

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 08-0607.01 Kristen Forrestal

HOUSE BILL 08-1325

HOUSE SPONSORSHIP

Looper, and Rose

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Tapia,

House Committees
State, Veterans, & Military Affairs

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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 recent agritourism study indicates that approximately
8 thirteen million two hundred thousand people participated in some form
9 of Colorado agritourism in 2006, and it is estimated that Colorado
10 agritourism generated about two billion two hundred thousand dollars for
11 Colorado's economy, or fourteen percent of tourism's economic activity
12 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 federal H-2A certification process is inefficient,
17 ineffective, and layered with bureaucracy;

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

22 (k) It is the purpose of this act to remove constraints on commerce
23 caused by activities detrimental to Colorado's agriculture industry and to
24 allow the Colorado department of labor and employment in cooperation
25 with the Colorado commissioner of agriculture to establish a Colorado
26 nonimmigrant agricultural seasonal worker pilot program;

27 (l) The intent of the nonimmigrant agricultural seasonal worker

1 pilot program is to secure a waiver from the United States department of
2 labor to allow the state of Colorado to participate in the processing of the
3 H-2A visa applications in compliance with federal and state requirements;

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

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

14 (o) The Colorado nonimmigrant agricultural seasonal worker pilot
15 program is not an amnesty program, not a path to citizenship, and not an
16 open door to illegal workers;

17 (p) The Colorado nonimmigrant agricultural seasonal worker pilot
18 program is an effort to save Colorado's agriculture economy from further
19 harm, Colorado's farmers from additional closures due to labor shortages,
20 and provide Colorado consumers with the finest products in the world at
21 a reasonable price; and

22 (q) Because the federal H-2A certification process is often the
23 only option available to Colorado producers needing temporary labor, and
24 because of the multiple problems with the H-2A certification process'
25 ability to provide seasonal workers in a time and manner to meet the
26 needs of producers, the Colorado department of labor and employment
27 and the Colorado commissioner of agriculture should work together and

1 in conformity with existing federal laws to implement a pilot program to
2 meet the temporary employment needs of Colorado producers.

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

5 **ARTICLE 3.5**

6 **Nonimmigrant Agricultural Seasonal**

7 **Worker Pilot Program**

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

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

18 **8-3.5-103. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
19 CONTEXT OTHERWISE REQUIRES:

20 (1) "COMMISSIONER" MEANS THE COMMISSIONER OF THE
21 COLORADO DEPARTMENT OF AGRICULTURE.

22 (2) "DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF
23 LABOR AND EMPLOYMENT.

24 (3) "DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE
25 DEPARTMENT OF LABOR AND EMPLOYMENT OR HIS OR HER DESIGNEE.

26 (4) "EMPLOYEE" MEANS A PERSON WHO WORKS FOR AN EMPLOYER
27 AND IS AN ACTIVE PARTICIPANT IN THE PROGRAM.

1 (5) "EMPLOYER" MEANS A PERSON OR ENTITY THAT HAS APPLIED
2 AND BEEN ACCEPTED TO PARTICIPATE IN THE PROGRAM AND EMPLOYS ONE
3 OR MORE EMPLOYEES.

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

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

19 (7) "LABOR CERTIFICATION" MEANS THE PROCESS BY WHICH THE
20 UNITED STATES DEPARTMENT OF LABOR IS PERMITTED TO ISSUE
21 CERTIFICATION THAT THERE ARE NOT SUFFICIENT UNITED STATES
22 WORKERS WHO ARE ABLE, WILLING, AND QUALIFIED TO PERFORM
23 AGRICULTURAL SERVICES ON A TEMPORARY BASIS, AND THAT THE
24 EMPLOYMENT OF FOREIGN WORKERS IN THE LABOR OR SERVICES WILL NOT
25 ADVERSELY AFFECT THE WAGES AND WORKING CONDITIONS OF WORKERS
26 IN THE UNITED STATES. EMPLOYERS WHO ANTICIPATE A SHORTAGE OF
27 AVAILABLE UNITED STATES WORKERS NEEDED TO PERFORM

1 AGRICULTURAL LABOR ON A TEMPORARY BASIS MAY APPLY TO THE
2 UNITED STATES DEPARTMENT OF LABOR FOR CERTIFICATION. THE
3 APPLICATION FOR CERTIFICATION MUST INCLUDE A COPY OF THE JOB OFFER
4 THAT WILL BE USED BY EACH EMPLOYER FOR THE RECRUITMENT OF
5 UNITED STATES AND H-2A WORKERS, THE ESTIMATED NUMBER OF
6 WORKERS NEEDED BY THE EMPLOYER, AND THE DATE BY WHICH THE
7 WORKERS ARE NEEDED. EMPLOYERS ARE REQUIRED TO APPLY FOR
8 CERTIFICATION AT LEAST FORTY-FIVE DAYS IN ADVANCE OF THEIR
9 ESTIMATED DATE OF NEED.

10 (8) "PROGRAM" MEANS THE NONIMMIGRANT AGRICULTURAL
11 SEASONAL WORKER PILOT PROGRAM ESTABLISHED IN SECTION 8-3.5-104.

12 **8-3.5-104. Pilot program - creation - powers of department.**

13 (1) THERE IS HEREBY ESTABLISHED IN THE DEPARTMENT THE
14 NONIMMIGRANT AGRICULTURAL SEASONAL WORKER PILOT PROGRAM. THE
15 PURPOSE OF THE PROGRAM SHALL BE TO EXPEDITE THE RECRUITMENT,
16 APPLICATION, AND APPROVAL PROCESS OF THE FEDERAL H-2A
17 CERTIFICATION PROCESS ESTABLISHED AS PART OF THE FEDERAL
18 "IMMIGRATION REFORM AND CONTROL ACT OF 1986", 8 U.S.C. SEC. 1101
19 ET SEQ. THE PROGRAM SHALL BE IMPLEMENTED BY THE DIRECTOR, OR HIS
20 OR HER DESIGNEE, IN COOPERATION WITH THE COMMISSIONER OR HIS OR
21 HER DESIGNEE.

22 (2) THE PROGRAM SHALL INCLUDE SECTORS OF THE AGRICULTURE
23 INDUSTRY IDENTIFIED BY THE DIRECTOR IN COOPERATION WITH THE
24 COMMISSIONER, SHALL BE LIMITED TO ONE THOUSAND EMPLOYEES IN THE
25 FIRST YEAR, AND SHALL INCREASE BY ONE THOUSAND ADDITIONAL
26 EMPLOYEES ANNUALLY FOR FOUR YEARS THEREAFTER.

27 (3) (a) THE DIRECTOR AND THE COMMISSIONER, IN CONJUNCTION

1 WITH THE DIRECTOR OF THE GOVERNOR'S OFFICE OF ECONOMIC
2 DEVELOPMENT AND INTERNATIONAL TRADE SHALL SEEK AGREEMENTS
3 BETWEEN COLORADO AND FOREIGN COUNTRIES TO ASSIST IN THE
4 RECRUITING AND SELECTION OF ELIGIBLE H-2A WORKERS AND IN THE
5 MAINTENANCE OF A POOL OF WORKERS TO DEPART FOR WORK IN
6 COLORADO UPON THE APPROVAL OF THE EMPLOYEES' FEDERAL H-2A
7 VISAS AND EMPLOYER APPROVAL FOR PARTICIPATION IN THE PROGRAM.
8 THE PROGRAM SHALL ALLOW ONLY PARTICIPATION BY THE EMPLOYEE AND
9 SHALL NOT ALLOW FAMILY MEMBERS OF THE EMPLOYEE.

10 (b) THE DIRECTOR SHALL REQUIRE THE COUNTRY OF ORIGIN OF
11 EACH WORKER TO PROVIDE BACKGROUND AND SECURITY CHECKS TO THE
12 DEPARTMENT FOR EACH ELIGIBLE WORKER. THE DIRECTOR IS AUTHORIZED
13 TO ESTABLISH OFFICES IN COUNTRIES OF ORIGIN IF, AS DETERMINED BY THE
14 DIRECTOR, SUCH OFFICES WILL AID IN THE IMPLEMENTATION AND
15 MAINTENANCE OF THE PROGRAM.

16 (c) WITH THE SUBMISSION OF AN APPLICATION FOR AN H-2A VISA
17 IN ORDER TO PARTICIPATE IN THE PROGRAM, EACH APPLICANT SHALL
18 SUBMIT A COMPLETE SET OF HIS OR HER FINGERPRINTS TO THE
19 DEPARTMENT. THE DEPARTMENT SHALL FORWARD SUCH FINGERPRINTS TO
20 THE COLORADO BUREAU OF INVESTIGATION FOR THE PURPOSE OF
21 CONDUCTING A STATE AND NATIONAL FINGERPRINT-BASED CRIMINAL
22 HISTORY RECORD CHECK UTILIZING THE RECORDS OF THE COLORADO
23 BUREAU OF INVESTIGATION AND THE FEDERAL BUREAU OF INVESTIGATION.
24 THE APPLICANT SHALL PAY THE COSTS ASSOCIATED WITH THE
25 FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK TO THE
26 COLORADO BUREAU OF INVESTIGATION.

27 **8-3.5-105. Application process - screening.** (1) AN EMPLOYER

1 INTERESTED IN PARTICIPATING IN THE PROGRAM SHALL SUBMIT AN
2 APPLICATION FOR H-2A LABOR CERTIFICATION WITHIN A TIME PERIOD
3 SPECIFIED BY THE DIRECTOR. THE DIRECTOR SHALL, BASED UPON LABOR
4 MARKET CONDITIONS, APPROVE, SEEK MODIFICATIONS TO, OR DISAPPROVE
5 THE APPLICATION.

6 (2) THE DIRECTOR MAY RETAIN LOCAL AGENTS TO ASSIST
7 IDENTIFIED WORKERS MAKING APPLICATIONS FOR H-2A VISAS THROUGH
8 THE UNITED STATES EMBASSY OR CONSULATE, TO COORDINATE A
9 MEDICAL SCREENING OF WORKERS PRIOR TO DEPARTING TO THE UNITED
10 STATES, TO COORDINATE TRAVEL TO COLORADO, AND TO DOCUMENT
11 EACH EMPLOYEE'S RETURN TO HIS OR HER COUNTRY OF ORIGIN.

12 (3) THE EMPLOYER SHALL:

13 (a) PAY FOR THE EMPLOYEES' APPLICATION FEES FOR THE H-2A
14 VISAS;

15 (b) PAY FOR THE TRANSPORTATION COSTS FROM THE COUNTRY OF
16 ORIGIN TO THE WORKSITE;

17 (c) PROVIDE THE COSTS OF TRANSPORTATION OF THE EMPLOYEE
18 BACK TO HIS OR HER SITE OF RECRUITMENT AT THE CONCLUSION OF THE
19 EMPLOYEE'S CONTRACT PERIOD;

20 (d) PROVIDE HOUSING, WHICH SHALL BE SUBJECT TO INSPECTION
21 BY THE DEPARTMENT, FOR EACH EMPLOYEE, INCLUDING HOUSING FOR
22 EMPLOYEES WHO ARE NOT REASONABLY ABLE TO RETURN TO THEIR
23 RESIDENCE WITHIN THE SAME DAY, WITHOUT CHARGE TO THE EMPLOYEE;

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

26 (f) PAY THE EMPLOYEE WAGES THAT ARE IN COMPLIANCE WITH
27 THE FEDERAL REQUIREMENTS ESTABLISHED PURSUANT TO THE FEDERAL

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

3 (g) PROVIDE WORKERS' COMPENSATION INSURANCE;

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

6 (i) PROVIDE THREE MEALS A DAY FOR THE FIRST TWO WEEKS OF
7 EMPLOYMENT OR THE FIRST PAYDAY, WHICHEVER IS LATER, FOR WHICH
8 THE EMPLOYER MAY NOT CHARGE THE EMPLOYEE MORE THAN NINE
9 DOLLARS AND EIGHT CENTS PER DAY AND PROVIDE ACCESS TO KITCHEN
10 FACILITIES FOR THE DURATION OF THE TERM OF EMPLOYMENT;

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

13 (k) GUARANTEE THAT THE EMPLOYEES WILL BE PAID AT LEAST
14 TWICE PER MONTH; AND

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

17 (4) THE EMPLOYER MAY RECOVER THE COST OF THE H-2A VISA
18 APPLICATION, PLUS ACTUAL TRANSPORTATION EXPENSES OF UP TO FIVE
19 HUNDRED DOLLARS, FOR EACH EMPLOYEE BY A PAYROLL DEDUCTION.

20 (5) AN EMPLOYER MAY RELEASE EMPLOYEES TO ANOTHER
21 EMPLOYER AT THE COMPLETION OF A WORK ASSIGNMENT WITH APPROVAL
22 IN ADVANCE FROM THE DEPARTMENT.

23 (6) AN EMPLOYER SEEKING TO EMPLOY EMPLOYEES THROUGH THE
24 PROGRAM SHALL MAKE THE FOLLOWING ASSURANCES:

25 (a) THAT THE SPECIFIC JOB OPPORTUNITY FOR WHICH THE
26 EMPLOYER IS REQUESTING H-2A LABOR CERTIFICATION IS NOT VACANT
27 BECAUSE THE FORMER OCCUPANT IS ON STRIKE;

1 (b) THAT THE EMPLOYER WILL COMPLY WITH APPLICABLE
2 FEDERAL, STATE, AND LOCAL EMPLOYMENT LAWS;

3 (c) THAT NO UNITED STATES WORKER WILL BE REJECTED FOR OR
4 TERMINATED FROM EMPLOYMENT OTHER THAN FOR A LAWFUL
5 JOB-RELATED REASON; AND

6 (d) THAT THE EMPLOYER WILL, IN A TIMELY MANNER, PAY THE
7 FEES ASSOCIATED WITH THE PROGRAM.

8 **8-3.5-106. Enforcement - penalties.** (1) EACH EMPLOYER SHALL
9 NOTIFY THE DEPARTMENT AND THE APPROPRIATE LOCAL LAW
10 ENFORCEMENT AGENCY WITHIN FORTY-EIGHT HOURS IF AN EMPLOYEE
11 CANNOT BE LOCATED AND HAS NOT REPORTED FOR WORK AS SCHEDULED.

12 (2) IF AN EMPLOYER FAILS TO NOTIFY THE DEPARTMENT AND THE
13 APPROPRIATE LOCAL LAW ENFORCEMENT AGENCY PURSUANT TO
14 SUBSECTION (1) OF THIS SECTION, THE DEPARTMENT MAY:

15 (a) DENY THE EMPLOYER FUTURE PARTICIPATION IN THE PROGRAM;
16 OR

17 (b) IMPOSE A FINE ON THE EMPLOYER FOR EACH VIOLATION, NOT
18 TO EXCEED TWO HUNDRED DOLLARS PER VIOLATION.

19 **8-3.5-107. Nonimmigrant agricultural seasonal worker pilot**
20 **program account.** EACH EMPLOYER SHALL WITHHOLD TWENTY PERCENT
21 OF THE WAGES EARNED FOR EACH EMPLOYEE. THE MONEYS WITHHELD
22 SHALL BE DEPOSITED INTO A NONIMMIGRANT AGRICULTURAL SEASONAL
23 WORKER PILOT PROGRAM ACCOUNT ESTABLISHED BY THE DEPARTMENT.
24 THE DIRECTOR SHALL BE RESPONSIBLE FOR THE ADMINISTRATION AND
25 OVERSIGHT OF THE ACCOUNT. THE MONEYS WITHHELD SHALL BE
26 RETURNED TO EACH EMPLOYEE UPON RETURN TO HIS OR HER COUNTRY OF
27 ORIGIN. IF THE EMPLOYEE DOES NOT RETURN TO HIS OR HER COUNTRY OF

1 ORIGIN WITHIN A TIME PERIOD DETERMINED BY THE DIRECTOR, THE
2 MONEYS IN THE ACCOUNT SHALL BE TRANSFERRED TO THE LOCAL LAW
3 ENFORCEMENT AGENCY IN THE JURISDICTION OF THE EMPLOYER.

4 **8-3.5-108. Identification cards issued by department of**
5 **revenue - employee application required - employer identification**
6 **number - database.** (1) EACH EMPLOYEE SHALL ENTER INTO A
7 CONTRACT WITH THE DEPARTMENT AND AGREE TO:

8 (a) ALLOW THE DEPARTMENT TO DEPOSIT TWENTY PERCENT OF
9 THE EMPLOYEE'S WAGES INTO THE NONIMMIGRANT AGRICULTURAL
10 SEASONAL WORKER PILOT PROGRAM ACCOUNT;

11 (b) RETURN TO HIS OR HER COUNTRY OF ORIGIN AFTER
12 EMPLOYMENT HAS TERMINATED OR HIS OR HER H-2A VISA IS EXPIRED;
13 AND

14 (c) WITHIN TWO WEEKS OF THE EMPLOYEE'S ARRIVAL IN
15 COLORADO, APPLY FOR AN IDENTIFICATION CARD ISSUED BY THE
16 DEPARTMENT OF REVENUE PURSUANT TO PART 3 OF ARTICLE 2 OF TITLE 42,
17 C.R.S.

18 (2) THE DEPARTMENT OF REVENUE SHALL INCLUDE AN EMPLOYER
19 IDENTIFICATION NUMBER ASSIGNED BY THE DEPARTMENT OF LABOR AND
20 EMPLOYMENT ON EACH IDENTIFICATION CARD ISSUED TO AN EMPLOYEE.

21 (3) THE DEPARTMENT SHALL MAINTAIN A DATABASE OF THE
22 IDENTIFICATION CARDS ISSUED TO EACH EMPLOYEE AND SHALL INCLUDE
23 THE INFORMATION CONTAINED ON EACH CARD. THE DEPARTMENT SHALL
24 MAKE THE DATABASE ACCESSIBLE TO LAW ENFORCEMENT OFFICIALS FOR
25 LAW ENFORCEMENT ACTIVITIES AUTHORIZED BY LAW.

26 **8-3.5-109. Adjustments to controversies.** THE DIRECTOR SHALL
27 INVESTIGATE AND ATTEMPT TO ADJUST EQUITABLY CONTROVERSIES

1 BETWEEN EMPLOYERS AND THEIR EMPLOYEES WITH RESPECT TO CLAIMS
2 ARISING UNDER THIS ARTICLE.

3 **8-3.5-110. Penalties.** A PERSON WHO VIOLATES ANY PROVISION
4 OF THIS ARTICLE, OR WHO CAUSES OR INDUCES ANOTHER TO VIOLATE ANY
5 PROVISIONS OF THIS ARTICLE, SHALL BE GUILTY OF A MISDEMEANOR
6 PUNISHABLE BY A FINE OF NOT MORE THAN FIVE THOUSAND DOLLARS,
7 IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN SIX MONTHS, OR
8 BOTH.

9 **8-3.5-111. Civil penalty - hearing - court action - civil actions**
10 **- injunctions.** (1) IN ADDITION TO ANY CRIMINAL PENALTY IMPOSED
11 UNDER SECTION 8-3.5-110, THE DIRECTOR MAY ASSESS AGAINST ANY
12 PERSON WHO VIOLATES THIS ARTICLE, OR ANY RULE ADOPTED UNDER THIS
13 ARTICLE, A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS
14 FOR EACH VIOLATION.

15 (2) THE PERSON SHALL BE AFFORDED THE OPPORTUNITY FOR A
16 HEARING, UPON REQUEST TO THE DIRECTOR MADE WITHIN THIRTY DAYS
17 AFTER THE DATE OF ISSUANCE OF THE NOTICE OF ASSESSMENT.

18 (3) IF ANY PERSON FAILS TO PAY AN ASSESSMENT AFTER IT HAS
19 BECOME A FINAL AND UNAPPEALABLE ORDER, OR AFTER THE COURT HAS
20 ENTERED FINAL JUDGMENT IN FAVOR OF THE DEPARTMENT, THE DIRECTOR
21 SHALL REFER THE MATTER TO THE STATE ATTORNEY GENERAL, WHO SHALL
22 RECOVER THE AMOUNT ASSESSED BY ACTION IN THE APPROPRIATE COURT
23 OF JURISDICTION. IN SUCH ACTION, THE VALIDITY AND APPROPRIATENESS
24 OF THE FINAL ORDER IMPOSING THE PENALTY SHALL NOT BE SUBJECT TO
25 REVIEW.

26 **8-3.5-112. Waiver application.** THE DEPARTMENT SHALL APPLY
27 TO THE FEDERAL GOVERNMENT FOR ANY WAIVERS AS NECESSARY IN

1 ORDER TO IMPLEMENT AN APPROVAL PROCESS FOR H-2A CERTIFICATION
2 IN LIEU OF THE UNITED STATES DEPARTMENT OF LABOR CERTIFICATION
3 PROCESS SO THAT THE DEPARTMENT MAY EXPEDITE THE APPLICATION
4 PROCESS AND WORK DIRECTLY WITH UNITED STATES CITIZENSHIP AND
5 IMMIGRATION SERVICES FOR FINAL APPROVAL OF EACH APPLICATION. THE
6 DEPARTMENT SHALL ENSURE THAT THE APPROVAL PROCESS IS SECURE,
7 SAFE, AND EXPEDITED IN A MANNER THAT MEETS THE AGRICULTURAL
8 LABOR NEEDS OF EMPLOYERS.

9 **8-3.5-113. Report to general assembly.** ON OR BEFORE
10 FEBRUARY 1, 2010, THE DIRECTOR, IN COOPERATION WITH THE
11 COMMISSIONER, SHALL REPORT TO THE SENATE BUSINESS, LABOR, AND
12 TECHNOLOGY COMMITTEE, THE SENATE AGRICULTURE, NATURAL
13 RESOURCES, AND ENERGY COMMITTEE, THE HOUSE BUSINESS AFFAIRS AND
14 LABOR COMMITTEE, AND THE HOUSE AGRICULTURE, LIVESTOCK, AND
15 NATURAL RESOURCES COMMITTEE, OF THE GENERAL ASSEMBLY, OR THEIR
16 SUCCESSOR COMMITTEES, REGARDING THE PROGRESS OF THE PROGRAM.
17 THE REPORT SHALL INCLUDE ANY RECOMMENDED LEGISLATIVE CHANGES.

18 **8-3.5-114. Rules.** THE DEPARTMENT, IN CONSULTATION WITH THE
19 COMMISSIONER, SHALL PROMULGATE RULES AS NECESSARY TO IMPLEMENT
20 THIS ARTICLE.

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