or
25 to determine whether any of the requested records are exempt and
26 whether all or part of the request should be denied. If the department
27 is unable to fully respond within five business days, the department
28 shall respond to as much of the request as feasible. The department
29 shall also send a copy of its response by regular mail within eight
30 business days from the date the request was received if it provided an
31 initial response by facsimile.

32 (4) This chapter governs any information or records concerning a
33 specific worker possessed by the department under the H-2A visa
34 program.

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

1 NEW SECTION. **Sec. 18.** CAPTIONS. Captions used in this act are
2 not any part of the law.

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