

105TH CONGRESS
1ST SESSION

H. R. 2038

To amend the Migrant and Seasonal Agricultural Worker Protection Act
to clarify the application of such Act.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1997

Mr. CANADY of Florida (for himself, Mr. JENKINS, and Mr. HILLEARY) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Migrant and Seasonal Agricultural Worker
Protection Act to clarify the application of such Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND REFERENCE.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “MSPA Clarification Act of 1997”.

6 (b) **REFERENCE.**—Whenever in this Act an amend-
7 ment or repeal is expressed in terms of an amendment
8 to, or repeal of, a section or other provision, the reference
9 shall be considered to be made to a section or other provi-

1 sion of the Migrant and Seasonal Agricultural Worker
2 Protection Act.

3 **SEC. 2. FAMILY BUSINESS EXEMPTION.**

4 Section 4(a)(1) (29 U.S.C. 1803(a)(1)) is amended
5 by inserting before the period the following: “, such indi-
6 vidual’s employees choose to work for another person on
7 their free time, such individual used a State employment
8 service agency to obtain employees, or such individual ob-
9 tained referrals for employment from the other migrant
10 or seasonal agricultural employees”.

11 **SEC. 3. FARM LABOR CONTRACTOR.**

12 Section 3(6) (29 U.S.C. 1802(6)) is amended by in-
13 serting at the end the following: “Such term does not in-
14 clude a migrant or seasonal agricultural worker who vol-
15 untarily enters into carpool arrangements or who is di-
16 rected or requested to do so by a person pursuant to Fed-
17 eral, State, or local law.

18 **SEC. 4. INSPECTIONS.**

19 Part A of title V is amended by adding at the end
20 the following:

21 “INVESTIGATIONS

22 “SEC. 507. No investigation by entry onto a place
23 of agricultural employment may be made under this Act
24 to determine if a person violated this Act unless a con-
25 ference is first held with such person to inform such per-
26 son of the purpose of the investigation and a conference

1 is held with such person at the end of the investigation
2 to inform such person of the results of the investigation.”.

3 **SEC. 5. VIOLATION CORRECTIONS.**

4 (a) ADMINISTRATIVE SANCTIONS.—Section
5 503(a)(1) (29 U.S.C. 1853(a)(1)) is amended by adding
6 at the end the following: “If an agricultural employer, ag-
7 ricultural association, or farm labor contractor corrects a
8 violation of this Act or a regulation under this Act within
9 10 working days of the date on which a citation for such
10 violation has been served upon such employer, association,
11 or contractor, no civil money penalty shall be imposed on
12 such person for such violation. Such correction of a viola-
13 tion shall be allowed only where such agricultural em-
14 ployer, agricultural association, or farm labor contractor
15 has not previously been finally adjudicated to have violated
16 the same section of this Act or section of the regulations
17 under this Act as is specified in the citation and the prior
18 violation occurred after the date this sentence takes ef-
19 fect.”.

20 (b) PRIVATE RIGHT OF ACTION.—Section 504(a) (29
21 U.S.C. 1854(a)) is amended by adding at the end the fol-
22 lowing: “If an agricultural employer, agricultural associa-
23 tion, or farm labor contractor corrects a violation of this
24 Act or regulation under this Act within 10 working days
25 of the date on which the agricultural employer, agricul-

1 tural association, or farm labor contractor was notified in
2 writing of such violation, no action, including a complaint,
3 may be brought under this subsection with respect to such
4 violation. Such correction of a violation shall be allowed
5 only where such agricultural employer, agricultural asso-
6 ciation, or farm labor contractor has not previously been
7 finally adjudicated to have violated the same section of
8 this Act or section of the regulations under this Act as
9 is specified in the written notification alleging the violation
10 and the prior violation occurred after the date this sen-
11 tence takes effect.”.

12 **SEC. 6. REGULATION OF HOUSING.**

13 Section 203 (29 U.S.C. 1823) is amended by adding
14 at the end the following:

15 “(d) APPROVED HOUSING.—Any farm worker hous-
16 ing which is regulated and approved for health and safety
17 by a Federal or State agency shall not be subject to regu-
18 lation under this section.

19 “(e) LIABILITY.—Subsection (a) of section 203 (29
20 U.S.C. 1823) is amended by adding at the end the follow-
21 ing: “A person who owns or controls a facility for housing
22 migrant agricultural workers shall not be held liable under
23 this subsection for housing conditions which are caused
24 by or are within the responsibility of the housed migrant
25 workers.”.

1 **SEC. 7. JOINT EMPLOYMENT.**

2 Sections 522, 523, and 524 (29 U.S.C. 1872, 1801
3 note) are redesignated as sections 523, 524, and 525, re-
4 spectively, and the following new section is inserted after
5 section 521:

6 “JOINT EMPLOYMENT

7 “SEC. 522. (a) In determining if an agricultural em-
8 ployer, agricultural association, or farm labor contractor
9 jointly employs any migrant or seasonal agricultural work-
10 er, only each of the following factors shall be taken into
11 account—

12 “(1) the nature and degree of control of the
13 workers,

14 “(2) the degree of supervision, direct or indi-
15 rect, of the work,

16 “(3) the power to determine the pay rates or
17 the methods of payment of the workers,

18 “(4) the right, directly or indirectly, to hire,
19 fire, or modify the employment conditions of the
20 workers, and

21 “(5) preparation of payroll and the payment of
22 wages.

23 In the case of joint responsibility for housing of migrant
24 agricultural workers, who owns or controls the housing
25 shall be taken into account. In the case of joint respon-
26 sibility for transportation of migrant and seasonal agricul-

1 tural workers, who owns or directs the transportation to
2 be utilized shall be taken into account. A person shall not
3 be considered jointly responsible for transportation of mi-
4 grant or seasonal agricultural workers because that person
5 participates in, or directs or requests such agricultural
6 workers to enter into carpooling arrangements pursuant
7 to the requirements of Federal, State, or local law.

8 “(b) Joint employment or joint responsibility between
9 an agricultural employer and an agricultural association
10 or farm labor contractor may not be presumed. Before
11 making a determination of joint employment or joint re-
12 sponsibility and the imposition of the requirements of this
13 Act or the issuance of a penalty, the agricultural employer,
14 the agricultural association, and farm labor contractor
15 shall be provided with a written determination of joint em-
16 ployment or joint responsibility with the reasons therefor.
17 For purposes of this subsection, joint responsibility is not
18 established through a joint employment analysis.”

19 **SEC. 8. CONFIRMATION OF REGISTRATION.**

20 Section 402 (29 U.S.C. 1842) is amended by adding
21 at the end the following: “Notwithstanding the foregoing,
22 where a person is a farm labor contractor solely because
23 that person, for any money or other valuable consideration
24 paid or promised to be paid, engages in transporting any
25 migrant or seasonal agricultural worker, an agricultural

1 employer or agricultural association employing any such
2 migrant or seasonal agricultural worker shall be required
3 to take such reasonable steps only where such agricultural
4 employer or agricultural association had actual knowledge
5 that such transportation was not a carpooling arrange-
6 ment among the workers themselves.”.

7 **SEC. 9. DEFINITIONS.**

8 (a) **DEFINITION OF MIGRANT AGRICULTURAL WORK-**
9 **ER.**—Section 3(8)(B) (29 U.S.C. 1802(8)(B)) is amended
10 by striking “or” at the end of clause (i), by striking the
11 period at the end of clause (ii) and inserting “; or”, and
12 by adding at the end the following:

13 “(iii) any individual who is employed by a
14 specific agricultural employer or association on
15 a year-round basis.”.

16 (b) **DEFINITION OF SEASONAL AGRICULTURAL**
17 **WORKER.**—Section 3(10)(B) (29 U.S.C. 1802(10)(B)) is
18 amended by striking “or” at the end of clause (ii), by
19 striking the period at the end of clause (iii) and inserting
20 “; or”, and by adding at the end the following:

21 “(iv) any individual who is employed by a
22 specific agricultural employer or association on
23 a year-round basis.”.

1 **SEC. 10. MOTOR VEHICLE SAFETY INSURANCE REQUIRE-**
2 **MENTS.**

3 Section 401(b) (29 U.S.C. 1841(b)) is amended by
4 amending paragraph (3) to read as follows:

5 “(3) The level of insurance required under
6 paragraph (1)(C) shall be determined by the applica-
7 ble transportation requirements under State law.”.

8 **SEC. 11. STATUTE OF LIMITATIONS.**

9 (a) SECTION 503.—Section 503(a)(1) (29 U.S.C.
10 1853(a)(1)) is amended by inserting “within 2 years of
11 the date of such violation” after “assessed”.

12 (b) SECTION 504.—Section 504(a) (29 U.S.C. 1854)
13 is amended by inserting “within 2 years of the date of
14 such violation” after “suit”.

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