

# SENATE BILL REPORT

## ESSB 6392

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As Passed Senate, February 11, 2012

**Title:** An act relating to a farm internship program.

**Brief Description:** Establishing a farm internship program.

**Sponsors:** Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Ranker, Kohl-Welles, Conway and Shin).

**Brief History:**

**Committee Activity:** Labor, Commerce & Consumer Protection: 1/24/12, 1/26/12, 1/30/12, 1/31/12 [DPS].

Passed Senate: 2/11/12, 47-0.

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### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

**Majority Report:** That Substitute Senate Bill No. 6392 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Keiser and Kline.

**Staff:** Mac Nicholson (786-7445)

**Background:** Generally, an individual who acts directly or indirectly in the interest of a for-profit business is considered an employee of that business, and a business that permits an individual to work is considered an employer, subjecting both the employee and employer to a number of state employment laws, including the Minimum Wage Act, the Industrial Insurance Act, the Employment Security Act, and the Industrial Welfare Act. Many of the different employment acts contain exemptions for specific groups of employees and employers. Referring to an individual as an intern or volunteer, or allowing an individual to provide services without compensation, does not exempt the employer or the employee from provisions of the respective acts.

Minimum Wage Act (MWA). The MWA establishes a minimum wage which must be paid to all employees in the state. Under the MWA, an employee is any individual employed by an employer except those specifically excluded in statute. Consequently, any individual who is engaged or permitted to work by an employer is entitled to the state minimum wage. A number of individuals are exempt from the MWA, including certain agricultural employees

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and volunteers for educational, charitable, religious, governmental, and nonprofit organizations.

Industrial Insurance Act. Industrial insurance provides medical and time loss benefits to workers injured in the course of their employment. Industrial insurance coverage is mandatory, and employers that maintain coverage generally cannot be sued for damages when an employee suffers a work-related injury. All employers (except for self-insured employers) must purchase industrial insurance through the Department of Labor and Industries (L&I), and the workers compensation system is funded by premiums collected from employers and employees. Premiums are calculated based on the industry risk classification and the employer's experience rating. Exemptions to mandatory coverage are specified in statute.

Employment Security Act. Under the Employment Security Act, qualified individuals who have lost their job through no fault of their own, or for good cause, can collect unemployment insurance benefits. Benefits are funded by contributions collected from all employers in the state. Exemptions to unemployment insurance coverage are specified in statute, and include an exemption for agricultural labor performed by students.

Industrial Welfare Act (IWA). The IWA regulates hours and conditions of labor and other wage issues not specifically covered by the MWA. The IWA applies to all employers and employees in the state unless specifically exempt. Agricultural workers exempt from unemployment insurance are also exempt from the IWA.

Farm Internship Program. In 2010 the Legislature directed L&I to establish a farm internship pilot project for San Juan and Skagit counties and report back to the Legislature by December 31, 2011. Pursuant to the pilot project, qualified small farms could employ up to three farm interns per year under special certificates. A farm intern is an individual who provides services to a small farm under a written agreement and primarily as a means of learning about farming practices and farm enterprises. Farms seeking to employ interns were required to execute an agreement with the intern and submit an application to L&I that set forth specific information including a description of the work to be performed, any wages to be paid, and a description of the farm internship program.

Under the pilot project, farm interns providing services under a farm internship program were not considered employees under the MWA and could be paid at subminimum wages during the effective period of a certificate. Similarly, agricultural labor provided by a farm intern was not considered employment for unemployment insurance purposes. L&I also provided a special industrial insurance risk class for farm interns.

Six small farms were awarded a small farm intern certificate, and nine interns were employed under the certificates during the pilot project. The pilot project expired on December 31, 2011.

**Summary of Engrossed Substitute Bill:** Farm Internship Program. The pilot project created in 2010 is re-authorized and expires on December 31, 2017, with the following changes: the counties eligible to participate in the pilot project are expanded to include San Juan, Skagit, Whatcom, Kitsap, Pierce, Jefferson, Spokane, Yakima, Chelan, Grant, Kittitas,

Lincoln, and Thurston; a small farm may employ no more than three interns at one time; language is added to provide that only farm interns providing services at for-profit farms are not considered employees for unemployment insurance purposes; and the agreement between the farmer and intern must explicitly state that the intern is not entitled to unemployment benefits and must describe the anticipated number of hours of curriculum instruction provided to the intern per week. Funds for the farm internship program must be appropriated from the state General Fund.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on the Original Bill:** PRO: The state is facing a crisis of aging farmers. The average age of a farmer is 56 years old, and 70 percent of farmland will change hands in next 20 years, which represents a potential disruption in the food system. There's also been an increased interest in local and organic food. There's a group of young people who are interested in farming and are coming to farm from non-traditional agricultural backgrounds. People entering farming rely on internships to get experience. These farm internships are important and this bill makes them safer and provides good safeguards for these vocational programs.

**Persons Testifying:** PRO: Ethan Schaffer, GrowFood.org.