

Nonimmigrant Agricultural Seasonal Worker Pilot Program

This Act creates the “Nonimmigrant Agricultural Seasonal Worker Pilot Program” in the state department of labor. The purpose of the program is to expedite the federal H-2A Visa certification process to enable eligible workers to come to the state legally to meet the staffing needs of farmers and ranchers in the state. The department may retain agents to:

- assist employers with labor certification application materials;
- recruit workers;
- assist workers with their H-2A Visas;
- coordinate medical screening prior to departure to the U.S.; and
- coordinate travel to the state.

The pilot program is limited to 1,000 employees in the first year, with annual increases of 1,000 each year for 4 years.

The Act creates a Nonimmigrant Agricultural Seasonal Worker Pilot Program Advisory Council, made up of legislators, agency executives and stakeholders, to make recommendations for the adoption of rules, determine the availability of health insurance for program participants, and to assist in the preparation of reports to the legislature.

The bill establishes requirements for employers and employees who participate in the program. Employees are required to apply for an identification card within two weeks of arrival in the state. Employers are required to:

- reimburse employees for transportation and subsistence costs from the site of recruitment, and pay return expenses;
- provide free transportation to the worksite, free housing, low-cost meals, and workers’ compensation insurance;
- pay wages in compliance with the Immigration Reform and Control Act of 1986;
- not displace a U.S. worker;
- notify the state department of labor if an employee cannot be located; and
- pay fees associated with the program.

This Act authorizes the department of labor to fine employers up to \$200 per day per violation for failure to report visa violations, and up to \$5,000 for violation of any provision.

Submitted as:

Colorado

HB 08-1325

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as the “Nonimmigrant Agricultural
2 Seasonal Worker Pilot Program Act.”

3

4 Section 2. [*Definitions.*] As used in this Act:

5 (1) “Agent” means a person or entity in the business of:

6 (a) developing and submitting appropriate application materials to the [state
7 employment security agency] and the [department responsible for issuing labor certifications for
8 a specific employer and job];

9 (b) coordinating local recruitment with the employer and [state employment
10 security agency];

11 (c) developing appropriate documentation of employer requirements and
12 employment terms for use in selecting foreign workers; and

13 (d) filing for visa petition approval and coordinating visa issuance by the United
14 States Consulate or Embassy in the worker's country of origin.

15 (2) "Commissioner" means the [commissioner of the department of agriculture or his or
16 her designee].

17 (3) "Department" means the [department of labor and employment].

18 (4) "Director" means the [executive director of the department of labor and employment
19 or his or her designee].

20 (5) "Employee" means a person who works for an employer and is an active participant
21 in the program.

22 (6) "Employer" means a person or entity that has applied and been accepted to participate
23 in the program and employs [one or more] employees.

24 (7) (a) "H-2A Visa" means a Temporary Agricultural Nonimmigrant Visa that allows
25 foreign nationals to enter into the United States to perform agricultural labor or services of a
26 temporary or seasonal nature and that is issued pursuant to the federal "Immigration Reform And
27 Control Act of 1986," 8 U.S.C. Sec. 1101 et seq.

28 (b) An H-2A Visa allows for the admission of nonimmigrant foreign workers into
29 the United States to perform agricultural work that is temporary in nature, such as harvesting
30 crops. Nonimmigrants are people legally admitted into the United States for a specific purpose
31 and time period and who do not intend to make the United States their permanent residence. H-
32 2A Visas are administered jointly by the United States Department of Labor and the United
33 States Citizenship and Immigration Services.

34 (8) "Labor certification" means the process by which the United States Department of
35 Labor is permitted to issue certification that there are not sufficient United States workers who
36 are able, willing, and qualified to perform agricultural services on a temporary basis, and that the
37 employment of foreign workers in the labor or services will not adversely affect the wages and
38 working conditions of workers in the United States. Employers who anticipate a shortage of
39 available United States workers needed to perform agricultural labor on a temporary basis may
40 apply to the United States Department of Labor for certification. The application for certification
41 must include a copy of the job offer that will be used by each employer for the recruitment of
42 United States and H-2A workers, the estimated number of workers needed by the employer, and
43 the date by which the workers are needed. Employers are required to apply for certification at
44 least [forty-five] days in advance of their estimated date of need.

45 (9) "Program" means the [Nonimmigrant Agricultural Seasonal Worker Pilot Program]
46 established in section 3 of this Act.

47

48 Section 3. [*Nonimmigrant Agricultural Seasonal Worker Program – Creation.*]

49 (A) There is hereby established in the [department] the Nonimmigrant Agricultural
50 Seasonal Worker Pilot Program. The purpose of the program shall be to expedite the application
51 and approval of the federal H-2A Visa certification process established as part of the federal
52 "Immigration Reform and Control Act of 1986," 8 U.S.C. Sec. 1101 et seq. Upon the

53 promulgation of rules pursuant to section 11 of this Act, the [director or his or her designee], in
54 cooperation with the [commissioner or his or her designee], shall implement the program.

55 (B) The program shall include sectors of the agriculture industry identified by the
56 [director] in cooperation with the [commissioner], shall be limited to [one thousand] employees
57 in the [first] year, and shall increase by [one thousand] additional employees [annually] for [four]
58 years thereafter.

59 (C) The [director and the commissioner], in conjunction with the [director of the
60 governor's office of economic development and international trade], may seek agreements
61 between this state and foreign countries to assist in the recruiting and selection of eligible H-2A
62 workers and in the maintenance of a pool of workers to depart for work in this state upon the
63 approval of the employees' federal H-2A Visas and employer approval for participation in the
64 program. A family member of an employee may participate in the program only if the family
65 member also qualifies for and is issued a current H-2A Visa.

66 (D) There is hereby established the [Nonimmigrant Agricultural Seasonal Worker Pilot
67 Program Advisory Council]. The [advisory council] members shall be the [commissioner of the
68 department of agriculture or his or her designee, the executive director of the department of labor
69 and employment or his or her designee, the chairs of the house business affairs and labor
70 committee and the senate business, labor, and technology committee, the chairs of the house and
71 senate agriculture, livestock, and natural resources committees, or their successor committees,
72 and three appointees of the governor, one who is a representative of the agriculture industry, one
73 who has experience in immigration services, and one who is a representative of a migrant worker
74 advocacy group]. Members of the [advisory council] are entitled to reimbursement for actual and
75 necessary expenses incurred in the performance of their duties. The [advisory council] shall
76 make recommendations for the adoption of rules pursuant to section 11 of this Act and shall
77 assist in the preparation of the report to the [General Assembly] pursuant to section 10 of this
78 Act. The [advisory council] shall consult with health insurance carriers in this state to determine
79 the availability of health insurance plans for employees participating in the program. The
80 [advisory council] shall include in the report to the [General Assembly] any legislative
81 recommendations deemed necessary to make health insurance available to seasonal agricultural
82 workers.

83
84 Section 4. *[Application Process - Screening.]*

85 (A) The [department] shall work with employers participating in the program to expedite
86 the H-2A Visa application, approval, and recruitment process so that the seasonal agricultural
87 needs of the employers are met in a timely manner.

88 (B) The [department] is authorized to charge employers a fee necessary to cover the costs
89 of the program. The fees collected shall be transferred to the [state treasurer] who shall deposit
90 the moneys into the [Nonimmigrant Agricultural Seasonal Worker Pilot Program Cash Fund]
91 established in section 7 of this Act.

92 (C) The [director] may retain agents to assist identified workers making applications for
93 H-2A Visas through the United States Embassy or Consulate, to coordinate a medical screening
94 of workers prior to their departure to the United States, to coordinate travel to this state, and to
95 document each employee's return to his or her country of origin.

96 (D) The employer shall:

97 (1) reimburse the employee for the costs of transportation and subsistence from
98 the site of recruitment to the place of employment when half of the contract period is complete;

99 (2) provide free transportation to the employee between the employee's local
100 housing and the worksite;

- 101 (3) pay for the costs of return transportation and subsistence to the place of
102 recruitment when the contract period is complete;
- 103 (4) provide free housing for each employee that meets safety and health standards
104 established by federal law, which shall be subject to inspection by the [department];
- 105 (5) provide United States workers and employees the same benefits, wages, and
106 working conditions;
- 107 (6) pay the employee wages that are in compliance with the federal requirements
108 established pursuant to the federal "Immigration Reform and Control Act of 1986," 8 U.S.C.
109 Sec. 1101 et seq.;
- 110 (7) provide workers' compensation insurance;
- 111 (8) provide all tools, supplies, and equipment required to perform the duties
112 assigned, without charge, to the employee;
- 113 (9) in compliance with federal law, provide each employee with [three] low-cost
114 meals per day and disclose the cost in the employment contract or provide free cooking and
115 kitchen facilities;
- 116 (10) guarantee employment for at least [three-fourths] of the work days during the
117 work contract period;
- 118 (11) guarantee that the employee will be paid at least [twice] per month; and
- 119 (12) provide to the employee a copy of the work contract between the employer
120 and the employee.

121 (E) An employer seeking to employ employees through the [program] shall make the
122 following assurances:

- 123 (1) that the employer will comply with applicable federal, state, and local
124 employment laws;
- 125 (2) that no United States worker will be rejected for or terminated from
126 employment other than for a lawful job-related reason; and
- 127 (3) that the employer will, in a timely manner, pay the fees associated with the
128 program.
129

130 Section 5. [*Visa Violation Notification - Employee Compliance.*]

131 (A) Each employer shall notify the [department] within the time period specified in, and
132 in accordance with, section 8 CFR 214.2 (h) (5) (vi) (A) if an employee absconds his or her
133 employment.

134 (B) If an employer, with reckless disregard, fails to notify the [department] as required in
135 subsection (A) of this section, the [department] may deny the employer future participation in the
136 program or impose a fine on the employer for each violation, not to exceed [two hundred dollars]
137 per day per violation, that shall be deposited into the [Nonimmigrant Agricultural Seasonal
138 Worker Pilot Program Cash Fund] created in section 7 of this Act.

139 (C) The [department] shall notify the United States Citizenship and Immigration Services
140 of any known violations of the conditions for the issuance of an H-2A Visa.

141 (D) An employee who complies with the conditions of the program shall have the
142 opportunity and be given priority to participate in the program the following year.
143

144 Section 6. [*Retaliation Prohibited.*] An employer shall not intimidate, threaten, restrain,
145 coerce, blacklist, discharge, or in any manner discriminate against any person who has, with just
146 cause, performed any act enumerated in 20 CFR 655.103 (g).
147

148 Section 7. [*Nonimmigrant Agricultural Seasonal Worker Pilot Program Cash Fund.*]
149 There is hereby established the [Nonimmigrant Agricultural Seasonal Worker Pilot Program
150 Cash Fund] in the [state treasury], referred to in this section as the “fund”. Moneys in the [fund]
151 shall consist of any fees or fines collected pursuant to this Act. The moneys in the [fund] shall be
152 [annually] appropriated to the [department] for the administrative costs associated with the
153 program. Any moneys remaining in the [fund] at the end of any fiscal year shall remain in the
154 [fund] and shall not revert to the [General Fund] or any other fund.
155

156 Section 8. [*Identification Cards Issued by Department of Revenue.*] Within [two] weeks
157 after an employee's arrival in this state, the employee shall apply for an identification card issued
158 by the [department of revenue] pursuant to [insert citation]. The employer shall provide free
159 transportation to the employee in order for the employee to meet this requirement.
160

161 Section 9. [*Penalties.*]

162 (A) A person who, with reckless disregard, violates any provisions of this Act, or who,
163 with reckless disregard, causes or induces another to violate any provisions of this Act, may be
164 assessed a fine by the director of not more than [five thousand] dollars. Any moneys collected
165 pursuant to this section shall be transferred to the [state treasurer] who shall deposit the same into
166 the [Nonimmigrant Agricultural Seasonal Worker Pilot Program Cash Fund] established in
167 section 7 of this Act.

168 (B) The person shall be afforded the opportunity for a hearing upon request to the
169 [director] made within [thirty] days after the date of issuance of the notice of assessment.

170 (C) If any person fails to pay an assessment after it has become a final and unappealable
171 order, or after the court has entered final judgment in favor of the [department], the [director]
172 shall refer the matter to the state [attorney general], who shall recover the amount assessed by
173 action in the appropriate court of competent jurisdiction. In such action, the validity and
174 appropriateness of the final order imposing the penalty shall not be subject to review.
175

176 Section 10. [*Report to General Assembly.*] On or before [February 1, 2010], the
177 [director], in cooperation with the [commissioner], shall report to the [senate business, labor, and
178 technology committee, the senate agriculture, natural resources, and energy committee, the house
179 business affairs and labor committee, and the house agriculture, livestock, and natural resources
180 committee of the General Assembly], or their successor committees, regarding the progress of
181 the [program] created by this Act. The report shall include any recommended legislative
182 changes.
183

184 Section 11. [*Rules.*] On or before [January 1, 2009], the [department], in consultation
185 with the [commissioner and the advisory council] created in section 3 of this Act shall
186 promulgate rules as necessary for the delineation of oversight responsibilities to the [department]
187 under, and for the implementation of, this Act.
188

189 Section 12. [*Appropriation.*] [Insert appropriation.]
190

191 Section 13. [*Severability.*] [Insert severability clause.]
192

193 Section 14. [*Repealer.*] [Insert repealer clause.]
194

195 Section 15. [*Effective Date.*] [Insert effective date.]