

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 08-0607.01 Kristen Forrestal

HOUSE BILL 08-1325

HOUSE SPONSORSHIP

Looper, and Rose

SENATE SPONSORSHIP

Tapia,

House Committees

State, Veterans, & Military Affairs

Appropriations

Senate Committees

Agriculture, Natural Resources &

Energy

Appropriations

A BILL FOR AN ACT

101 **CONCERNING THE COLORADO NONIMMIGRANT AGRICULTURAL**
102 **SEASONAL WORKER PILOT PROGRAM, AND MAKING AN**
103 **APPROPRIATION THEREFOR.**

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

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.*

SENATE
3rd Reading Unamended
May 2, 2008

SENATE
Amended 2nd Reading
May 1, 2008

HOUSE
3rd Reading Unamended
April 22, 2008

HOUSE
Amended 2nd Reading
April 21, 2008

(program) for the purpose of expediting recruitment, application, and approval of workers through the federal H-2A certification process. 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

1 six hundred million dollars, with livestock products accounting for
2 seventy-two percent of the total and crops accounting for the other
3 twenty-eight percent;

4 (f) Colorado farmers and ranchers help to feed the world,
5 exporting nearly one billion dollars in food products annually, with
6 Mexico, Canada, Japan, and Taiwan receiving the largest share of
7 Colorado food products;

8 (g) A 2007 Colorado state university agritourism study indicates
9 that approximately thirteen million two hundred thousand people
10 participated in some form of Colorado agritourism in 2006, and it is
11 estimated that Colorado agritourism generated about two billion two
12 hundred thousand dollars for Colorado's economy, or fourteen percent of
13 tourism's economic activity in Colorado;

14 (h) Colorado's agriculture industry employs an estimated nine
15 thousand seasonal workers annually, and the agriculture industry faces
16 critical shortages of seasonal workers;

17 (i) The Colorado general assembly realizes Colorado's
18 agricultural leadership in the world market would not be possible without
19 the hard, tedious, and dangerous work of the farmer, rancher, and
20 agricultural seasonal worker;

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

25 (k) It is the purpose of this act to remove constraints on commerce
26 caused by activities detrimental to Colorado's agriculture industry and to
27 allow the Colorado department of labor and employment, in cooperation

1 with the Colorado commissioner of agriculture, to establish a Colorado
2 nonimmigrant agricultural seasonal worker pilot program and to assure
3 necessary protections for nonimmigrant and seasonal agricultural
4 workers;

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

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

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

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

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

4 (2) "COMMISSIONER" MEANS THE COMMISSIONER OF THE
5 COLORADO DEPARTMENT OF AGRICULTURE OR HIS OR HER DESIGNEE.

6 (3) "DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF
7 LABOR AND EMPLOYMENT.

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

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

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

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

21 (b) AN H-2A VISA ALLOWS FOR THE ADMISSION OF NONIMMIGRANT
22 FOREIGN WORKERS INTO THE UNITED STATES TO PERFORM AGRICULTURAL
23 WORK THAT IS TEMPORARY IN NATURE, SUCH AS HARVESTING CROPS.
24 NONIMMIGRANTS ARE PERSONS LEGALLY ADMITTED INTO THE UNITED
25 STATES FOR A SPECIFIC PURPOSE AND TIME PERIOD AND WHO DO NOT
26 INTEND TO MAKE THE UNITED STATES THEIR PERMANENT RESIDENCE.
27 H-2A VISAS ARE ADMINISTERED JOINTLY BY THE UNITED STATES

1 DEPARTMENT OF LABOR AND THE UNITED STATES CITIZENSHIP AND
2 IMMIGRATION SERVICES.

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

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

23 **8-3.5-104. Pilot program - creation - powers of department -**
24 **advisory council.** (1) THERE IS HEREBY ESTABLISHED IN THE
25 DEPARTMENT THE NONIMMIGRANT AGRICULTURAL SEASONAL WORKER
26 PILOT PROGRAM. THE PURPOSE OF THE PROGRAM SHALL BE TO EXPEDITE
27 THE APPLICATION AND APPROVAL OF THE FEDERAL H-2A VISA

1 CERTIFICATION PROCESS ESTABLISHED AS PART OF THE FEDERAL
2 "IMMIGRATION REFORM AND CONTROL ACT OF 1986", 8 U.S.C. SEC. 1101
3 ET SEQ. UPON THE PROMULGATION OF RULES PURSUANT TO SECTION
4 8-3.5-112, THE DIRECTOR OR HIS OR HER DESIGNEE, IN COOPERATION WITH
5 THE COMMISSIONER OR HIS OR HER DESIGNEE, SHALL IMPLEMENT THE
6 PROGRAM.

7 (2) THE PROGRAM SHALL INCLUDE SECTORS OF THE AGRICULTURE
8 INDUSTRY IDENTIFIED BY THE DIRECTOR IN COOPERATION WITH THE
9 COMMISSIONER, SHALL BE LIMITED TO ONE THOUSAND EMPLOYEES IN THE
10 FIRST YEAR, AND SHALL INCREASE BY ONE THOUSAND ADDITIONAL
11 EMPLOYEES ANNUALLY FOR FOUR YEARS THEREAFTER.

12 (3) THE DIRECTOR AND THE COMMISSIONER, IN CONJUNCTION WITH
13 THE DIRECTOR OF THE GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT
14 AND INTERNATIONAL TRADE, MAY SEEK AGREEMENTS BETWEEN
15 COLORADO AND FOREIGN COUNTRIES TO ASSIST IN THE RECRUITING AND
16 SELECTION OF ELIGIBLE H-2A WORKERS AND IN THE MAINTENANCE OF A
17 POOL OF WORKERS TO DEPART FOR WORK IN COLORADO UPON THE
18 APPROVAL OF THE EMPLOYEES' FEDERAL H-2A VISAS AND EMPLOYER
19 APPROVAL FOR PARTICIPATION IN THE PROGRAM. A FAMILY MEMBER OF
20 AN EMPLOYEE MAY PARTICIPATE IN THE PROGRAM ONLY IF THE FAMILY
21 MEMBER ALSO QUALIFIES FOR AND IS ISSUED A CURRENT H-2A VISA.

22 (4) THERE IS HEREBY ESTABLISHED THE NONIMMIGRANT
23 AGRICULTURAL SEASONAL WORKER PILOT PROGRAM ADVISORY COUNCIL.
24 THE ADVISORY COUNCIL MEMBERS SHALL BE THE COMMISSIONER OF THE
25 DEPARTMENT OF AGRICULTURE OR HIS OR HER DESIGNEE, THE EXECUTIVE
26 DIRECTOR OF THE DEPARTMENT OF LABOR AND EMPLOYMENT OR HIS OR
27 HER DESIGNEE, THE CHAIRS OF THE HOUSE BUSINESS AFFAIRS AND LABOR

1 COMMITTEE AND THE SENATE BUSINESS, LABOR, AND TECHNOLOGY
2 COMMITTEE, THE CHAIRS OF THE HOUSE AND SENATE AGRICULTURE,
3 LIVESTOCK, AND NATURAL RESOURCES COMMITTEES, OR THEIR SUCCESSOR
4 COMMITTEES, AND THREE APPOINTEES OF THE GOVERNOR, ONE WHO IS A
5 REPRESENTATIVE OF THE AGRICULTURE INDUSTRY, ONE WHO HAS
6 EXPERIENCE IN IMMIGRATION SERVICES, AND ONE WHO IS A
7 REPRESENTATIVE OF A MIGRANT WORKER ADVOCACY GROUP. MEMBERS
8 OF THE ADVISORY COUNCIL ARE ENTITLED TO REIMBURSEMENT FOR
9 ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF
10 THEIR DUTIES. THE ADVISORY COUNCIL SHALL MAKE RECOMMENDATIONS
11 FOR THE ADOPTION OF RULES PURSUANT TO SECTION 8-3.5-112 AND SHALL
12 ASSIST IN THE PREPARATION OF THE REPORT TO THE GENERAL ASSEMBLY
13 PURSUANT TO SECTION 8-3.5-111. THE ADVISORY COMMITTEE SHALL
14 CONSULT WITH HEALTH INSURANCE CARRIERS IN THIS STATE TO
15 DETERMINE THE AVAILABILITY OF HEALTH INSURANCE PLANS FOR
16 EMPLOYEES PARTICIPATING IN THE PROGRAM. THE ADVISORY COMMITTEE
17 SHALL INCLUDE IN THE REPORT TO THE GENERAL ASSEMBLY ANY
18 LEGISLATIVE RECOMMENDATIONS DEEMED NECESSARY TO MAKE HEALTH
19 INSURANCE AVAILABLE TO SEASONAL AGRICULTURAL WORKERS.

20 **8-3.5-105. Application process - screening.** (1) THE
21 DEPARTMENT SHALL WORK WITH EMPLOYERS PARTICIPATING IN THE
22 PROGRAM TO EXPEDITE THE H-2A VISA APPLICATION, APPROVAL, AND
23 RECRUITMENT PROCESS SO THAT THE SEASONAL AGRICULTURAL NEEDS OF
24 THE EMPLOYERS ARE MET IN A TIMELY MANNER.

25 (2) THE DEPARTMENT IS AUTHORIZED TO CHARGE EMPLOYERS A
26 FEE NECESSARY TO COVER THE COSTS OF THE PROGRAM. THE FEES
27 COLLECTED SHALL BE TRANSFERRED TO THE STATE TREASURER WHO

1 SHALL DEPOSIT THE MONEYS INTO THE NONIMMIGRANT AGRICULTURAL
2 SEASONAL WORKER PILOT PROGRAM CASH FUND ESTABLISHED IN SECTION
3 8-3.5-108.

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

10 (4) THE EMPLOYER SHALL:

11 (a) REIMBURSE THE EMPLOYEE FOR THE COSTS OF
12 TRANSPORTATION AND SUBSISTENCE FROM THE SITE OF RECRUITMENT TO
13 THE PLACE OF EMPLOYMENT WHEN HALF OF THE CONTRACT PERIOD IS
14 COMPLETE;

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

17 (c) PAY FOR THE COSTS OF RETURN TRANSPORTATION AND
18 SUBSISTENCE TO THE PLACE OF RECRUITMENT WHEN THE CONTRACT
19 PERIOD IS COMPLETE;

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

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

25 (f) PAY THE EMPLOYEE WAGES THAT ARE IN COMPLIANCE WITH
26 THE FEDERAL REQUIREMENTS ESTABLISHED PURSUANT TO THE FEDERAL
27 "IMMIGRATION REFORM AND CONTROL ACT OF 1986", 8 U.S.C. SEC. 1101

1 ET SEQ.;

2 (g) PROVIDE WORKERS' COMPENSATION INSURANCE;

3 (h) PROVIDE ALL TOOLS, SUPPLIES, AND EQUIPMENT REQUIRED TO

4 PERFORM THE DUTIES ASSIGNED, WITHOUT CHARGE, TO THE EMPLOYEE;

5 (i) IN COMPLIANCE WITH FEDERAL LAW, PROVIDE EACH EMPLOYEE

6 WITH THREE LOW-COST MEALS PER DAY AND DISCLOSE THE COST IN THE

7 EMPLOYMENT CONTRACT OR PROVIDE FREE COOKING AND KITCHEN

8 FACILITIES;

9 (j) GUARANTEE EMPLOYMENT FOR AT LEAST THREE-FOURTHS OF

10 THE WORK DAYS DURING THE WORK CONTRACT PERIOD;

11 (k) GUARANTEE THAT THE EMPLOYEE WILL BE PAID AT LEAST

12 TWICE PER MONTH; AND

13 (l) PROVIDE TO THE EMPLOYEE A COPY OF THE WORK CONTRACT

14 BETWEEN THE EMPLOYER AND THE EMPLOYEE.

15 (5) AN EMPLOYER SEEKING TO EMPLOY EMPLOYEES THROUGH THE

16 PROGRAM SHALL MAKE THE FOLLOWING ASSURANCES:

17 (a) THAT THE EMPLOYER WILL COMPLY WITH APPLICABLE

18 FEDERAL, STATE, AND LOCAL EMPLOYMENT LAWS;

19 (b) THAT NO UNITED STATES WORKER WILL BE REJECTED FOR OR

20 TERMINATED FROM EMPLOYMENT OTHER THAN FOR A LAWFUL

21 JOB-RELATED REASON; AND

22 (c) THAT THE EMPLOYER WILL, IN A TIMELY MANNER, PAY THE

23 FEES ASSOCIATED WITH THE PROGRAM.

24 **8-3.5-106. Visa violation notification - employee compliance.**

25 (1) EACH EMPLOYER SHALL NOTIFY THE DEPARTMENT WITHIN THE TIME

26 PERIOD SPECIFIED IN, AND IN ACCORDANCE WITH, SECTION 8 CFR 214.2 (h)

27 (5) (vi) (A) IF AN EMPLOYEE ABSCONDS HIS OR HER EMPLOYMENT.

1 (2) IF AN EMPLOYER, WITH RECKLESS DISREGARD, FAILS TO NOTIFY
2 THE DEPARTMENT AS REQUIRED IN SUBSECTION (1) OF THIS SECTION, THE
3 DEPARTMENT MAY:

4 (a) DENY THE EMPLOYER FUTURE PARTICIPATION IN THE PROGRAM;
5 OR

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

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

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

16 **8-3.5-107. Retaliation prohibited.** AN EMPLOYER SHALL NOT
17 INTIMIDATE, THREATEN, RESTRAIN, COERCE, BLACKLIST, DISCHARGE, OR
18 IN ANY MANNER DISCRIMINATE AGAINST ANY PERSON WHO HAS, WITH JUST
19 CAUSE, PERFORMED ANY ACT ENUMERATED IN 20 CFR 655.103 (g).

20 **8-3.5-108. Nonimmigrant agricultural seasonal worker pilot**
21 **program cash fund.** THERE IS HEREBY ESTABLISHED THE
22 NONIMMIGRANT AGRICULTURAL SEASONAL WORKER PILOT PROGRAM CASH
23 FUND IN THE STATE TREASURY, REFERRED TO IN THIS SECTION AS THE
24 "FUND". MONEYS IN THE FUND SHALL CONSIST OF ANY FEES OR FINES
25 COLLECTED PURSUANT TO THIS ARTICLE. THE MONEYS IN THE FUND SHALL
26 BE ANNUALLY APPROPRIATED TO THE DEPARTMENT FOR THE
27 ADMINISTRATIVE COSTS ASSOCIATED WITH THE PROGRAM. ANY MONEYS

1 REMAINING IN THE FUND AT THE END OF ANY FISCAL YEAR SHALL REMAIN
2 IN THE FUND AND SHALL NOT REVERT TO THE GENERAL FUND OR ANY
3 OTHER FUND.

4 **8-3.5-109. Identification cards issued by department of**
5 **revenue.** WITHIN TWO WEEKS AFTER AN EMPLOYEE'S ARRIVAL IN
6 COLORADO, THE EMPLOYEE SHALL APPLY FOR AN IDENTIFICATION CARD
7 ISSUED BY THE DEPARTMENT OF REVENUE PURSUANT TO PART 3 OF
8 ARTICLE 2 OF TITLE 42, C.R.S. THE EMPLOYER SHALL PROVIDE FREE
9 TRANSPORTATION TO THE EMPLOYEE IN ORDER FOR THE EMPLOYEE TO
10 MEET THIS REQUIREMENT.

11 **8-3.5-110. Penalties - hearing - court action - civil actions. (1)**
12 A PERSON WHO, WITH RECKLESS DISREGARD, VIOLATES ANY PROVISIONS
13 OF THIS ARTICLE, OR WHO, WITH RECKLESS DISREGARD, CAUSES OR
14 INDUCES ANOTHER TO VIOLATE ANY PROVISIONS OF THIS ARTICLE, MAY BE
15 ASSESSED A FINE BY THE DIRECTOR OF NOT MORE THAN FIVE THOUSAND
16 DOLLARS. ANY MONEYS COLLECTED PURSUANT TO THIS SECTION SHALL
17 BE TRANSFERRED TO THE STATE TREASURER WHO SHALL DEPOSIT THE
18 SAME INTO THE NONIMMIGRANT AGRICULTURAL SEASONAL WORKER PILOT
19 PROGRAM CASH FUND ESTABLISHED IN SECTION 8-3.5-108.

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

23 (3) IF ANY PERSON FAILS TO PAY AN ASSESSMENT AFTER IT HAS
24 BECOME A FINAL AND UNAPPEALABLE ORDER, OR AFTER THE COURT HAS
25 ENTERED FINAL JUDGMENT IN FAVOR OF THE DEPARTMENT, THE DIRECTOR
26 SHALL REFER THE MATTER TO THE STATE ATTORNEY GENERAL, WHO SHALL
27 RECOVER THE AMOUNT ASSESSED BY ACTION IN THE APPROPRIATE COURT

1 OF COMPETENT JURISDICTION. IN SUCH ACTION, THE VALIDITY AND
2 APPROPRIATENESS OF THE FINAL ORDER IMPOSING THE PENALTY SHALL
3 NOT BE SUBJECT TO REVIEW.

4 **8-3.5-111. Report to general assembly.** ON OR BEFORE
5 FEBRUARY 1, 2010, THE DIRECTOR, IN COOPERATION WITH THE
6 COMMISSIONER, SHALL REPORT TO THE SENATE BUSINESS, LABOR, AND
7 TECHNOLOGY COMMITTEE, THE SENATE AGRICULTURE, NATURAL
8 RESOURCES, AND ENERGY COMMITTEE, THE HOUSE BUSINESS AFFAIRS AND
9 LABOR COMMITTEE, AND THE HOUSE AGRICULTURE, LIVESTOCK, AND
10 NATURAL RESOURCES COMMITTEE OF THE GENERAL ASSEMBLY, OR THEIR
11 SUCCESSOR COMMITTEES, REGARDING THE PROGRESS OF THE PROGRAM.
12 THE REPORT SHALL INCLUDE ANY RECOMMENDED LEGISLATIVE CHANGES.

13 **8-3.5-112. Rules.** ON OR BEFORE JANUARY 1, 2009, THE
14 DEPARTMENT, IN CONSULTATION WITH THE COMMISSIONER AND THE
15 ADVISORY COUNCIL CREATED IN SECTION 8-3.5-104 (4), SHALL
16 PROMULGATE RULES AS NECESSARY FOR THE DELINEATION OF OVERSIGHT
17 RESPONSIBILITIES TO THE DEPARTMENT UNDER, AND FOR THE
18 IMPLEMENTATION OF, THIS ARTICLE.

19 **8-3.5-113. Severability.** IF ANY PROVISION OF THIS ARTICLE OR
20 ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD ILLEGAL,
21 INVALID, OR UNENFORCEABLE, NO OTHER PROVISIONS OR APPLICATIONS OF
22 THIS ARTICLE SHALL BE AFFECTED THAT CAN BE GIVEN EFFECT WITHOUT
23 THE ILLEGAL, INVALID, OR UNENFORCEABLE PROVISION OR APPLICATION,
24 AND TO THIS END THE PROVISIONS OF THIS ARTICLE ARE SEVERABLE.

25 **8-3.5-114. Repeal.** THIS ARTICLE IS REPEALED, EFFECTIVE
26 JANUARY 1, 2014.

27 **SECTION 3. Appropriation - adjustments to the 2008 long**

1 **bill.** (1) In addition to any other appropriation, there is hereby
2 appropriated, out of any moneys in the nonimmigrant agricultural
3 seasonal worker pilot program cash fund created in section 8-3.5-108,
4 Colorado Revised Statutes, not otherwise appropriated, to the department
5 of labor and employment, for allocation to the division of employment
6 and training, for state operations, for the fiscal year beginning July 1,
7 2008, the sum of seventy-seven thousand seven hundred twenty-five
8 dollars (\$77,725) and 1.0 FTE, or so much thereof as may be necessary,
9 for the implementation of this act.

10 (2) In addition to any other appropriation, there is hereby
11 appropriated, out of any moneys in the nonimmigrant agricultural
12 seasonal worker pilot program cash fund created in section 8-3.5-108,
13 Colorado Revised Statutes, not otherwise appropriated, to the department
14 of labor and employment, for allocation to the executive director's office,
15 for legal services, for the fiscal year beginning July 1, 2008, the sum of
16 four thousand three hundred twenty-two dollars (\$4,322), or so much
17 thereof as may be necessary, for the implementation of this act.

18 (3) In addition to any other appropriation, there is hereby
19 appropriated to the department of law, for the fiscal year beginning July
20 1, 2008, the sum of four thousand three hundred twenty-two dollars
21 (\$4,322), or so much thereof as may be necessary, for the provision of
22 legal services to the department of labor and employment related to the
23 implementation of this act. Said sum shall be from reappropriated funds
24 received from the department of labor and employment out of the
25 appropriation made in subsection (2) of this section.

26 (4) In addition to any other appropriation, there is hereby
27 appropriated, out of any moneys in the general fund not otherwise

1 appropriated, to the legislative department, for allocation to legislative
2 council, for the fiscal year beginning July 1, 2008, the sum of seven
3 thousand twenty dollars (\$7,020), or so much thereof as may be
4 necessary, for the implementation of this act.

5 (5) For the implementation of this act, the general fund
6 appropriation to the controlled maintenance trust fund made in section 23
7 of the annual general appropriation act, for the fiscal year beginning July
8 1, 2008, shall be decreased by seven thousand twenty dollars (\$7,020).

9 **SECTION 4. Effective date.** This act shall take effect at 12:01
10 a.m. on the day following the expiration of the ninety-day period after
11 final adjournment of the general assembly that is allowed for submitting
12 a referendum petition pursuant to article V, section 1 (3) of the state
13 constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008);
14 except that, if a referendum petition is filed against this act or an item,
15 section, or part of this act within such period, then the act, item, section,
16 or part, if approved by the people, shall take effect on the date of the
17 official declaration of the vote thereon by proclamation of the governor.