

HOUSE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

March 18, 2008  
Date

Committee on State, Veterans, & Military Affairs.

After consideration on the merits, the Committee recommends the following:

HB08-1325 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and  
2 substitute the following:

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

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

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

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

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

17 (e) Colorado's cash receipts for the year 2005 totaled five billion  
18 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  
28 nonimmigrant agricultural seasonal worker pilot program and to assure  
29 necessary protections for nonimmigrant and seasonal agricultural  
30 workers;

31 (l) The Colorado department of labor and employment, the  
32 Colorado commissioner of agriculture, and approved agents will work  
33 closely with the United States department of labor, the United States  
34 citizenship and immigration services, and the United States department

1 of state to provide for a timely, efficient, and effective process for  
2 workers participating in the Colorado nonimmigrant agricultural seasonal  
3 worker pilot program and the H-2A visa certification process;

4 (m) The Colorado nonimmigrant agricultural seasonal worker  
5 pilot program will include provisions for accountability, enforcement, and  
6 oversight;

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

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

20 **SECTION 2.** Title 8, Colorado Revised Statutes, is amended BY  
21 THE ADDITION OF A NEW ARTICLE to read:

22 **ARTICLE 3.5**  
23 **Nonimmigrant Agricultural Seasonal**  
24 **Worker Pilot Program**

25 **8-3.5-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND MAY  
26 BE CITED AS THE "COLORADO NONIMMIGRANT AGRICULTURAL SEASONAL  
27 WORKER PILOT PROGRAM ACT".

28 **8-3.5-102. Legislative declaration.** IT IS THE INTENT OF THE  
29 GENERAL ASSEMBLY TO ESTABLISH A NONIMMIGRANT AGRICULTURAL  
30 SEASONAL WORKER PILOT PROGRAM TO EXPEDITE THE SEASONAL WORKER  
31 APPLICATION AND APPROVAL PROCESS IN COMPLIANCE WITH THE EXISTING  
32 FEDERAL H-2A VISA CERTIFICATION PROCESS SO THAT ELIGIBLE WORKERS  
33 MAY COME TO COLORADO LEGALLY, SAFELY, AND IN A TIMELY MANNER  
34 TO MEET THE DEMANDS OF COLORADO PRODUCERS.

1           **8-3.5-103. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE  
2 CONTEXT OTHERWISE REQUIRES:

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

4           (a) DEVELOPING AND SUBMITTING APPROPRIATE APPLICATION  
5 MATERIALS TO THE STATE EMPLOYMENT SECURITY AGENCY AND THE  
6 DEPARTMENT RESPONSIBLE FOR ISSUING LABOR CERTIFICATIONS FOR A  
7 SPECIFIC EMPLOYER AND JOB;

8           (b) COORDINATING LOCAL RECRUITMENT WITH THE EMPLOYER  
9 AND STATE EMPLOYMENT SECURITY AGENCY;

10          (c) DEVELOPING APPROPRIATE DOCUMENTATION OF EMPLOYER  
11 REQUIREMENTS AND EMPLOYMENT TERMS FOR USE IN SELECTING FOREIGN  
12 WORKERS; AND

13          (d) FILING FOR VISA PETITION APPROVAL AND COORDINATING VISA  
14 ISSUANCE BY THE UNITED STATES CONSULATE OR EMBASSY IN THE  
15 WORKER'S COUNTRY OF ORIGIN.

16          (2) "COMMISSIONER" MEANS THE COMMISSIONER OF THE  
17 COLORADO DEPARTMENT OF AGRICULTURE.

18          (3) "DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF  
19 LABOR AND EMPLOYMENT.

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

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

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

27          (7) (a) "H-2A VISA" MEANS A TEMPORARY AGRICULTURAL  
28 NONIMMIGRANT VISA THAT ALLOWS FOREIGN NATIONALS TO ENTER INTO  
29 THE UNITED STATES TO PERFORM AGRICULTURAL LABOR OR SERVICES OF  
30 A TEMPORARY OR SEASONAL NATURE AND THAT IS ISSUED PURSUANT TO

1 THE FEDERAL "IMMIGRATION REFORM AND CONTROL ACT OF 1986", 8  
2 U.S.C. SEC. 1101 ET SEQ.

3 (b) AN H-2A VISA ALLOWS FOR THE ADMISSION OF NONIMMIGRANT  
4 FOREIGN WORKERS INTO THE UNITED STATES TO PERFORM AGRICULTURAL  
5 WORK THAT IS TEMPORARY IN NATURE, SUCH AS HARVESTING CROPS.  
6 NONIMMIGRANTS ARE PERSONS LEGALLY ADMITTED INTO THE UNITED  
7 STATES FOR A SPECIFIC PURPOSE AND TIME PERIOD AND WHO DO NOT  
8 INTEND TO MAKE THE UNITED STATES THEIR PERMANENT RESIDENCE.  
9 H-2A VISAS ARE ADMINISTERED JOINTLY BY THE UNITED STATES  
10 DEPARTMENT OF LABOR AND THE UNITED STATES CITIZENSHIP AND  
11 IMMIGRATION SERVICES.

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

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

32 **8-3.5-104. Pilot program - creation - powers of department -**  
33 **advisory council.** (1) THERE IS HEREBY ESTABLISHED IN THE  
34 DEPARTMENT THE NONIMMIGRANT AGRICULTURAL SEASONAL WORKER  
35 PILOT PROGRAM. THE PURPOSE OF THE PROGRAM SHALL BE TO EXPEDITE  
36 THE APPLICATION AND APPROVAL OF THE FEDERAL H-2A VISA  
37 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  
28 COMMITTEES, AND THREE APPOINTEES OF THE GOVERNOR, ONE WHO IS A  
29 REPRESENTATIVE OF THE AGRICULTURE INDUSTRY, ONE WHO HAS  
30 EXPERIENCE IN IMMIGRATION SERVICES, AND ONE WHO IS A  
31 REPRESENTATIVE OF A MIGRANT WORKER ADVOCACY GROUP. THE  
32 ADVISORY COUNCIL SHALL MAKE RECOMMENDATIONS FOR THE ADOPTION  
33 OF RULES PURSUANT TO SECTION 8-3.5-113 AND SHALL ASSIST IN THE  
34 PREPARATION OF THE REPORT TO THE GENERAL ASSEMBLY PURSUANT TO  
35 SECTION 8-3.5-112. THE ADVISORY COMMITTEE SHALL CONSULT WITH  
36 HEALTH INSURANCE CARRIERS IN THIS STATE TO DETERMINE THE  
37 AVAILABILITY OF HEALTH INSURANCE PLANS FOR EMPLOYEES  
38 PARTICIPATING IN THE PROGRAM. THE ADVISORY COMMITTEE SHALL

1 INCLUDE IN THE REPORT TO THE GENERAL ASSEMBLY ANY LEGISLATIVE  
2 RECOMMENDATIONS DEEMED NECESSARY TO MAKE HEALTH INSURANCE  
3 AVAILABLE TO SEASONAL AGRICULTURAL WORKERS.

4 **8-3.5-105. Application process - screening.** (1) THE  
5 DEPARTMENT SHALL WORK WITH EMPLOYERS PARTICIPATING IN THE  
6 PROGRAM TO EXPEDITE THE H-2A VISA APPLICATION, APPROVAL, AND  
7 RECRUITMENT PROCESS SO THAT THE SEASONAL AGRICULTURAL NEEDS OF  
8 THE EMPLOYERS ARE MET IN A TIMELY MANNER.

9 (2) THE DEPARTMENT IS AUTHORIZED TO CHARGE EMPLOYERS A  
10 FEE NECESSARY TO COVER THE COSTS OF THE PROGRAM. THE FEES  
11 COLLECTED SHALL BE TRANSFERRED TO THE STATE TREASURER WHO  
12 SHALL DEPOSIT THE MONEYS INTO THE NONIMMIGRANT AGRICULTURAL  
13 SEASONAL WORKER PILOT PROGRAM CASH FUND ESTABLISHED IN SECTION  
14 8-3.5-108.

15 (3) THE DIRECTOR MAY RETAIN AGENTS TO ASSIST IDENTIFIED  
16 WORKERS MAKING APPLICATIONS FOR H-2A VISAS THROUGH THE UNITED  
17 STATES EMBASSY OR CONSULATE, TO COORDINATE A MEDICAL SCREENING  
18 OF WORKERS PRIOR TO THEIR DEPARTURE TO THE UNITED STATES, TO  
19 COORDINATE TRAVEL TO COLORADO, AND TO DOCUMENT EACH  
20 EMPLOYEE'S RETURN TO HIS OR HER COUNTRY OF ORIGIN.

21 (4) THE EMPLOYER SHALL:

22 (a) REIMBURSE THE EMPLOYEE FOR THE COSTS OF  
23 TRANSPORTATION AND SUBSISTENCE FROM THE SITE OF RECRUITMENT TO  
24 THE PLACE OF EMPLOYMENT WHEN HALF OF THE CONTRACT PERIOD IS  
25 COMPLETE;

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

28 (c) PAY FOR THE COSTS OF RETURN TRANSPORTATION AND  
29 SUBSISTENCE TO THE PLACE OF RECRUITMENT WHEN THE CONTRACT  
30 PERIOD IS COMPLETE;

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

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

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

7 (g) PROVIDE WORKERS' COMPENSATION INSURANCE;

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

10 (i) IN COMPLIANCE WITH FEDERAL LAW, PROVIDE EACH EMPLOYEE  
11 WITH THREE LOW-COST MEALS PER DAY AND DISCLOSE THE COST IN THE  
12 EMPLOYMENT CONTRACT OR PROVIDE FREE COOKING AND KITCHEN  
13 FACILITIES;

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

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

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

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

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

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

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

29 **8-3.5-106. Visa violation notification - employee compliance.**

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

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

6 (a) DENY THE EMPLOYER FUTURE PARTICIPATION IN THE PROGRAM;  
7 OR

8 (b) IMPOSE A FINE ON THE EMPLOYER FOR EACH VIOLATION, NOT  
9 TO EXCEED TWO HUNDRED DOLLARS PER DAY PER VIOLATION, THAT SHALL  
10 BE DEPOSITED INTO THE NONIMMIGRANT AGRICULTURAL SEASONAL  
11 WORKER PILOT PROGRAM CASH FUND CREATED IN SECTION 8-3.5-108.

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

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

18 **8-3.5-107. Retaliation prohibited.** AN EMPLOYER SHALL NOT  
19 INTIMIDATE, THREATEN, RESTRAIN, COERCE, BLACKLIST, DISCHARGE, OR  
20 IN ANY MANNER DISCRIMINATE AGAINST ANY PERSON WHO HAS, WITH JUST  
21 CAUSE, PERFORMED ANY ACT ENUMERATED IN 20 CFR 655.103 (g).

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

33 **8-3.5-109. Identification cards issued by department of**

1 **revenue.** WITHIN TWO WEEKS AFTER AN EMPLOYEE'S ARRIVAL IN  
2 COLORADO, THE EMPLOYEE SHALL APPLY FOR AN IDENTIFICATION CARD  
3 ISSUED BY THE DEPARTMENT OF REVENUE PURSUANT TO PART 3 OF  
4 ARTICLE 2 OF TITLE 42, C.R.S. THE EMPLOYER SHALL PROVIDE FREE  
5 TRANSPORTATION TO THE EMPLOYEE IN ORDER FOR THE EMPLOYEE TO  
6 MEET THIS REQUIREMENT.

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

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

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

25 (3) IF ANY PERSON FAILS TO PAY AN ASSESSMENT AFTER IT HAS  
26 BECOME A FINAL AND UNAPPEALABLE ORDER, OR AFTER THE COURT HAS  
27 ENTERED FINAL JUDGMENT IN FAVOR OF THE DEPARTMENT, THE DIRECTOR  
28 SHALL REFER THE MATTER TO THE STATE ATTORNEY GENERAL, WHO SHALL  
29 RECOVER THE AMOUNT ASSESSED BY ACTION IN THE APPROPRIATE COURT  
30 OF COMPETENT JURISDICTION. IN SUCH ACTION, THE VALIDITY AND  
31 APPROPRIATENESS OF THE FINAL ORDER IMPOSING THE PENALTY SHALL  
32 NOT BE SUBJECT TO REVIEW.

33 **8-3.5-112. Report to general assembly.** ON OR BEFORE  
34 FEBRUARY 1, 2010, THE DIRECTOR, IN COOPERATION WITH THE  
35 COMMISSIONER, SHALL REPORT TO THE SENATE BUSINESS, LABOR, AND  
36 TECHNOLOGY COMMITTEE, THE SENATE AGRICULTURE, NATURAL

1 RESOURCES, AND ENERGY COMMITTEE, THE HOUSE BUSINESS AFFAIRS AND  
2 LABOR COMMITTEE, AND THE HOUSE AGRICULTURE, LIVESTOCK, AND  
3 NATURAL RESOURCES COMMITTEE OF THE GENERAL ASSEMBLY, OR THEIR  
4 SUCCESSOR COMMITTEES, REGARDING THE PROGRESS OF THE PROGRAM.  
5 THE REPORT SHALL INCLUDE ANY RECOMMENDED LEGISLATIVE CHANGES.

6 **8-3.5-113. Rules.** ON OR BEFORE JANUARY 1, 2009, THE  
7 DEPARTMENT, IN CONSULTATION WITH THE COMMISSIONER AND THE  
8 ADVISORY COUNCIL CREATED IN SECTION 8-3.5-104 (4), SHALL  
9 PROMULGATE RULES AS NECESSARY TO IMPLEMENT THIS ARTICLE.

10 **8-3.5-114. Severability.** IF ANY PROVISION OF THIS ARTICLE OR  
11 ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD ILLEGAL,  
12 INVALID, OR UNENFORCEABLE, NO OTHER PROVISIONS OR APPLICATIONS OF  
13 THIS ARTICLE SHALL BE AFFECTED THAT CAN BE GIVEN EFFECT WITHOUT  
14 THE ILLEGAL, INVALID, OR UNENFORCEABLE PROVISION OR APPLICATION,  
15 AND TO THIS END THE PROVISIONS OF THIS ARTICLE ARE SEVERABLE.

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

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