

LEGISLATIVE BILL 344

Approved by the Governor April 6, 1987

Introduced by Smith, 33; R. Johnson, 34; Nelson, 35;
Chambers, 11; Pappas, 42; Weihing, 48;
Hall, 7

AN ACT relating to employment; to adopt the Farm Labor Contractors Act; and to provide penalties.
Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as the Farm Labor Contractors Act.

Sec. 2. For purposes of the Farm Labor Contractors Act, unless the context otherwise requires:

(1) Department shall mean the Department of Labor;

(2) Farm labor contractor shall mean any individual, partnership, corporation, or cooperative association, other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association, who for any money or other valuable consideration paid or promised to be paid performs any farm labor contracting activity;

(3) Farm labor contracting activity shall mean recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant or seasonal agricultural worker; and

(4) Worker shall mean a person who is employed or recruited by or who subcontracts with a farm labor contractor.

Sec. 3. The following shall be excluded from the Farm Labor Contractors Act:

(1) Any individual who engages in a farm labor contracting activity on behalf of a farm, processing establishment, cannery, gin, packing shed, or nursery, which is owned and operated exclusively by such individual or a member of his or her immediate family, if such activities are performed only for such operation and exclusively by such individual or family member, but without regard to whether such individual has incorporated or otherwise organized for business purposes;

(2) Any common carrier which would be a farm labor contractor solely because it is engaged in transporting any migrant or seasonal agricultural

worker. For purposes of this section, a common carrier is one which holds itself out to the general public to engage in transportation of passengers for hire, whether over regular or irregular routes, and which holds a valid certificate or authorization for such purposes from an appropriate local, state, or federal agency;

(3) Any labor organization as defined under applicable state law;

(4) Any nonprofit charitable organization or public or private nonprofit educational institution;

(5) Any custom combine, hay harvesting, sheep shearing, or custom poultry operations;

(6) Employees of exempt employers; and

(7) Any operation which employs individuals domiciled within fifty miles of the location where the labor is to be performed and which has obtained a local operator's certificate of exemption from the department. Any operator who meets the requirements of this subdivision shall be issued such certificate by the department. The department shall adopt and promulgate rules and regulations necessary to carry out this subdivision.

Sec. 4. (1) Except as otherwise provided by the Farm Labor Contractors Act, no person shall act as a farm labor contractor and engage in farm labor contracting activity unless such person holds a valid license issued by the department.

(2) Farm labor contractor licenses may be issued by the department only as follows:

(a) To an individual operating as a sole proprietor under the person's own name or under an assumed business name registered with the state;

(b) To two or more individuals operating as a partnership under their own names or under an assumed business name registered with the state; and

(c) To a corporation or cooperative association authorized to do business in Nebraska.

(3) An application for a license as a farm labor contractor shall be sworn to by the applicant and shall be written on a form prescribed by the department. The form shall include, but not be limited to, the following:

(a) The applicant's name and Nebraska address and all other temporary and permanent addresses the applicant uses or knows will be used in the future;

(b) Information on all motor vehicles to be used by the applicant in operations as a farm labor contractor, including the license number and state of licensure, the vehicle number, and the name and address

of the vehicle owner for all vehicles used for farm labor contracting activity;

(c) Whether or not the applicant was ever denied a license under the Farm Labor Contractors Act or in any other jurisdiction under a similar law or had such a license revoked or suspended; and

(d) The names and addresses of all persons financially interested, whether as partners, shareholders, associates, or profit sharers in the applicant's proposed operations as a farm labor contractor, together with the amount of their respective interests, and whether or not, to the best of the applicant's knowledge, any of such persons was ever denied a license under the act or in any other jurisdiction or had such a license revoked or suspended.

Sec. 5. (1) Each applicant shall submit with the application and shall continually maintain proof of financial responsibility to ensure the prompt payment of wages of employees and other obligations that may arise under the Farm Labor Contractors Act. The proof shall be in the form of a corporate surety bond of a company licensed to do business in the State of Nebraska, a cash deposit, or a deposit the equivalent of cash. The department shall determine the amount of surety required, except that such amount shall not be less than five thousand dollars. In lieu of such surety, the farm labor contractor may establish a savings account at a financial institution in Nebraska in the name of the Commissioner of Labor as trustee for the employees of the farm labor contractor, and others as their interest may appear, and deliver the evidence of the account and the ability to withdraw funds to the department under terms approved by the department. No farm labor contractor license shall be issued to any applicant who has an unsatisfied final judgment of a court or decision of an administrative agency which would be covered by the bond or deposit required by the act against himself or herself. All corporate surety bonds filed under this section shall be executed to cover liability for a period of one year, during which the bond cannot be canceled or otherwise terminated.

(2) The surety company or the department shall make prompt and periodic payments on the farm labor contractor's liability to the extent of the total sum of the bond or deposit. Payments shall be made in the following manner:

(a) Payment shall be made based upon priority of wage claims over advances made by the grower or producer of agricultural commodities;

(b) Payment in full of all sums due to each person who presents adequate proof of a claim; and

(c) If there are insufficient funds to pay in full, the person next entitled to payment shall be paid in part.

(3) All claims against the bond or deposit shall be unenforceable unless request for payment of a judgment or other form of adequate proof of liability or a notice of the claim has been sent by certified mail to the surety or the department within six months from the end of the year for which the bond or deposit has been made.

(4) If the department has not received notice of the claim within six months after a farm labor contractor is no longer required to provide and maintain a surety bond or deposit, the department shall terminate and surrender any bond or any deposit under control of the department to the person who is entitled thereto upon receiving appropriate proof of such entitlement.

(5) The surety bond or deposit shall be payable to the Commissioner of Labor and shall be conditioned upon:

(a) Payment in full of all sums due on wage claims of employees; and

(b) Payment by the farm labor contractor of all sums due to the grower or producer of agricultural commodities for advances made to or on behalf of the farm labor contractor.

Sec. 6. Each application shall be accompanied by a fee of seven hundred fifty dollars. All fees so collected shall be deposited in the Farm Labor Contractors Fund.

Sec. 7. There is hereby created the Farm Labor Contractors Fund for purposes of enforcing the Farm Labor Contractors Act. Any money in such fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 8. The department shall adopt and promulgate rules and regulations reasonably necessary for the administration and enforcement of the Farm Labor Contractors Act.

Sec. 9. Every farm labor contractor covered by the Farm Labor Contractors Act shall post conspicuously upon the premises where employees working under the contractor are employed, in both English and Spanish, a notice specifying the contractor's compliance with the act and the name and Nebraska address of the surety on the bond or a notice that a deposit in lieu of the bond has been made with the department together with

the address of the department.

Sec. 10. (1) The department shall conduct an investigation of each applicant's character, competence, and reliability and any other matters relating to the applicant's operations as a farm labor contractor.

(2) The department shall issue a license within fifteen days of receipt of the application if the department determines that the applicant is of satisfactory character, competence, and reliability.

(3) Any person may protest the issuance of a license to any applicant at any time by filing with the department a written statement detailing such person's reasons for protesting.

(4) The licensing year shall run from April 1 to the following March 31 and each license shall expire on March 31 following the date of its issuance unless sooner revoked by the department.

(5) A license shall be renewed annually upon payment in advance of a fee of seven hundred fifty dollars, except that the Commissioner of Labor may require any person seeking renewal to file a new application and may conduct a new investigation of the applicant's character, competence, and reliability and any other matters relating to the applicant's operations as a farm labor contractor.

Sec. 11. A farm labor contractor shall:

(1) Carry his or her farm labor contractor license at all times and exhibit such license upon request to any person with whom the contractor intends to deal in his or her capacity as a farm labor contractor;

(2) File immediately at the United States post office serving the farm labor contractor's address as noted on the license a correct change of address and notify the department each time an address change is made;

(3) Pay or distribute promptly when due to the individuals entitled all money or other things of value entrusted to the farm labor contractor by any person for that purpose;

(4) Comply with the terms and provisions of all legal and valid agreements or contracts entered into by the farm labor contractor;

(5) Comply with all state laws, rules, and regulations relevant to the activity as a farm labor contractor;

(6) Furnish to each worker at the time of hiring, recruiting, soliciting, or supplying such worker, whichever occurs first, a written statement in

both English and Spanish which contains a description of:

(a) The method of computing the rate of compensation and the rate of compensation;

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

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

(d) The conditions of any housing and health and day care to be provided;

(e) The terms and conditions of employment, including the approximate length of season or period of employment and the approximate starting and ending dates;

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

(g) The name and address of the owner of all operations where the worker will be working; and

(h) The worker's rights and remedies in plain and simple language in a form specified by the department; and

(7) Furnish to the worker each time the worker receives a compensation payment from the farm labor contractor a written statement itemizing the total payment, the amount and purpose of each deduction therefrom, the hours worked, and, if the work is done on a piece basis, the number of pieces completed.

Sec. 12. A farm labor contractor or an applicant for a farm labor contractor license shall not:

(1) Make any misrepresentation, false statement, or willful concealment in the application for a license or in his or her dealing with workers;

(2) Solicit or induce or cause to be solicited or induced the violation of an existing contract of employment;

(3) Assist a person to act in violation of the Farm Labor Contractors Act; and

(4) By any force, intimidation, or threat, including threat of deportation, induce any worker employed or in a subcontracting relationship to the farm labor contractor to give up any part of the compensation to which the worker is entitled under the contract of employment or under federal or state wage laws.

Sec. 13. The department may revoke, suspend, or refuse to renew a farm labor contractor license upon the department's own motion or upon complaint by any individual if:

(1) The licensee or his or her agent has

violated or failed to comply with any provision of the Farm Labor Contractors Act;

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

(3) The licensee's character, reliability, or competence makes him or her an unfit farm labor contractor.

Sec. 14. (1) Any person violating section 11 or 12 of this act shall be guilty of a Class II misdemeanor.

(2) Any person who (a) intentionally defaces, alters, or changes a farm labor contractor license, (b) uses the license of another, (c) knowingly permits the use of another person's license, or (d) acts as a farm labor contractor without a license shall be guilty of a Class II misdemeanor.