

**Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 08-0607.01 Kristen Forrestal

HOUSE BILL 08-1325

HOUSE SPONSORSHIP

Looper, and Rose

SENATE SPONSORSHIP

Tapia,

House Committees

State, Veterans, & Military Affairs
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE COLORADO NONIMMIGRANT AGRICULTURAL**
102 **SEASONAL WORKER PILOT PROGRAM.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires the executive director (director) of the department of labor and employment (department), in conjunction with the commissioner of the department of agriculture (commissioner), to implement the nonimmigrant agricultural seasonal worker pilot program (program) for the purpose of expediting recruitment, application, and approval of workers through the federal H-2A certification process.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

Requires the program to include sectors of the agriculture industry and up to 1,000 workers in the first year. Requires the director and the commissioner, in conjunction with the director of the office of economic development and international trade, to seek agreements between Colorado and foreign countries to assist in the recruitment and selection of H-2A workers. Requires the director to require the country of origin of each worker to perform background checks. Requires each H-2A visa applicant who wishes to participate in the program to submit to a fingerprint-based criminal history record check. Authorizes the department to establish offices in the countries of origin.

Requires an employer who is interested in participating in the program to submit an application to the department. Authorizes the director to retain local agents to aid in the application process, medical screening, travel, and documentation of return to the countries of origin of the prospective employees.

Requires each employer to:

- ! Pay for the visa application;
- ! Provide transportation for the employees;
- ! Provide housing for the employees;
- ! Pay fair wages to each employee that are in compliance with existing federal law;
- ! Provide workers' compensation insurance;
- ! Provide meals and necessary tools and supplies to the employees;
- ! Provide a copy of the work contract to the employee;
- ! Pay the employee at least twice per month; and
- ! Guarantee a minimum number of hours of work.

Requires each employer seeking to participate in the program to make assurances to the department.

Requires an employer to notify the department and the appropriate local law enforcement agency if an employee cannot be located and has not reported for work as scheduled or be subject to a penalty imposed by the department.

Directs each employer to withhold 20% of the wages of each employee, to be returned by the department upon the employee's return to the country of origin or, if the employee does not return to the country of origin, transferred to the local law enforcement agency of the employer.

Requires each employee to enter into a contract with the department to:

- ! Allow the department to deposit 20% of the employee's wages into the nonimmigrant agricultural seasonal worker pilot program account;
- ! Return to his or her country of origin after employment has terminated or his or her H-2A visa is expired; and

! Within 2 weeks of the employee's arrival in Colorado, apply for an identification card issued by the department of revenue.

Requires the department of revenue to include employer identification numbers on the identification cards. Requires the department of labor and employment to maintain a database of identification cards issued to program participants that is accessible to law enforcement officials.

Directs the department to apply for waivers necessary to implement an approval process for H-2A certification in lieu of the federal approval process.

Requires the director and the commissioner to make a report to committees of the general assembly regarding the progress of the program and any recommended legislative changes.

Makes legislative findings.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) Americans enjoy the safest, most abundant, and most
5 affordable food supply in the world, thanks in large part to the efficiency
6 and productivity of American farm and ranch families;

7 (b) Of all consumers worldwide, American consumers spend the
8 lowest percentage of their annual income, only ten percent, on food;

9 (c) Agriculture continues to be a vital part of Colorado's future,
10 playing a unique role in our economic strength, providing over one
11 hundred five thousand jobs, four and four-tenths percent of the state's
12 total, generating over sixteen billion dollars of economic activity
13 annually;

14 (d) Colorado is ranked as the sixteenth largest agricultural
15 producer in the United States;

16 (e) Colorado's cash receipts for the year 2005 totaled five billion
17 six hundred million dollars, with livestock products accounting for

1 seventy-two percent of the total and crops accounting for the other
2 twenty-eight percent;

3 (f) Colorado farmers and ranchers help to feed the world,
4 exporting nearly one billion dollars in food products annually, with
5 Mexico, Canada, Japan, and Taiwan receiving the largest share of
6 Colorado food products;

7 (g) A 2007 Colorado state university agritourism study indicates
8 that approximately thirteen million two hundred thousand people
9 participated in some form of Colorado agritourism in 2006, and it is
10 estimated that Colorado agritourism generated about two billion two
11 hundred thousand dollars for Colorado's economy, or fourteen percent of
12 tourism's economic activity in Colorado;

13 (h) Colorado's agriculture industry employs an estimated nine
14 thousand seasonal workers annually, and the agriculture industry faces
15 critical shortages of seasonal workers;

16 (i) The Colorado general assembly realizes Colorado's
17 agricultural leadership in the world market would not be possible without
18 the hard, tedious, and dangerous work of the farmer, rancher, and
19 agricultural seasonal worker;

20 (j) The economic health of the state of Colorado, specifically the
21 agriculture community and consumers of Colorado, will be bearing the
22 negative effects of the inability of the United States department of labor
23 to process H-2A visa applications in a timely manner;

24 (k) It is the purpose of this act to remove constraints on commerce
25 caused by activities detrimental to Colorado's agriculture industry and to
26 allow the Colorado department of labor and employment, in cooperation
27 with the Colorado commissioner of agriculture, to establish a Colorado

1 nonimmigrant agricultural seasonal worker pilot program and to assure
2 necessary protections for nonimmigrant and seasonal agricultural
3 workers;

4 (l) The Colorado department of labor and employment, the
5 Colorado commissioner of agriculture, and approved agents will work
6 closely with the United States department of labor, the United States
7 citizenship and immigration services, and the United States department
8 of state to provide for a timely, efficient, and effective process for
9 workers participating in the Colorado nonimmigrant agricultural seasonal
10 worker pilot program and the H-2A visa certification process;

11 (m) The Colorado nonimmigrant agricultural seasonal worker
12 pilot program will include provisions for accountability, enforcement, and
13 oversight;

14 (n) The Colorado nonimmigrant agricultural seasonal worker pilot
15 program is an effort to save Colorado's agriculture economy from further
16 harm, Colorado's farmers from additional closures due to labor shortages,
17 and to provide Colorado consumers with the finest products in the world
18 at a reasonable price, in a timely manner, and in a dependable way; and

19 (o) Because the federal H-2A visa certification process is often the
20 only option available to Colorado producers needing temporary labor, and
21 because of the multiple problems with the H-2A visa certification process'
22 ability to provide seasonal workers in a time and manner to meet the
23 needs of producers, the Colorado department of labor and employment
24 and the Colorado commissioner of agriculture should work together and
25 in conformity with existing federal laws to implement a pilot program to
26 meet the temporary employment needs of Colorado producers.

27 **SECTION 2.** Title 8, Colorado Revised Statutes, is amended BY

1 THE ADDITION OF A NEW ARTICLE to read:

2 **ARTICLE 3.5**

3 **Nonimmigrant Agricultural Seasonal**

4 **Worker Pilot Program**

5 **8-3.5-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND MAY
6 BE CITED AS THE "COLORADO NONIMMIGRANT AGRICULTURAL SEASONAL
7 WORKER PILOT PROGRAM ACT".

8 **8-3.5-102. Legislative declaration.** IT IS THE INTENT OF THE
9 GENERAL ASSEMBLY TO ESTABLISH A NONIMMIGRANT AGRICULTURAL
10 SEASONAL WORKER PILOT PROGRAM TO EXPEDITE THE SEASONAL WORKER
11 APPLICATION AND APPROVAL PROCESS IN COMPLIANCE WITH THE EXISTING
12 FEDERAL H-2A VISA CERTIFICATION PROCESS SO THAT ELIGIBLE WORKERS
13 MAY COME TO COLORADO LEGALLY, SAFELY, AND IN A TIMELY MANNER
14 TO MEET THE DEMANDS OF COLORADO PRODUCERS.

15 **8-3.5-103. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
16 CONTEXT OTHERWISE REQUIRES:

17 (1) "AGENT" MEANS A PERSON OR ENTITY IN THE BUSINESS OF:

18 (a) DEVELOPING AND SUBMITTING APPROPRIATE APPLICATION
19 MATERIALS TO THE STATE EMPLOYMENT SECURITY AGENCY AND THE
20 DEPARTMENT RESPONSIBLE FOR ISSUING LABOR CERTIFICATIONS FOR A
21 SPECIFIC EMPLOYER AND JOB;

22 (b) COORDINATING LOCAL RECRUITMENT WITH THE EMPLOYER
23 AND STATE EMPLOYMENT SECURITY AGENCY;

24 (c) DEVELOPING APPROPRIATE DOCUMENTATION OF EMPLOYER
25 REQUIREMENTS AND EMPLOYMENT TERMS FOR USE IN SELECTING FOREIGN
26 WORKERS; AND

27 (d) FILING FOR VISA PETITION APPROVAL AND COORDINATING VISA

1 ISSUANCE BY THE UNITED STATES CONSULATE OR EMBASSY IN THE
2 WORKER'S COUNTRY OF ORIGIN.

3 (2) "COMMISSIONER" MEANS THE COMMISSIONER OF THE
4 COLORADO DEPARTMENT OF AGRICULTURE.

5 (3) "DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF
6 LABOR AND EMPLOYMENT.

7 (4) "DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE
8 DEPARTMENT OF LABOR AND EMPLOYMENT OR HIS OR HER DESIGNEE.

9 (5) "EMPLOYEE" MEANS A PERSON WHO WORKS FOR AN EMPLOYER
10 AND IS AN ACTIVE PARTICIPANT IN THE PROGRAM.

11 (6) "EMPLOYER" MEANS A PERSON OR ENTITY THAT HAS APPLIED
12 AND BEEN ACCEPTED TO PARTICIPATE IN THE PROGRAM AND EMPLOYS ONE
13 OR MORE EMPLOYEES.

14 (7) (a) "H-2A VISA" MEANS A TEMPORARY AGRICULTURAL
15 NONIMMIGRANT VISA THAT ALLOWS FOREIGN NATIONALS TO ENTER INTO
16 THE UNITED STATES TO PERFORM AGRICULTURAL LABOR OR SERVICES OF
17 A TEMPORARY OR SEASONAL NATURE AND THAT IS ISSUED PURSUANT TO
18 THE FEDERAL "IMMIGRATION REFORM AND CONTROL ACT OF 1986", 8
19 U.S.C. SEC. 1101 ET SEQ.

20 (b) AN H-2A VISA ALLOWS FOR THE ADMISSION OF NONIMMIGRANT
21 FOREIGN WORKERS INTO THE UNITED STATES TO PERFORM AGRICULTURAL
22 WORK THAT IS TEMPORARY IN NATURE, SUCH AS HARVESTING CROPS.
23 NONIMMIGRANTS ARE PERSONS LEGALLY ADMITTED INTO THE UNITED
24 STATES FOR A SPECIFIC PURPOSE AND TIME PERIOD AND WHO DO NOT
25 INTEND TO MAKE THE UNITED STATES THEIR PERMANENT RESIDENCE.
26 H-2A VISAS ARE ADMINISTERED JOINTLY BY THE UNITED STATES
27 DEPARTMENT OF LABOR AND THE UNITED STATES CITIZENSHIP AND

1 IMMIGRATION SERVICES.

2 (8) "LABOR CERTIFICATION" MEANS THE PROCESS BY WHICH THE
3 UNITED STATES DEPARTMENT OF LABOR IS PERMITTED TO ISSUE
4 CERTIFICATION THAT THERE ARE NOT SUFFICIENT UNITED STATES
5 WORKERS WHO ARE ABLE, WILLING, AND QUALIFIED TO PERFORM
6 AGRICULTURAL SERVICES ON A TEMPORARY BASIS, AND THAT THE
7 EMPLOYMENT OF FOREIGN WORKERS IN THE LABOR OR SERVICES WILL NOT
8 ADVERSELY AFFECT THE WAGES AND WORKING CONDITIONS OF WORKERS
9 IN THE UNITED STATES. EMPLOYERS WHO ANTICIPATE A SHORTAGE OF
10 AVAILABLE UNITED STATES WORKERS NEEDED TO PERFORM
11 AGRICULTURAL LABOR ON A TEMPORARY BASIS MAY APPLY TO THE
12 UNITED STATES DEPARTMENT OF LABOR FOR CERTIFICATION. THE
13 APPLICATION FOR CERTIFICATION MUST INCLUDE A COPY OF THE JOB OFFER
14 THAT WILL BE USED BY EACH EMPLOYER FOR THE RECRUITMENT OF
15 UNITED STATES AND H-2A WORKERS, THE ESTIMATED NUMBER OF
16 WORKERS NEEDED BY THE EMPLOYER, AND THE DATE BY WHICH THE
17 WORKERS ARE NEEDED. EMPLOYERS ARE REQUIRED TO APPLY FOR
18 CERTIFICATION AT LEAST FORTY-FIVE DAYS IN ADVANCE OF THEIR
19 ESTIMATED DATE OF NEED.

20 (9) "PROGRAM" MEANS THE NONIMMIGRANT AGRICULTURAL
21 SEASONAL WORKER PILOT PROGRAM ESTABLISHED IN SECTION 8-3.5-104.

22 **8-3.5-104. Pilot program - creation - powers of department -
23 advisory council.** (1) THERE IS HEREBY ESTABLISHED IN THE

24 DEPARTMENT THE NONIMMIGRANT AGRICULTURAL SEASONAL WORKER
25 PILOT PROGRAM. THE PURPOSE OF THE PROGRAM SHALL BE TO EXPEDITE
26 THE APPLICATION AND APPROVAL OF THE FEDERAL H-2A VISA
27 CERTIFICATION PROCESS ESTABLISHED AS PART OF THE FEDERAL

1 "IMMIGRATION REFORM AND CONTROL ACT OF 1986", 8 U.S.C. SEC. 1101
2 ET SEQ. UPON THE PROMULGATION OF RULES PURSUANT TO SECTION
3 8-3.5-113, THE DIRECTOR OR HIS OR HER DESIGNEE, IN COOPERATION WITH
4 THE COMMISSIONER OR HIS OR HER DESIGNEE, SHALL IMPLEMENT THE
5 PROGRAM.

6 (2) THE PROGRAM SHALL INCLUDE SECTORS OF THE AGRICULTURE
7 INDUSTRY IDENTIFIED BY THE DIRECTOR IN COOPERATION WITH THE
8 COMMISSIONER, SHALL BE LIMITED TO ONE THOUSAND EMPLOYEES IN THE
9 FIRST YEAR, AND SHALL INCREASE BY ONE THOUSAND ADDITIONAL
10 EMPLOYEES ANNUALLY FOR FOUR YEARS THEREAFTER.

11 (3) THE DIRECTOR AND THE COMMISSIONER, IN CONJUNCTION WITH
12 THE DIRECTOR OF THE GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT
13 AND INTERNATIONAL TRADE, MAY SEEK AGREEMENTS BETWEEN
14 COLORADO AND FOREIGN COUNTRIES TO ASSIST IN THE RECRUITING AND
15 SELECTION OF ELIGIBLE H-2A WORKERS AND IN THE MAINTENANCE OF A
16 POOL OF WORKERS TO DEPART FOR WORK IN COLORADO UPON THE
17 APPROVAL OF THE EMPLOYEES' FEDERAL H-2A VISAS AND EMPLOYER
18 APPROVAL FOR PARTICIPATION IN THE PROGRAM.

19 (4) THERE IS HEREBY ESTABLISHED THE NONIMMIGRANT
20 AGRICULTURAL SEASONAL WORKER PILOT PROGRAM ADVISORY COUNCIL.
21 THE ADVISORY COUNCIL MEMBERS SHALL BE THE COMMISSIONER OF THE
22 DEPARTMENT OF AGRICULTURE OR HIS OR HER DESIGNEE, THE EXECUTIVE
23 DIRECTOR OF THE DEPARTMENT OF LABOR AND EMPLOYMENT OR HIS OR
24 HER DESIGNEE, THE CHAIRS OF THE HOUSE BUSINESS AFFAIRS AND LABOR
25 COMMITTEE AND THE SENATE BUSINESS, LABOR, AND TECHNOLOGY
26 COMMITTEE, THE CHAIRS OF THE HOUSE AND SENATE AGRICULTURE,
27 LIVESTOCK, AND NATURAL RESOURCES COMMITTEES, OR THEIR SUCCESSOR

1 COMMITTEES, AND THREE APPOINTEES OF THE GOVERNOR, ONE WHO IS A
2 REPRESENTATIVE OF THE AGRICULTURE INDUSTRY, ONE WHO HAS
3 EXPERIENCE IN IMMIGRATION SERVICES, AND ONE WHO IS A
4 REPRESENTATIVE OF A MIGRANT WORKER ADVOCACY GROUP. THE
5 ADVISORY COUNCIL SHALL MAKE RECOMMENDATIONS FOR THE ADOPTION
6 OF RULES PURSUANT TO SECTION 8-3.5-113 AND SHALL ASSIST IN THE
7 PREPARATION OF THE REPORT TO THE GENERAL ASSEMBLY PURSUANT TO
8 SECTION 8-3.5-112. THE ADVISORY COMMITTEE SHALL CONSULT WITH
9 HEALTH INSURANCE CARRIERS IN THIS STATE TO DETERMINE THE
10 AVAILABILITY OF HEALTH INSURANCE PLANS FOR EMPLOYEES
11 PARTICIPATING IN THE PROGRAM. THE ADVISORY COMMITTEE SHALL
12 INCLUDE IN THE REPORT TO THE GENERAL ASSEMBLY ANY LEGISLATIVE
13 RECOMMENDATIONS DEEMED NECESSARY TO MAKE HEALTH INSURANCE
14 AVAILABLE TO SEASONAL AGRICULTURAL WORKERS.

15 **8-3.5-105. Application process - screening.** (1) THE
16 DEPARTMENT SHALL WORK WITH EMPLOYERS PARTICIPATING IN THE
17 PROGRAM TO EXPEDITE THE H-2A VISA APPLICATION, APPROVAL, AND
18 RECRUITMENT PROCESS SO THAT THE SEASONAL AGRICULTURAL NEEDS OF
19 THE EMPLOYERS ARE MET IN A TIMELY MANNER.

20 (2) THE DEPARTMENT IS AUTHORIZED TO CHARGE EMPLOYERS A
21 FEE NECESSARY TO COVER THE COSTS OF THE PROGRAM. THE FEES
22 COLLECTED SHALL BE TRANSFERRED TO THE STATE TREASURER WHO
23 SHALL DEPOSIT THE MONEYS INTO THE NONIMMIGRANT AGRICULTURAL
24 SEASONAL WORKER PILOT PROGRAM CASH FUND ESTABLISHED IN SECTION
25 8-3.5-108.

26 (3) THE DIRECTOR MAY RETAIN AGENTS TO ASSIST IDENTIFIED
27 WORKERS MAKING APPLICATIONS FOR H-2A VISAS THROUGH THE UNITED

1 STATES EMBASSY OR CONSULATE, TO COORDINATE A MEDICAL SCREENING
2 OF WORKERS PRIOR TO THEIR DEPARTURE TO THE UNITED STATES, TO
3 COORDINATE TRAVEL TO COLORADO, AND TO DOCUMENT EACH
4 EMPLOYEE'S RETURN TO HIS OR HER COUNTRY OF ORIGIN.

5 (4) THE EMPLOYER SHALL:

6 (a) REIMBURSE THE EMPLOYEE FOR THE COSTS OF
7 TRANSPORTATION AND SUBSISTENCE FROM THE SITE OF RECRUITMENT TO
8 THE PLACE OF EMPLOYMENT WHEN HALF OF THE CONTRACT PERIOD IS
9 COMPLETE;

10 (b) PROVIDE FREE TRANSPORTATION TO THE EMPLOYEE BETWEEN
11 THE EMPLOYEE'S LOCAL HOUSING AND THE WORKSITE;

12 (c) PAY FOR THE COSTS OF RETURN TRANSPORTATION AND
13 SUBSISTENCE TO THE PLACE OF RECRUITMENT WHEN THE CONTRACT
14 PERIOD IS COMPLETE;

15 (d) PROVIDE FREE HOUSING FOR EACH EMPLOYEE THAT MEETS
16 SAFETY AND HEALTH STANDARDS ESTABLISHED BY FEDERAL LAW, WHICH
17 SHALL BE SUBJECT TO INSPECTION BY THE DEPARTMENT;

18 (e) PROVIDE UNITED STATES WORKERS AND EMPLOYEES THE SAME
19 BENEFITS, WAGES, AND WORKING CONDITIONS;

20 (f) PAY THE EMPLOYEE WAGES THAT ARE IN COMPLIANCE WITH
21 THE FEDERAL REQUIREMENTS ESTABLISHED PURSUANT TO THE FEDERAL
22 "IMMIGRATION REFORM AND CONTROL ACT OF 1986", 8 U.S.C. SEC. 1101
23 ET SEQ.;

24 (g) PROVIDE WORKERS' COMPENSATION INSURANCE;

25 (h) PROVIDE ALL TOOLS, SUPPLIES, AND EQUIPMENT REQUIRED TO
26 PERFORM THE DUTIES ASSIGNED, WITHOUT CHARGE, TO THE EMPLOYEE;

27 (i) IN COMPLIANCE WITH FEDERAL LAW, PROVIDE EACH EMPLOYEE

1 WITH THREE LOW-COST MEALS PER DAY AND DISCLOSE THE COST IN THE
2 EMPLOYMENT CONTRACT OR PROVIDE FREE COOKING AND KITCHEN
3 FACILITIES;

4 (j) GUARANTEE EMPLOYMENT FOR AT LEAST THREE-FOURTHS OF
5 THE WORK DAYS DURING THE WORK CONTRACT PERIOD;

6 (k) GUARANTEE THAT THE EMPLOYEE WILL BE PAID AT LEAST
7 TWICE PER MONTH; AND

8 (l) PROVIDE TO THE EMPLOYEE A COPY OF THE WORK CONTRACT
9 BETWEEN THE EMPLOYER AND THE EMPLOYEE.

10 (5) AN EMPLOYER SEEKING TO EMPLOY EMPLOYEES THROUGH THE
11 PROGRAM SHALL MAKE THE FOLLOWING ASSURANCES:

12 (a) THAT THE EMPLOYER WILL COMPLY WITH APPLICABLE
13 FEDERAL, STATE, AND LOCAL EMPLOYMENT LAWS;

14 (b) THAT NO UNITED STATES WORKER WILL BE REJECTED FOR OR
15 TERMINATED FROM EMPLOYMENT OTHER THAN FOR A LAWFUL
16 JOB-RELATED REASON; AND

17 (c) THAT THE EMPLOYER WILL, IN A TIMELY MANNER, PAY THE
18 FEES ASSOCIATED WITH THE PROGRAM.

19 **8-3.5-106. Visa violation notification - employee compliance.**

20 (1) EACH EMPLOYER SHALL NOTIFY THE DEPARTMENT WITHIN
21 FORTY-EIGHT HOURS IF AN EMPLOYEE CANNOT BE LOCATED AND HAS NOT
22 REPORTED FOR WORK AS SCHEDULED.

23 (2) IF AN EMPLOYER FAILS TO NOTIFY THE DEPARTMENT AS
24 REQUIRED IN SUBSECTION (1) OF THIS SECTION, THE DEPARTMENT MAY:

25 (a) DENY THE EMPLOYER FUTURE PARTICIPATION IN THE PROGRAM;

26 OR

27 (b) IMPOSE A FINE ON THE EMPLOYER FOR EACH VIOLATION, NOT

1 TO EXCEED TWO HUNDRED DOLLARS PER DAY PER VIOLATION, THAT SHALL
2 BE DEPOSITED INTO THE NONIMMIGRANT AGRICULTURAL SEASONAL
3 WORKER PILOT PROGRAM CASH FUND CREATED IN SECTION 8-3.5-108.

4 (3) THE DEPARTMENT SHALL NOTIFY THE UNITED STATES
5 CITIZENSHIP AND IMMIGRATION SERVICES OF ANY KNOWN VIOLATIONS OF
6 THE CONDITIONS FOR THE ISSUANCE OF AN H-2A VISA.

7 (4) AN EMPLOYEE WHO COMPLIES WITH THE CONDITIONS OF THE
8 PROGRAM SHALL HAVE THE OPPORTUNITY AND BE GIVEN PRIORITY TO
9 PARTICIPATE IN THE PROGRAM THE FOLLOWING YEAR.

10 **8-3.5-107. Retaliation prohibited.** AN EMPLOYER SHALL NOT
11 INTIMIDATE, THREATEN, RESTRAIN, COERCE, BLACKLIST, DISCHARGE, OR
12 IN ANY MANNER DISCRIMINATE AGAINST ANY PERSON WHO HAS, WITH JUST
13 CAUSE, PERFORMED ANY ACT ENUMERATED IN 20 CFR 655.103 (g).

14 **8-3.5-108. Nonimmigrant agricultural seasonal worker pilot**
15 **program cash fund.** THERE IS HEREBY ESTABLISHED THE
16 NONIMMIGRANT AGRICULTURAL SEASONAL WORKER PILOT PROGRAM CASH
17 FUND IN THE STATE TREASURY, REFERRED TO IN THIS SECTION AS THE
18 "FUND". MONEYS IN THE FUND SHALL CONSIST OF ANY FEES OR FINES
19 COLLECTED PURSUANT TO THIS ARTICLE. THE MONEYS IN THE FUND SHALL
20 BE ANNUALLY APPROPRIATED TO THE DEPARTMENT FOR THE
21 ADMINISTRATIVE COSTS ASSOCIATED WITH THE PROGRAM. ANY MONEYS
22 REMAINING IN THE FUND AT THE END OF ANY FISCAL YEAR SHALL REMAIN
23 IN THE FUND AND SHALL NOT REVERT TO THE GENERAL FUND OR ANY
24 OTHER FUND.

25 **8-3.5-109. Identification cards issued by department of**
26 **revenue.** WITHIN TWO WEEKS AFTER AN EMPLOYEE'S ARRIVAL IN
27 COLORADO, THE EMPLOYEE SHALL APPLY FOR AN IDENTIFICATION CARD

1 ISSUED BY THE DEPARTMENT OF REVENUE PURSUANT TO PART 3 OF
2 ARTICLE 2 OF TITLE 42, C.R.S. THE EMPLOYER SHALL PROVIDE FREE
3 TRANSPORTATION TO THE EMPLOYEE IN ORDER FOR THE EMPLOYEE TO
4 MEET THIS REQUIREMENT.

5 **8-3.5-110. Penalties.** A PERSON WHO VIOLATES ANY PROVISIONS
6 OF THIS ARTICLE, OR WHO CAUSES OR INDUCES ANOTHER TO VIOLATE ANY
7 PROVISIONS OF THIS ARTICLE, SHALL BE GUILTY OF A MISDEMEANOR
8 PUNISHABLE BY A FINE OF NOT MORE THAN FIVE THOUSAND DOLLARS,
9 IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN SIX MONTHS, OR
10 BOTH. ANY MONEYS COLLECTED PURSUANT TO THIS SECTION SHALL BE
11 TRANSFERRED TO THE STATE TREASURER WHO SHALL DEPOSIT THE SAME
12 INTO THE NONIMMIGRANT AGRICULTURAL SEASONAL WORKER PILOT
13 PROGRAM CASH FUND ESTABLISHED IN SECTION 8-3.5-108.

14 **8-3.5-111. Civil penalty - hearing - court action - civil actions**
15 **- injunctions.** (1) IN ADDITION TO ANY CRIMINAL PENALTY IMPOSED
16 UNDER SECTION 8-3.5-110, THE DIRECTOR MAY ASSESS AGAINST ANY
17 PERSON WHO VIOLATES THIS ARTICLE, OR ANY RULE ADOPTED UNDER THIS
18 ARTICLE, A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS
19 FOR EACH VIOLATION.

20 (2) THE PERSON SHALL BE AFFORDED THE OPPORTUNITY FOR A
21 HEARING UPON REQUEST TO THE DIRECTOR MADE WITHIN THIRTY DAYS
22 AFTER THE DATE OF ISSUANCE OF THE NOTICE OF ASSESSMENT.

23 (3) IF ANY PERSON FAILS TO PAY AN ASSESSMENT AFTER IT HAS
24 BECOME A FINAL AND UNAPPEALABLE ORDER, OR AFTER THE COURT HAS
25 ENTERED FINAL JUDGMENT IN FAVOR OF THE DEPARTMENT, THE DIRECTOR
26 SHALL REFER THE MATTER TO THE STATE ATTORNEY GENERAL, WHO SHALL
27 RECOVER THE AMOUNT ASSESSED BY ACTION IN THE APPROPRIATE COURT

1 OF COMPETENT JURISDICTION. IN SUCH ACTION, THE VALIDITY AND
2 APPROPRIATENESS OF THE FINAL ORDER IMPOSING THE PENALTY SHALL
3 NOT BE SUBJECT TO REVIEW.

4 **8-3.5-112. Report to general assembly.** ON OR BEFORE
5 FEBRUARY 1, 2010, THE DIRECTOR, IN COOPERATION WITH THE
6 COMMISSIONER, SHALL REPORT TO THE SENATE BUSINESS, LABOR, AND
7 TECHNOLOGY COMMITTEE, THE SENATE AGRICULTURE, NATURAL
8 RESOURCES, AND ENERGY COMMITTEE, THE HOUSE BUSINESS AFFAIRS AND
9 LABOR COMMITTEE, AND THE HOUSE AGRICULTURE, LIVESTOCK, AND
10 NATURAL RESOURCES COMMITTEE OF THE GENERAL ASSEMBLY, OR THEIR
11 SUCCESSOR COMMITTEES, REGARDING THE PROGRESS OF THE PROGRAM.
12 THE REPORT SHALL INCLUDE ANY RECOMMENDED LEGISLATIVE CHANGES.

13 **8-3.5-113. Rules.** ON OR BEFORE JANUARY 1, 2009, THE
14 DEPARTMENT, IN CONSULTATION WITH THE COMMISSIONER AND THE
15 ADVISORY COUNCIL CREATED IN SECTION 8-3.5-104 (4), SHALL
16 PROMULGATE RULES AS NECESSARY TO IMPLEMENT THIS ARTICLE.

17 **8-3.5-114. Severability.** IF ANY PROVISION OF THIS ARTICLE OR
18 ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD ILLEGAL,
19 INVALID, OR UNENFORCEABLE, NO OTHER PROVISIONS OR APPLICATIONS OF
20 THIS ARTICLE SHALL BE AFFECTED THAT CAN BE GIVEN EFFECT WITHOUT
21 THE ILLEGAL, INVALID, OR UNENFORCEABLE PROVISION OR APPLICATION,
22 AND TO THIS END THE PROVISIONS OF THIS ARTICLE ARE SEVERABLE.

23 **SECTION 3. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, and safety.