

SENATE BILL 100

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(PRE-FILED)

By: **Chair, Finance Committee (By Request – Departmental – Labor, Licensing and Regulation)**

Requested: October 9, 2015

Introduced and read first time: January 13, 2016

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Farm Labor Contracting – State License Requirement – Repeal**

3 FOR the purpose of repealing the requirement that an individual, except under certain
4 circumstances, be licensed by the Commissioner of Labor and Industry before
5 performing a farm labor contracting service in the State for consideration; repealing
6 certain provisions of law related to the licensure of farm labor contractors; repealing
7 a certain provision of law authorizing the Commissioner to require a farm labor
8 contractor to post a surety bond or other security; repealing a certain provision of
9 law authorizing a certain person to take a certain appeal as allowed in certain
10 provisions of law; altering a requirement regarding the performance of farm labor
11 contracting service in the State for consideration; altering a requirement regarding
12 the use of a farm labor contractor to perform a farm labor contracting service;
13 altering a certain definition; repealing certain definitions; making conforming
14 changes; and generally relating to farm labor contracting.

15 BY repealing and reenacting, with amendments,
16 Article – Labor and Employment
17 Section 7–101, 7–201, 7–203(b), 7–501, 7–502, 7–503, and 7–506
18 Annotated Code of Maryland
19 (2008 Replacement Volume and 2015 Supplement)

20 BY repealing
21 Article – Labor and Employment
22 Section 7–301 through 7–313 and the subtitle “Subtitle 3. Licensing”; and 7–505
23 Annotated Code of Maryland
24 (2008 Replacement Volume and 2015 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
26 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Labor and Employment

7–101.

(a) In this title the following words have the meanings indicated.

(b) “Agricultural operation” means:

(1) a person:

(i) who performs a farm labor contracting service; and

(ii) who:

1. owns or operates a farm;

2. owns or operates a cannery, packing shed, or other processing establishment; or

3. produces or conditions seed; or

(2) a not-for-profit or cooperative association that:

(i) performs a farm labor contracting service;

(ii) consists of owners or operators of farms; and

(iii) is incorporated or qualified under the laws of the State.

(c) “Agricultural work” means employment:

(1) on a farm, in any activity that relates to the maintenance, management, or operation of the farm or its tools or other equipment, including cultivation of soil, raising of bees, or the growing, harvesting, or producing of an agricultural or horticultural commodity; or

(2) by the owner or operator of a farm, to dry, to freeze, to grade, to pack, to package, to plant, to process, or otherwise to handle an agricultural or horticultural commodity in its unmanufactured state before delivery for storage.

(d) “Commissioner” means the Commissioner of Labor and Industry.

(e) (1) “Farm” means an area that is used primarily to raise an agricultural or horticultural commodity.

(2) “Farm” includes:

- 1 (i) a dairy farm;
- 2 (ii) a fruit farm;
- 3 (iii) a furbearing animal farm;
- 4 (iv) a greenhouse;
- 5 (v) a nursery;
- 6 (vi) an orchard;
- 7 (vii) a poultry farm;
- 8 (viii) a ranch;
- 9 (ix) a stock farm; and
- 10 (x) a truck farm.

11 (f) “Farm labor contractor” means a person[,]:

12 (1) other than an agricultural operation or an employee of an agricultural
 13 operation, who performs a farm labor contracting service for consideration; AND

14 (2) WHO HAS A FARM LABOR CONTRACTOR CERTIFICATE OF
 15 REGISTRATION FROM THE U.S. DEPARTMENT OF LABOR.

16 [(g) “License” means a license issued by the Commissioner to perform farm labor
 17 contracting services for consideration.

18 (h) “Licensed farm labor contractor” means an individual who is licensed by the
 19 Commissioner to perform farm labor contracting services for consideration.]

20 [(i)] (G) (1) “Migrant agricultural worker” means, except as provided in
 21 paragraph (2) of this subsection, an individual who:

22 (i) is employed to perform agricultural work of a seasonal or other
 23 temporary nature; and

24 (ii) in the course of employment:

25 1. is absent overnight from the permanent place of residence
 26 of the individual; or

1 (1) submit to the Commissioner:

2 (i) an application on the form that the Commissioner provides; and

3 (ii) two recent, passport sized, color photographs of the applicant;
4 and

5 (2) pay to the Commissioner an application fee of \$25.

6 (b) The application shall state:

7 (1) the permanent place of residence of the applicant;

8 (2) each address where the applicant expects to reside while in the State;

9 (3) each farm labor contracting service that the applicant will perform for
10 consideration;

11 (4) the name and address of each agricultural operation for whom the
12 applicant will perform a farm labor contracting service, in the State, for consideration;

13 (5) the name and permanent address of each person who will act as
14 custodian of records of wages that are required under this title to be kept;

15 (6) the number of migrant agricultural workers that the applicant expects
16 to use in the State to perform a farm labor contracting service for consideration;

17 (7) if the applicant will provide housing or cause housing to be provided to
18 a migrant agricultural worker:

19 (i) the name of each person who will provide the housing; and

20 (ii) each address where the housing will be provided;

21 (8) if registration is required under the federal Migrant and Seasonal
22 Agricultural Worker Protection Act, the registration identification number of the applicant;

23 (9) the name of a resident agent who is acceptable to the Commissioner;

24 (10) the consent of the applicant to service of process on the resident agent
25 whenever the applicant leaves the State or otherwise is unavailable to accept service; and

26 (11) other relevant information that the Commissioner requires.

27 (c) If information required under subsection (b) of this section changes, the
28 applicant or, if a license has been issued, the licensee shall give the Commissioner notice of

1 the change within 10 days after the applicant or licensee knows or should have known of
2 the change.

3 (d) Information in an application or in a notice of change may not be used to imply
4 legal responsibility on an agricultural operation for the care, custody, or activities of a
5 migrant agricultural worker whom a farm labor contractor provides.

6 (e) The Commissioner shall make application forms reasonably available at
7 convenient locations throughout the State.]

8 [7-303.

9 On receipt of an application for a license, the Commissioner shall investigate, as
10 appropriate, to determine whether the applicant is entitled to be licensed.]

11 [7-304.

12 (a) The Commissioner shall issue a license to each applicant who meets the
13 requirements of this subtitle.

14 (b) The Commissioner shall attach to each license issued under this section a
15 photograph of the licensee.]

16 [7-305.

17 While a license is in effect, it authorizes the licensee to perform farm labor
18 contracting services for consideration.]

19 [7-306.

20 A license expires on the first March 1 after its effective date.]

21 [7-307.

22 While a licensee is performing a farm labor contracting service in the State, the
23 licensee shall:

24 (1) carry the license; and

25 (2) show the license:

26 (i) to each person with whom the licensee intends to deal as a farm
27 labor contractor; and

28 (ii) on request, to an authorized employee or official of the State.]

1 [7-308.

2 Subject to the hearing provisions of § 7-309 of this subtitle, the Commissioner may
3 deny a license to any applicant or suspend or revoke a license if the applicant or licensee:

4 (1) fraudulently or deceptively obtains or attempts to obtain a license for
5 the applicant or licensee or for another;

6 (2) fraudulently or deceptively uses a license;

7 (3) knowingly makes any misrepresentation in the application;

8 (4) is not the real party in interest in the application for a license and the
9 real party in interest:

10 (i) has been refused a license;

11 (ii) has had a license suspended or revoked; or

12 (iii) otherwise fails to qualify under this section for a license;

13 (5) fails to comply with any provision of this title;

14 (6) fails to comply with any regulation that the Commissioner adopts;

15 (7) fails to comply with an order that the Commissioner passes;

16 (8) fails to satisfy a judgment that the Commissioner obtains under this
17 title;

18 (9) knowingly gives a migrant agricultural worker who is recruited or hired
19 false or misleading information about the existence or conditions of employment;

20 (10) fails, without just cause, to comply with any agreement or arrangement
21 with an agricultural operation or with a migrant agricultural worker;

22 (11) is found by the Secretary of Health and Mental Hygiene to have violated
23 a regulation of the Secretary on housing, sanitation, or safety for migrant agricultural
24 workers;

25 (12) has had a farm labor contractor registration certificate suspended or
26 revoked by the United States Department of Labor or by another state for a reason that
27 would justify suspension or revocation of a license in this State;

28 (13) has been convicted of a felony under a law of the State or under federal
29 law; or

1 (14) during the past 5 years, has been convicted of a misdemeanor in
2 connection with performing a farm labor contracting service if the misdemeanor relates to:

3 (i) gambling;

4 (ii) sale, distribution, or possession of an alcoholic beverage; or

5 (iii) sale, distribution, or possession of a controlled dangerous
6 substance.]

7 [7-309.

8 (a) Except as provided in § 10-226 of the State Government Article or in § 7-310
9 of this subtitle, before the Commissioner takes any final action under § 7-308 of this
10 subtitle, the Commissioner shall give the individual against whom the action is
11 contemplated an opportunity for a hearing before the Commissioner.

12 (b) The Commissioner shall give notice and hold the hearing in accordance with
13 Title 10, Subtitle 2 of the State Government Article.

14 (c) If, after due notice, the individual against whom the action is contemplated
15 fails or refuses to appear, nevertheless the Commissioner may hear and determine the
16 matter.]

17 [7-310.

18 The Commissioner may suspend a license summarily pending the determination of
19 a hearing under § 7-309 of this subtitle if the Commissioner finds suspension necessary to
20 prevent abuse of or injury to a migrant agricultural worker.]

21 [7-311.

22 (a) If, after an investigation, the Commissioner has reason to believe that a
23 person is performing a farm labor contracting service for consideration in the State without
24 a license, the Commissioner may pass an order to require the person immediately to cease
25 performing the farm labor contracting service.

26 (b) The Commissioner shall give notice of the order and, if requested under
27 subsection (d) of this section, hold a hearing in accordance with Title 10, Subtitle 2 of the
28 State Government Article.

29 (c) An order passed under this section shall be:

30 (1) served personally; or

31 (2) sent by certified mail to the last known address of the person.

1 (d) (1) Within 7 days after service of an order under this section, the person
2 may submit to the Commissioner a written request for a hearing.

3 (2) Unless a person requests a hearing in accordance with paragraph (1) of
4 this subsection, the order is final.]

5 [7-312.

6 (a) Subject to subsection (b) of this section, the Commissioner may require a farm
7 labor contractor to post a surety bond or other security if the Commissioner:

8 (1) finds that the farm labor contractor has violated a provision of this title
9 or any order that the Commissioner passes or regulation that the Commissioner adopts; or

10 (2) receives a certified record of the finding of a unit of another state or the
11 United States that the farm labor contractor has violated any law that relates to:

12 (i) registration as a farm labor contractor; or

13 (ii) the employment of, provision of housing for, or transportation of
14 a migrant agricultural worker.

15 (b) The Commissioner may not require security on the basis of an administrative
16 decision that a court nullifies.

17 (c) The Commissioner may require security in an amount that the Commissioner
18 considers adequate to ensure compliance with the laws of the State.]

19 [7-313.

20 Any person aggrieved by a final decision of the Commissioner in a contested case, as
21 defined in § 10-202 of the State Government Article, may take an appeal as allowed in §§
22 10-222 and 10-223 of the State Government Article.]

23 7-501.

24 Except as otherwise provided in this title, a person may not perform a farm labor
25 contracting service in the State for consideration unless [licensed by the Commissioner]
26 **THE PERSON HAS A FARM LABOR CONTRACTOR CERTIFICATE OF REGISTRATION**
27 **FROM THE U.S. DEPARTMENT OF LABOR.**

28 7-502.

29 Unless authorized under this title to perform a farm labor contracting service for
30 consideration, a person may not represent to the public, by the use of a title, including

1 “[licensed] farm labor contractor”, by description of services, methods, or procedures, or
2 otherwise, that the person is authorized to perform a farm labor contracting service in the
3 State for consideration.

4 7–503.

5 [(a) Except as otherwise provided in this title, a] A person may not use a farm
6 labor contractor to perform a farm labor contracting service unless the person ascertains
7 that the farm labor contractor is [licensed by:

8 (1) requesting confirmation from the Commissioner that the farm labor
9 contractor is licensed; or

10 (2) examining the license] **REGISTERED WITH THE U.S. DEPARTMENT**
11 **OF LABOR.**

12 [(b) (1) Whenever a person makes a request under subsection (a)(1) of this
13 section, the Commissioner shall inform the person whether the farm labor contractor is
14 licensed.

15 (2) Within 5 working days after a person makes a request under subsection
16 (a)(1) of this section, the Commissioner shall respond in writing.

17 (3) If the status changes during the term of the license, the Commissioner
18 shall give the person who made the request written notice of the change.

19 (4) If the Commissioner fails to provide the notice required under this
20 subsection, a person is not liable for hiring a person who is not authorized to perform farm
21 labor contracting services in the State.

22 (c) Notwithstanding subsection (b)(4) of this section, a person may not hire or
23 continue to use a farm labor contractor to perform a farm labor contracting service after
24 the person receives notice from the Commissioner or otherwise learns that the farm labor
25 contractor is not licensed.]

26 [7–505.

27 A person may not assign or transfer a license.]

28 7–506.

29 (a) Subject to the limitations in this section, the Commissioner may assess a civil
30 penalty against a person who willfully or repeatedly violates:

31 (1) any provision of this title;

1 (2) any order passed under this title; or

2 (3) any regulation adopted to carry out this title.

3 (b) A civil penalty under this section may not exceed \$5,000 for each violation.

4 (c) (1) Before the Commissioner assesses a civil penalty against an
5 agricultural operation, the Commissioner shall consider the appropriateness of the penalty
6 in relation to:

7 (i) the size of the business;

8 (ii) any good faith effort to comply with [§ 7-503 of] this subtitle; and

9 (iii) the history of previous violations.

10 (2) Before the Commissioner assesses a civil penalty against a farm labor
11 contractor, the Commissioner shall consider the appropriateness of the penalty in relation
12 to:

13 (i) the size of the business;

14 (ii) the gravity of the violation;

15 (iii) the good faith of the farm labor contractor; and

16 (iv) the history of previous violations in this State or in any other
17 state that relate [to licensing or] to the treatment of a migrant agricultural worker.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2016.