

1977 Assembly Bill 404

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CHAPTER 17, Laws of 1977

AN ACT to repeal 101.20; and to create 15.227 (8), 59.47 (12) and 103.90 to 103.97 of the statutes, relating to creating a council on migrant labor, regulating migrant employment and housing, granting rule-making authority and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Intent. It is declared to be the intent of this act to improve the status of migrant workers in this state. This goal is to be accomplished by creating a council on migrant labor in the department of industry, labor and human relations and by providing standards for: wages, hours and working conditions of migrant workers; certification, maintenance and inspection of migrant labor camps; recruitment and hiring of migrant workers; and guaranteeing the right of free access to migrant labor camps to ensure that migrant workers and their families are not isolated from the rest of the community or from services to which they are legally entitled.

SECTION 2. 15.227 (8) of the statutes is created to read:

15.227 (8) **COUNCIL ON MIGRANT LABOR.** There is created in the department of industry, labor and human relations a council on migrant labor. Nonlegislative members shall serve for staggered 3-year terms and shall include 6 representatives of employers of migrant workers and 6 representatives of migrant workers and their organizations. Two members of the senate and 2 members of the assembly shall be appointed to act as representatives of the public. Legislative members shall be appointed as are members of standing committees and shall be equally divided between the 2 major political parties.

SECTION 3. 59.47 (12) of the statutes is created to read:

59.47 (12) Enforce s. 103.92 (4) as requested by the department of industry, labor and human relations.

SECTION 4. 101.20 of the statutes is repealed.

SECTION 5. 103.90 to 103.97 of the statutes are created to read:

103.90 Definitions. In sections 103.90 to 103.97:

(1) "Emergency" means:

(a) A temporary condition created by an act of nature, demanding immediate action, which could not reasonably have been anticipated or prevented, and which is caused entirely by the forces of nature such as rain, lightning, hail, windstorm, tornado, sleet, frost or other similar natural phenomena.

(b) A sudden and temporary condition not covered under par. (a) which reasonably could not have been anticipated or prevented and which requires immediate action to prevent serious damage to person or property.

(2) "Employer" means a person engaged in planting, cultivating, harvesting, handling, drying, packing, packaging, processing, freezing, grading or storing fruits and vegetables; in nursery work; in sod farming or in Christmas tree cultivation or harvesting who employs a migrant worker.

(3) "Migrant labor contractor" means any person, who, for a fee or other consideration, on behalf of another person, recruits, solicits, hires, or furnishes migrant workers (excluding members of the contractor's immediate family) for employment in this state. Such term shall not include an employer or any full-time regular employes of an employer who engages in any such activity for the purpose of supplying workers solely for the employer's own operation.

(4) (a) "Migrant worker" or "worker" means any person who temporarily leaves a principal place of residence outside of this state and comes to this state for not more than 10 months in a year to accept seasonal employment in the planting, cultivating, harvesting, handling, drying, packing, packaging, processing, freezing, grading or storing of fruits and vegetables; in nursery work; in sod farming or in Christmas tree cultivation or harvesting.

(b) "Migrant worker" or "worker" does not include the following:

1. Any person who is employed only by a state resident if such resident or the resident's spouse is related to the worker as one of the following: child, parent, grandchild, grandparent, brother, sister, aunt, uncle, niece, nephew, or the spouse of any such relative.

2. A student who is enrolled or, during the past 6 months has been enrolled, in any school, college or university unless the student is a member of a family or household which contains a migrant worker.

(c) No more than 3 persons otherwise included in the definition under par. (a) may be excluded under par. (b) 1.

(5) (a) "Migrant labor camp" means the site and all structures maintained as living quarters by, for or under the control and supervision of any person for:

1. Any migrant worker; or

2. Any other person who is not related by blood or marriage to his or her employer and who occasionally or habitually leaves an established place of residence to travel to another locality to accept seasonal employment in the planting, cultivating, harvesting, handling, drying, packing, packaging, processing, freezing, grading or storing of fruits and vegetables; in nursery work; in sod farming or in Christmas tree cultivation or harvesting.

(b) "Migrant labor camp" does not include:

1. Premises occupied by the employer as a personal residence and by no more than 2 migrant workers.

2. Any accommodation subject to ch. 50.

(6) "Order" has the meaning designated under s. 101.01 (1) (e).

103.905 Department's duties. The department shall:

(1) Promulgate rules for the enforcement and implementation of ss. 103.90 to 103.97.

(2) Cooperate and enter into agreements with departments or agencies of this state or of the United States to coordinate, administer or enforce all other laws and programs designed to assist, serve or protect migrant workers.

(3) Gather, compile and submit to the council on migrant labor data and information relative to ss. 103.90 to 103.97.

(4) Investigate, or cause to be investigated, any complaint filed with the department concerning any violation of ss. 103.90 to 103.97, and during reasonable daylight hours, and upon notice to the employer or person in charge, enter and inspect any premises, inspect such records and make transcriptions thereof, question such persons, and investigate such facts, conditions, practices or matters as may be necessary or appropriate to determine whether a violation of such sections has been committed.

(5) Enforce, or cause to be enforced, ss. 103.90 to 103.97 and any rules promulgated under ss. 103.90 to 103.97, and cooperate with other officers, departments, boards, agencies or commissions of this state, or of the United States, or of any other state, or of any local government in the enforcement of such sections.

103.91 Migrant labor contractors. (1) **REGISTRATION REQUIRED.** No person may engage in activities as a migrant labor contractor without first obtaining a certificate of registration from the department. The certificate shall constitute a permit from this state to operate as a migrant labor contractor, and shall not be transferable to any person.

(2) **APPLICATION.** A migrant labor contractor shall apply to the department for a certificate in such manner and on such forms as the department prescribes. The migrant labor contractor may submit a copy of a federal application filed under 7 USC 2045 in lieu of the forms prescribed by the department under this subsection.

(3) **ANNUAL FEES.** Each certificate shall be renewed annually. The fee for the certificate or renewal shall be in an amount determined by the department, but not to exceed \$25.

(4) **QUALIFICATIONS.** The department may refuse to issue a certificate and may suspend or revoke any certificate previously issued whenever it finds that the applicant or registrant has:

(a) Made a material misrepresentation or false statement in his or her application for a certificate.

(b) Violated ss. 103.90 to 103.97, or any rules promulgated under such sections.

(5) **REAL PARTY IN INTEREST.** The department may refuse to issue a certificate, and may suspend or revoke any certificate previously issued, whenever it determines that the real party in interest in any such application or certificate is a person who previously has applied for and has been denied a certificate, or is a person who previously had been issued a certificate which subsequently was revoked or suspended by the department.

(6) **PENALTIES.** Refusal to issue or to renew a certificate or the suspension or revocation of a certificate or renewal shall be in addition to any other penalties imposed.

(7) **AGENTS EXEMPT FROM REGISTRATION.** A full-time employe of any person holding a valid certificate under ss. 103.90 to 103.97 who has been designated as agent of the registrant and who is employed partly or solely for the purpose of engaging in activities as a migrant labor contractor on behalf of the registrant, shall not be required to obtain a certificate in his or her own name under this section. Every such

agent shall have in his or her immediate possession, when engaging in activities as a migrant labor contractor, such identification as the department may require, showing such employe to be an agent of a registrant. Every agent shall be subject to ss. 103.90 to 103.97 and any rules promulgated under such sections to the same extent as if the agent were required to obtain a certificate in his or her own name. The department shall require that every registrant identify to the department all persons who have been, or who subsequently become, agents of the registrant, and may disallow, suspend or revoke the designation as agent of any person pursuant to the qualifications of registrants required by this section. For the purposes of ss. 103.90 to 103.97, every registrant shall be responsible for the activities of every agent designated by him or her, and shall be subject to any penalties, including the refusal, suspension or revocation of a certificate, proceeding from any act of any agent so designated, while the agent is engaged in activities as a migrant labor contractor. No agent shall be permitted separately to engage in activities as a migrant labor contractor.

(8) DUTIES. Every person engaged in activities as a migrant labor contractor and every agent of a migrant labor contractor shall:

(a) Carry at all times the certificate or other identification of such certification as the department may prescribe, and exhibit the same to all persons with whom he or she intends to deal as a migrant labor contractor prior to so dealing.

(b) File at the U.S. post office serving the address of such migrant labor contractor, a correct address within 10 days after a change of address.

(c) Promptly pay or deliver when due to the individuals entitled thereto, all moneys or other things of value entrusted to the contractor by any person.

(d) Comply with the terms and provisions of all legal agreements and contracts entered into between himself or herself as a migrant labor contractor and any person.

(e) Keep such records as the department prescribes and preserve such records for inspection by the department for such periods of time as the department shall prescribe.

(f) Obtain a policy of insurance from any insurance carrier authorized to do business in this state in an amount as prescribed by the department, which policy insures the migrant labor contractor against liability for damages to persons or property arising out of the operation or ownership by the migrant labor contractor or by his or her agent of any vehicle for the transportation of individuals or property in connection with activities as a migrant labor contractor. This paragraph shall not apply if the contractor furnishes transportation only as the agent of an employer who has obtained a policy of insurance against liability for damages arising out of the operation of motor vehicles.

(9) PROHIBITED ACTIVITIES. No person engaged in activities as a migrant labor contractor, and no person acting as an agent for any such person, may:

(a) Knowingly give to any migrant worker or a prospective migrant worker any false or misleading information, or fail to disclose fully to any such worker information concerning terms, conditions or existence of employment.

(b) Receive, disburse or withhold the wages of any worker except to immediately distribute a check payable to a worker.

(c) Charge or collect interest from any worker on account of any loan or extension of credit.

(d) Charge or collect from any worker for the provision of goods or services an amount in excess of the costs to him or her of providing such goods and services.

(e) Recruit any migrant worker except as provided in s. 103.915.

103.915 Migrant work agreements. (1) No person may bring or arrange for another to bring a migrant worker into this state for employment, or by means of an express or implied job offer induce a migrant worker to come into this state for employment, or hire a migrant worker for employment in this state, unless such person provides the migrant worker a written work agreement as specified in this section. Such agreement shall be signed by the employer and by each migrant worker or head of a family if a family is employed, at the time of recruitment or at the commencement of employment, whichever is earlier.

(2) The department shall issue a standard form for written work agreements required under this section. An employer may elect not to use such form. If an employer does not use the standard form, the employer shall use a form approved by the department.

(3) In fulfilling its duties under s. 103.905, the department may inspect any work agreement signed under this section.

(4) The work agreement shall include the following:

(a) A statement of the place of employment, kind of work available, applicable wage rates, pay period, approximate hours of employment including overtime applicable, term of employment including approximate beginning and ending dates, kind of housing and any charges in connection therewith, cost of meals if provided by the employer, transportation arrangements, the names of all persons in the family employed if a family is employed and any other charges or deductions from wages beyond those required by law.

(b) A guarantee of a minimum of 20 hours of work in a one-week period or a minimum of 64 hours of work in a 2-week period, the work to be the same as or similar to the kind of work specified in the work agreement. The work agreement shall clearly state whether the guarantee is on the basis of a one-week or 2-week period. In the case of a migrant worker employed exclusively in agricultural labor as defined in s. 108.02 (23), the guarantee shall be a minimum of 45 hours in each 2-week period, the work to be the same as or similar to the kind of work specified in the work agreement. The minimum guarantee shall be satisfied if the worker's earnings equal the number of hours guaranteed under this paragraph multiplied by the wage rate specified in the work agreement. The guarantee shall cover the period from the date the worker is notified by the employer to report for work, which date shall be reasonably related to the approximate beginning date specified in the work agreement, or the date the worker reports for work, whichever is later, and continuing until the final termination of employment, as specified in the work agreement, or earlier if the worker is terminated for cause or due to seriously adverse circumstances beyond the employer's control. If the beginning or ending period of employment does not coincide with the employer's pay period, the employer may reduce the guarantee for such beginning or ending period to an amount which is equal to the number of days in the beginning or ending period of employment multiplied by one-sixth of the guarantee if the employer's guarantee is on a weekly basis or multiplied by one-twelfth of the guarantee if the employer's guarantee is on a biweekly basis. If a worker is not available for work, the employer may reduce the minimum guarantee by an amount equal to the wages the worker would have earned if the worker had been available for work. This paragraph shall not apply to any person who is under the age of 18 years and who is a member of a household which contains a worker covered by a migrant work agreement under this section. The payment of the minimum guarantee under this paragraph shall be considered the payment of wages under ch. 108.

(c) A guarantee that the wages together with the other terms and conditions of employment are not less favorable than those provided by the employer for local workers for similar work.

(5) If a worker reports for work as notified by an employer and the worker is never employed due to seriously adverse circumstances beyond the employer's control, the employer shall not be obligated to pay the minimum guarantee under sub. (4) (b) but shall be obligated to pay wages to the worker at the agreed rate of pay for the job for which the worker was recruited for the elapsed time from departure to return to the point of departure, which amount shall not be less than 3 nor more than 6 days' pay at 8 hours per day. The employer shall pay the worker the amount required under this subsection within 24 hours after the worker reports to the employer for work.

(6) The work agreement may contain a guarantee which differs from the guarantee required under sub. (4) (b) if the department finds the guarantee to be no less favorable than the guarantee under sub. (4) (b) and approves the terms of the guarantee prior to the time the employer offers the work agreement to any worker.

(7) Temporary work for another employer with the consent of the worker and his or her first employer shall count toward the guarantee required under sub. (4) (b). Such other employer shall not be required to provide the worker a work agreement.

(8) The work agreement shall be written in English and, if the customary language of the migrant worker is not English, in the language of the worker. The department shall, upon request, provide assistance in translating such agreements.

(9) Any employer who does not satisfy the employer's guarantees in a work agreement as required under sub. (4) shall be considered not in compliance with this section.

103.917 Safe transportation. Any transportation provided by the employer to a migrant worker between the worker's places of residence shall be safe and adequate.

103.92 Certification of migrant labor camps. (1) **APPLICATION; FEE.** Every person maintaining a migrant labor camp shall, annually by April 1 or 30 days prior to the opening of a new camp, make application to the department to operate a camp. Each application shall be accompanied by a nonreturnable application fee in an amount determined by the department, but not to exceed \$25.

(2) **INSPECTION.** The department shall administer and enforce this section and any rules promulgated under this section and may during reasonable daylight hours enter and inspect camps. No agent or employe of the department may enter the premises of a camp for inspection purposes until he or she has given notice to the owner or to the person in charge of the camp that he or she intends to make an inspection. Upon notice an agent or employe of the department may also enter any property to determine whether a camp under this section exists.

(3) **CERTIFICATE.** The department shall inspect each camp for which application to operate is made, to determine if it is in compliance with the rules of the department establishing minimum standards for migrant labor camps. If the department finds that the camp is in compliance with the rules, it shall issue a certificate authorizing the camp to operate until March 31 of the next year. The department shall refuse to issue a certificate if it finds that the camp is in violation of such rules.

(4) **OPERATION.** Only certified camps may operate in this state. The department shall order the immediate closing of all other camps. A violation of any such order shall be deemed a public nuisance. All orders shall be enforced by the attorney general or the district attorney for the county in which the violation occurred at the election of the department. The circuit court of any county where violation of such an order has occurred in whole or in part shall have jurisdiction to enforce the order by injunctive and other appropriate relief.

(5) **MAINTENANCE.** The department may revoke any certificate previously issued if it finds that a camp is in violation of the department's rules for migrant labor camps.

103.925 Access and entry. Any worker shall have the right to decide who may visit with him or her in his or her residence. No person other than the resident may prohibit, bar or interfere with, or attempt to prohibit, bar or interfere with, the access to or egress from the residence of any worker by any person, either by the erection or maintenance of any physical barrier, or by physical force or violence, or by threat of force or violence, or by posting, or by any order or notice given in any manner. This section shall not prohibit the erection or maintenance of a fence around a migrant labor camp if one or more unlocked gates or gateways in the fence are provided, nor shall this section prohibit the posting of land adjacent to a migrant labor camp if access to the camp is clearly marked, nor shall this section prevent a majority of the residents of a migrant labor camp from imposing reasonable limitations on access to common use facilities.

103.926 Vacating residence. After a worker's employment has been terminated, the employer may require a worker to vacate residence at the migrant labor camp operated by the employer upon final payment of wages to the worker.

103.93 Wages. (1) **WAGE PAYMENT.** (a) Every employer shall pay all wages earned by any migrant worker directly to such worker on regular pay days designated in advance by the employer, but in no case less often than semimonthly. Wages shall be paid in U.S. currency or by check or draft.

(b) Every employer shall pay in full all wages due any migrant worker within 3 days after the termination of the period of employment for which the worker was employed except as provided under s. 103.915 (5). If the employer is unable to determine, due to circumstances beyond the employer's control, the amount of wages, figured upon a basis or system other than time rate, due to a worker under this paragraph, the employer shall pay the worker the amount of guaranteed wages due under s. 103.915 (4) (b) within the time required under this paragraph and shall pay any additional wages due within a reasonable time after such wages are determined.

(2) **WAGE STATEMENT.** Every employer shall furnish to each migrant worker at the time of payment of wages a written statement showing the amount of gross and net wages paid by the employer to the worker, and each amount deducted or withheld for whatever purpose.

(3) **DEDUCTIONS.** No employer or migrant labor contractor may deduct or withhold from the wages of any migrant worker any amount on account of debts accrued or anticipated unless the worker has previously authorized such deduction or withholding in writing. Nothing in this subsection shall prohibit any employer of a migrant worker from deducting or withholding from any wages paid, such amounts as may be required by law or on account of any court order.

(4) **OVERTIME.** Any migrant worker not employed exclusively in agricultural labor as defined in s. 108.02 (23) shall be paid not less than one and one-half times the worker's regular rate for any hours worked on Sunday unless the worker is allowed another day of rest in that calendar week.

103.935 Hours of labor. (1) In the case of a migrant worker employed exclusively in agricultural labor as defined in s. 108.02 (23), the hours of labor shall be as follows:

(a) Except in an emergency, no migrant worker may be required to work or be penalized for failure to work on any premises for more than 6 days in any one week or more than 60 hours in any one week, or more than 12 hours in any one day.

(b) Whenever an employer permits a migrant worker to work on the premises of another employer in any one week or in any one day, the aggregate number of hours during which the migrant worker is required to work on such premises shall not exceed 60 in any one week or 12 in any one day.

(c) Nothing in this section shall prohibit a migrant worker from voluntarily exceeding the limits prescribed by pars. (a) and (b).

(2) No migrant worker may be required to work for more than 6 hours continuously without a meal period of at least 30 minutes duration unless a shift can be completed within one additional hour. The meal period need not be considered as part of the hours of labor.

(3) Each migrant worker not employed exclusively in agricultural labor as defined in s. 108.02 (23) shall be provided a rest period of at least 10 minutes duration within each 5 hours of continuous employment, which rest period shall be considered a part of the hours of labor.

103.94 Civil action by migrant workers. Any migrant worker aggrieved by a violation of ss. 103.90 to 103.97 by an employer or by a migrant labor contractor may maintain a civil action on the basis of such violation without regard to exhaustion of any administrative remedy.

103.945 Nonwaiver of rights. Any agreement by a migrant worker purporting to waive or to modify his or her rights under ss. 103.90 to 103.97 shall be void as contrary to public policy.

103.96 Retaliation prohibited. (1) No employer or migrant labor contractor may terminate, suspend, demote, transfer or take any action otherwise unfavorable to any migrant worker in retaliation for the exercise by such worker of any right secured under the laws and regulations of the United States or of this state or any subdivision thereof.

(2) Any person aggrieved under this section may maintain an action against the employer or migrant labor contractor. In addition to any other damages awarded, an employer or migrant labor contractor found to have violated this section shall be liable to such person aggrieved for full reinstatement and for back wages accumulated during the period of such unlawful retaliation. In cases of wilful violation of this section, the court may assess exemplary damages up to double the amount of back wages found due in addition to any other damages awarded. In cases of aggravated circumstances, the court may also assess reasonable attorney's fees in addition to any other damages awarded.

103.965 Correction Period. If the department determines that any person has violated ss. 103.90 to 103.97, the person shall have a reasonable time, not to exceed 15 days from the day he or she receives notice of the violation, to correct the violation. If the violation is corrected within that period, no penalty may be imposed under s. 103.97.

103.967 Duties of council on migrant labor. The council on migrant labor shall:

(1) Advise the department and other state officials on any matter affecting migrant workers.

(2) Ascertain the conditions under which migrant workers are recruited, employed, housed and protected.

(3) Review in July of every odd-numbered year the minimum hours guaranteed under s. 103.915 (4) (b) and recommend to the legislature any changes the council finds necessary.

(4) Study the coordination of federal and state statutes and rules designed to assist, serve or protect migrant workers and recommend to the department, legislature and other appropriate state agencies any changes in statutes or rules necessary to achieve uniformity insofar as possible between such state and federal statutes and rules.

(5) Review rules submitted by the department under s. 103.968.

103.968 Council review of rules. The department shall submit every rule promulgated under ss. 103.90 to 103.97 to the council on migrant labor. If the department submits the rule to the appropriate standing committees of the legislature under s. 227.018 (2), the department shall submit the rule on the same date to the council. If the department does not submit the rule to the legislature under s. 227.018 (2), the department shall submit the rule to the council no later than the date of publication of the rule. If the council disapproves the rule within 45 days after the rule is submitted, the rule shall be void.

103.969 New contract compliance. Any collective bargaining agreement entered into by any person on or after the day after publication of chapter ... (this act), laws of 1977, shall not violate any provision of chapter ... (this act), laws of 1977.

103.97 Penalties. (1) If any person violates ss. 103.90 to 103.97, or fails or refuses to obey any lawful order of the department or any judgment of any court in connection with ss. 103.90 to 103.97, for each such violation, failure or refusal, such person shall forfeit not less than \$10 nor more than \$100. Each day of continued violation shall constitute a separate offense.

(2) An employer is not liable for a violation of ss. 103.90 to 103.97 if the violation is due to the employer's good faith reliance on the representations of a worker.

SECTION 6. Program responsibilities. In the list of program responsibilities for the department of justice under section 15.251 (intro.) of the statutes, delete reference to section "101.20 (2)".

SECTION 7. Initial council terms. The first members of the council on migrant labor created by section 15.227 (8) of the statutes shall be appointed by the governor for the following terms: 2 representatives of employers of migrant workers and 2 representatives of migrant workers and their organizations for a term of 3 years; 2 representatives of employers of migrant workers and 2 representatives of migrant workers and their organizations for a term of 2 years; and 2 representatives of employers of migrant workers and 2 representatives of migrant workers and their organizations for a term of one year.

SECTION 8. Current contracts unaffected. This act shall not affect any contract in effect on the date this act goes into effect.

SECTION 9. Effective date. Section 103.915 of the statutes, as created by this act, shall take effect on January 1, 1978.
