

SSB 5156 - H COMM AMD

By Committee on Labor & Workplace Standards

ADOPTED AND ENGROSSED 04/12/2023

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that encouraging  
4 participation in agriculture is valuable. The farm internship program  
5 allows students to experience farming practices and get hands-on  
6 experience with farming activities. The internship program has  
7 existed since 2014 and was piloted in a few select counties. The  
8 legislature finds that this program is valuable, should be extended  
9 to all counties, and should continue without an expiration date.

10 **Sec. 2.** RCW 49.12.471 and 2020 c 212 s 1 are each amended to  
11 read as follows:

12 (1) The director shall establish a farm internship (~~(pilot)~~)  
13 project for the employment of farm interns on small farms under  
14 special certificates at wages, if any, as authorized by the  
15 department and subject to such limitations as to time, number,  
16 proportion, and length of service as provided in this section and as  
17 prescribed by the department. (~~(The pilot project consists of the~~  
18 ~~following counties: San Juan, Skagit, King, Whatcom, Kitsap, Pierce,~~  
19 ~~Jefferson, Spokane, Yakima, Chelan, Grant, Island, Snohomish,~~  
20 ~~Kittitas, Lincoln, Thurston, Walla Walla, Clark, Cowlitz, and~~  
21 ~~Lewis.)~~)

22 (2) (a) A small farm may employ no more than three interns at one  
23 time under this section.

24 (b) For any small farm located in a county that became eligible  
25 to participate in the farm intern project on the effective date of  
26 this act, at least one of the interns employed by the farm must be an  
27 individual who, in addition to meeting the farm's qualifications  
28 applicable to all intern applicants, also has direct experience  
29 working as a migrant farmworker or whose parent or grandparent has  
30 direct experience working as a migrant farmworker. If a farm is  
31 employing only one intern and the farm does not receive any

1 applications from individuals who meet the criteria set forth in this  
2 subsection, the requirement of this subsection does not apply. If a  
3 farm is employing more than one intern, the farm must employ at least  
4 one intern who meets the criteria set forth in this subsection.

5 (3) A small farm must apply for a special certificate on a form  
6 made available by the director. The application must set forth: The  
7 name of the farm and a description of the farm seeking the  
8 certificate; the type of work to be performed by a farm intern; a  
9 description of the internship program; the period of time for which  
10 the certificate is sought and the duration of an internship; the  
11 number of farm interns for which a special certificate is sought; the  
12 wages, if any, that will be paid to the farm intern; any room and  
13 board, stipends, and other remuneration the farm will provide to a  
14 farm intern; and the total number of workers employed by the farm.

15 (4) Upon receipt of an application, the department shall review  
16 the application and issue a special certificate to the requesting  
17 farm within fifteen days if the department finds that:

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

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

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

27 (d) A farm intern will not displace an experienced worker;  
28 ((and))

29 (e) If subsection (2)(b) of this section applies, the farm has  
30 included in the application either: (i) An attestation from at least  
31 one farm intern stating that the farm intern is an individual who has  
32 direct experience working as a migrant farmworker or whose parent or  
33 grandparent has direct experience working as a migrant farmworker; or  
34 (ii) an attestation that the farm is employing only one intern and  
35 the farm did not receive any applications from individuals who meet  
36 the criteria set forth in subsection (2)(b) of this section; and

37 (f) The farm demonstrates that the interns will perform work for  
38 the farm under an internship program that: (i) Provides a curriculum  
39 of learning modules and supervised participation in farm work  
40 activities designed to teach farm interns about farming practices and

1 farm enterprises; (ii) is based on the bona fide curriculum of an  
2 educational or vocational institution; (iii) encourages the interns  
3 to participate in career and technical education or other educational  
4 content with courses in agriculture or related programs of study at a  
5 community or technical college; and (~~(iii)~~) (iv) is reasonably  
6 designed to provide the intern with vocational knowledge and skills  
7 about farming practices and enterprises. In assessing an internship  
8 program, the department may consult with relevant college and  
9 university departments and extension programs and state and local  
10 government agencies involved in the regulation or development of  
11 agriculture.

12 (5) A special certificate issued under this section must specify  
13 the terms and conditions under which it is issued, including: The  
14 name of the farm; the duration of the special certificate allowing  
15 the employment of farm interns and the duration of an internship; the  
16 total number of interns authorized under the special certificate; the  
17 authorized wage rate, if any; and any room and board, stipends, and  
18 other remuneration the farm will provide to the farm intern. A farm  
19 intern may be paid at wages specified in the certificate only during  
20 the effective period of the certificate and for the duration of the  
21 internship.

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

31 (7) Before employing a farm intern, a farm must submit a  
32 statement on a form made available by the director stating that the  
33 farm understands: The requirements of the industrial welfare act,  
34 this chapter, that apply to farm interns; that the farm must pay  
35 workers' compensation premiums in the assigned intern risk class and  
36 must pay workers' compensation premiums for nonintern work hours in  
37 the applicable risk class; and that if the farm does not comply with  
38 subsection (8) of this section, the director may revoke the special  
39 certificate.

1 (8) The director may revoke a special certificate issued under  
2 this section if a farm fails to: Comply with the requirements of the  
3 industrial welfare act, this chapter, that apply to farm interns; pay  
4 workers' compensation premiums in the assigned intern risk class; or  
5 pay workers' compensation premiums in the applicable risk class for  
6 nonintern work hours.

7 (9) Before the start of a farm internship, the farm and the  
8 intern must sign a written agreement and send a copy of the agreement  
9 to the department. The written agreement must, at a minimum:

10 (a) Describe the internship program offered by the farm,  
11 including the skills and objectives the program is designed to teach  
12 and the manner in which those skills and objectives will be taught;

13 (b) Explicitly state that the intern is not entitled to  
14 unemployment benefits or minimum wages for work and activities  
15 conducted pursuant to the internship program for the duration of the  
16 internship;

17 (c) Describe the responsibilities, expectations, and obligations  
18 of the intern and the farm, including the anticipated number of hours  
19 of farm activities to be performed by and the anticipated number of  
20 hours of curriculum instruction provided to the intern per week;

21 (d) Describe the activities of the farm and the type of work to  
22 be performed by the farm intern; and

23 (e) (~~Describes~~ [~~Describe~~]) Describe any wages, room and board,  
24 stipends, and other remuneration the farm will provide to the farm  
25 intern.

26 (10) The department must limit the administrative costs of  
27 implementing the internship (~~pilot~~) program by relying on farm  
28 organizations and other stakeholders to perform outreach and inform  
29 the farm community of the program and by limiting employee travel to  
30 the investigation of allegations of noncompliance with program  
31 requirements.

32 (11) The definitions in this subsection apply throughout this  
33 section unless the context clearly requires otherwise.

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

37 (b) "Farm internship program" means an internship program  
38 described under subsection (4) (e) of this section.

39 (c) "Small farm" means a farm:

1 (i) Organized as a sole proprietorship, partnership, or  
2 corporation;

3 (ii) That reports on the applicant's schedule F of form 1040 or  
4 other applicable form filed with the United States internal revenue  
5 service annual sales less than (~~two hundred fifty thousand dollars~~)  
6 \$265,000; and

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

10 (12) The department shall monitor and evaluate the farm  
11 internships authorized by this section and report to the appropriate  
12 committees of the legislature by December 31, 2024. The report must  
13 include, but not be limited to: The number of small farms that  
14 applied for and received special certificates; the number of interns  
15 employed as farm interns; the nature of the educational activities  
16 provided to the farm interns; the wages and other remuneration paid  
17 to farm interns; the number of and type of workers' compensation  
18 claims for farm interns; the employment of farm interns following  
19 farm internships; and other matters relevant to assessing farm  
20 internships authorized in this section.

21 (~~(13) This section expires December 31, 2025.~~)

22 **Sec. 3.** RCW 49.46.010 and 2020 c 212 s 3 are each amended to  
23 read as follows:

24 As used in this chapter:

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

26 (2) "Employ" includes to permit to work;

27 (3) "Employee" includes any individual employed by an employer  
28 but shall not include:

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

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

1 (c) Any individual employed in a bona fide executive,  
2 administrative, or professional capacity or in the capacity of  
3 outside salesperson as those terms are defined and delimited by rules  
4 of the director. However, those terms shall be defined and delimited  
5 by the human resources director pursuant to chapter 41.06 RCW for  
6 employees employed under the director of personnel's jurisdiction;

7 (d) Any individual engaged in the activities of an educational,  
8 charitable, religious, state or local governmental body or agency, or  
9 nonprofit organization where the employer-employee relationship does  
10 not in fact exist or where the services are rendered to such  
11 organizations gratuitously. If the individual receives reimbursement  
12 in lieu of compensation for normally incurred out-of-pocket expenses  
13 or receives a nominal amount of compensation per unit of voluntary  
14 service rendered, an employer-employee relationship is deemed not to  
15 exist for the purpose of this section or for purposes of membership  
16 or qualification in any state, local government, or publicly  
17 supported retirement system other than that provided under chapter  
18 41.24 RCW;

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

26 (f) Any newspaper vendor, carrier, or delivery person selling or  
27 distributing newspapers on the street, to offices, to businesses, or  
28 from house to house and any freelance news correspondent or  
29 "stringer" who, using his or her own equipment, chooses to submit  
30 material for publication for free or a fee when such material is  
31 published;

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

34 (h) Any individual engaged in forest protection and fire  
35 prevention activities;

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

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

5 (k) Any resident, inmate, or patient of a state, county, or  
6 municipal correctional, detention, treatment or rehabilitative  
7 institution;

8 (l) Any individual who holds a public elective or appointive  
9 office of the state, any county, city, town, municipal corporation or  
10 quasi municipal corporation, political subdivision, or any  
11 instrumentality thereof, or any employee of the state legislature;

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

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

16 (o) (~~Until December 31, 2025, any~~) Any farm intern providing  
17 his or her services to a small farm which has a special certificate  
18 issued under RCW 49.12.471;

19 (p) An individual who is at least (~~sixteen~~) 16 years old but  
20 under twenty-one years old, in his or her capacity as a player for a  
21 junior ice hockey team that is a member of a regional, national, or  
22 international league and that contracts with an arena owned,  
23 operated, or managed by a public facilities district created under  
24 chapter 36.100 RCW;

25 (4) "Employer" includes any individual, partnership, association,  
26 corporation, business trust, or any person or group of persons acting  
27 directly or indirectly in the interest of an employer in relation to  
28 an employee;

29 (5) "Occupation" means any occupation, service, trade, business,  
30 industry, or branch or group of industries or employment or class of  
31 employment in which employees are gainfully employed;

32 (6) "Retail or service establishment" means an establishment  
33 seventy-five percent of whose annual dollar volume of sales of goods  
34 or services, or both, is not for resale and is recognized as retail  
35 sales or services in the particular industry;

36 (7) "Wage" means compensation due to an employee by reason of  
37 employment, payable in legal tender of the United States or checks on  
38 banks convertible into cash on demand at full face value, subject to  
39 such deductions, charges, or allowances as may be permitted by rules  
40 of the director.

1       **Sec. 4.** RCW 50.04.152 and 2020 c 212 s 2 are each amended to  
2 read as follows:

3       (1) Except for services subject to RCW 50.44.010, 50.44.020,  
4 50.44.030, or 50.50.010, the term "employment" does not include  
5 service performed in agricultural labor by a farm intern providing  
6 his or her services under a farm internship program as established in  
7 RCW 49.12.471.

8       (2) For purposes of this section, "agricultural labor" means:

9       (a) Services performed on a farm, in the employ of any person, in  
10 connection with the cultivation of the soil, or in connection with  
11 raising or harvesting any agricultural or horticultural commodity,  
12 including raising, shearing, feeding, caring for, training, and  
13 management of livestock, bees, poultry, and furbearing animals and  
14 wildlife, or in the employ of the owner or tenant or other operator  
15 of a farm in connection with the operation, management, conservation,  
16 improvement, or maintenance of such farm and its tools and equipment;

17       (b) Services performed in packing, packaging, grading, storing,  
18 or delivering to storage, or to market or to a carrier for  
19 transportation to market, any agricultural or horticultural  
20 commodity; but only if such service is performed as an incident to  
21 ordinary farming operations. The exclusions from the term  
22 "employment" provided in this subsection (2)(b) are not applicable  
23 with respect to commercial packing houses, commercial storage  
24 establishments, commercial canning, commercial freezing, or any other  
25 commercial processing or with respect to services performed in  
26 connection with the cultivation, raising, harvesting, and processing  
27 of oysters or raising and harvesting of mushrooms; or

28       (c) Direct local sales of any agricultural or horticultural  
29 commodity after its delivery to a terminal market for distribution or  
30 consumption.

31       (~~(3) This section expires December 31, 2025.~~)

32       **Sec. 5.** RCW 51.16.243 and 2020 c 212 s 4 are each amended to  
33 read as follows:

34       (1) The department shall adopt rules to provide special workers'  
35 compensation risk class or classes for farm interns providing  
36 agricultural labor pursuant to a farm internship program under RCW  
37 49.12.471. The rules must include any requirements for obtaining a  
38 special risk class that must be met by small farms.

39       (~~(2) This section expires December 31, 2025.~~)

1        NEW SECTION.    **Sec. 6.**    This act is necessary for the immediate  
2    preservation of the public peace, health, or safety, or support of  
3    the state government and its existing public institutions, and takes  
4    effect immediately."

5        Correct the title.

--- **END** ---