

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6349

61st Legislature
2010 Regular Session

Passed by the Senate March 9, 2010
YEAS 44 NAYS 0

President of the Senate

Passed by the House March 3, 2010
YEAS 96 NAYS 2

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6349** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6349

AS AMENDED BY THE HOUSE

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Ranker, Holmquist, Haugen, Hobbs, Becker, Shin, and Roach)

READ FIRST TIME 02/04/10.

1 AN ACT Relating to a farm internship program; amending RCW
2 49.46.010; adding a new section to chapter 49.12 RCW; adding a new
3 section to chapter 51.16 RCW; adding a new section to chapter 50.04
4 RCW; creating a new section; and providing an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.12 RCW
7 to read as follows:

8 (1) The director shall establish a farm internship pilot project
9 until December 1, 2011, for the employment of farm interns on small
10 farms under special certificates at wages, if any, as authorized by the
11 department and subject to such limitations as to time, number,
12 proportion, and length of service as provided in this section and as
13 prescribed by the department. The pilot project shall consist of two
14 counties, one a county consisting entirely of islands with fewer than
15 fifty thousand residents and one a county that is bordered by the crest
16 of the Cascade mountain range and salt waters with fewer than one
17 hundred fifty thousand residents.

18 (2) A small farm may employ no more than three interns per year
19 under this section.

1 (3) A small farm must apply for a special certificate on a form
2 made available by the director. The application must set forth: The
3 name of the farm and a description of the farm seeking the certificate;
4 the type of work to be performed by a farm intern; a description of the
5 internship program; the period of time for which the certificate is
6 sought and the duration of an internship; the number of farm interns
7 for which a special certificate is sought; the wages, if any, that will
8 be paid to the farm intern; any room and board, stipends, and other
9 remuneration the farm will provide to a farm intern; and the total
10 number of workers employed by the farm.

11 (4) Upon receipt of an application, the department shall review the
12 application and issue a special certificate to the requesting farm
13 within fifteen days if the department finds that:

14 (a) The farm qualifies as a small farm;

15 (b) There have been no serious violations of chapter 49.46 RCW or
16 Title 51 RCW that provide reasonable grounds to believe that the terms
17 of an internship agreement may not be complied with;

18 (c) The issuance of a certificate will not create unfair
19 competitive labor cost advantages nor have the effect of impairing or
20 depressing wage or working standards established for experienced
21 workers for work of a like or comparable character in the industry or
22 occupation at which the intern is to be employed;

23 (d) A farm intern will not displace an experienced worker; and

24 (e) The farm demonstrates that the interns will perform work for
25 the farm under an internship program that: (i) Provides a curriculum
26 of learning modules and supervised participation in farm work
27 activities designed to teach farm interns about farming practices and
28 farm enterprises; (ii) is based on the bona fide curriculum of an
29 educational or vocational institution; and (iii) is reasonably designed
30 to provide the intern with vocational knowledge and skills about
31 farming practices and enterprises. In assessing an internship program,
32 the department may consult with relevant college and university
33 departments and extension programs and state and local government
34 agencies involved in the regulation or development of agriculture.

35 (5) A special certificate issued under this section must specify
36 the terms and conditions under which it is issued, including: The name
37 of the farm; the duration of the special certificate allowing the
38 employment of farm interns and the duration of an internship; the total

1 number of interns authorized under the special certificate; the
2 authorized wage rate, if any; and any room and board, stipends, and
3 other remuneration the farm will provide to the farm intern. A farm
4 worker may be paid at wages specified in the certificate only during
5 the effective period of the certificate and for the duration of the
6 internship.

7 (6) If the department denies an application for a special
8 certificate, notice of denial must be mailed to the farm. The farm
9 listed on the application may, within fifteen days after notice of such
10 action has been mailed, file with the director a petition for review of
11 the denial, setting forth grounds for seeking such a review. If
12 reasonable grounds exist, the director or the director's authorized
13 representative may grant such a review and, to the extent deemed
14 appropriate, afford all interested persons an opportunity to be heard
15 on such review.

16 (7) Before employing a farm intern, a farm must submit a statement
17 on a form made available by the director stating that the farm
18 understands: The requirements of the industrial welfare act, chapter
19 49.12 RCW, that apply to farm interns; that the farm must pay workers'
20 compensation premiums in the assigned intern risk class and must pay
21 workers' compensation premiums for nonintern work hours in the
22 applicable risk class; and that if the farm does not comply with
23 subsection (8) of this section, the director may revoke the special
24 certificate.

25 (8) The director may revoke a special certificate issued under this
26 section if a farm fails to: Comply with the requirements of the
27 industrial welfare act, chapter 49.12 RCW, that apply to farm interns;
28 pay workers' compensation premiums in the assigned intern risk class;
29 or pay workers' compensation premiums in the applicable risk class for
30 nonintern work hours.

31 (9) Before the start of a farm internship, the farm and the intern
32 must sign a written agreement and send a copy of the agreement to the
33 department. The written agreement must, at a minimum:

34 (a) Describe the internship program offered by the farm, including
35 the skills and objectives the program is designed to teach and the
36 manner in which those skills and objectives will be taught;

37 (b) Explicitly state that the intern is not entitled to minimum

1 wages for work and activities conducted pursuant to the internship
2 program for the duration of the internship;

3 (c) Describe the responsibilities, expectations, and obligations of
4 the intern and the farm, including the anticipated number of hours of
5 farm activities to be performed by the intern per week;

6 (d) Describe the activities of the farm and the type of work to be
7 performed by the farm intern; and

8 (e) Describes any wages, room and board, stipends, and other
9 remuneration the farm will provide to the farm intern.

10 (10) The definitions in this subsection apply throughout this
11 section unless the context clearly requires otherwise.

12 (a) "Farm intern" means an individual who provides services to a
13 small farm under a written agreement and primarily as a means of
14 learning about farming practices and farm enterprises.

15 (b) "Farm internship program" means an internship program described
16 under subsection (4)(e) of this section.

17 (c) "Small farm" means a farm:

18 (i) Organized as a sole proprietorship, partnership, or
19 corporation;

20 (ii) That reports on the applicant's schedule F of form 1040 or
21 other applicable form filed with the United States internal revenue
22 service annual sales less than two hundred fifty thousand dollars; and

23 (iii) Where all the owners or partners of the farm provide regular
24 labor to and participate in the management of the farm, and own or
25 lease the productive assets of the farm.

26 (11) The department shall monitor and evaluate the farm internships
27 authorized by this section and report to the appropriate committees of
28 the legislature by December 31, 2011. The report shall include, but
29 not be limited to: The number of small farms that applied for and
30 received special certificates; the number of interns employed as farm
31 interns; the nature of the educational activities provided to the farm
32 interns; the wages and other remuneration paid to farm interns; the
33 number of and type of workers' compensation claims for farm interns;
34 the employment of farm interns following farm internships; and other
35 matters relevant to assessing farm internships authorized in this
36 section.

1 **Sec. 2.** RCW 49.46.010 and 2002 c 354 s 231 are each amended to
2 read as follows:

3 As used in this chapter:

4 (1) "Director" means the director of labor and industries;

5 (2) "Wage" means compensation due to an employee by reason of
6 employment, payable in legal tender of the United States or checks on
7 banks convertible into cash on demand at full face value, subject to
8 such deductions, charges, or allowances as may be permitted by rules of
9 the director;

10 (3) "Employ" includes to permit to work;

11 (4) "Employer" includes any individual, partnership, association,
12 corporation, business trust, or any person or group of persons acting
13 directly or indirectly in the interest of an employer in relation to an
14 employee;

15 (5) "Employee" includes any individual employed by an employer but
16 shall not include:

17 (a) Any individual (i) employed as a hand harvest laborer and paid
18 on a piece rate basis in an operation which has been, and is generally
19 and customarily recognized as having been, paid on a piece rate basis
20 in the region of employment; (ii) who commutes daily from his or her
21 permanent residence to the farm on which he or she is employed; and
22 (iii) who has been employed in agriculture less than thirteen weeks
23 during the preceding calendar year;

24 (b) Any individual employed in casual labor in or about a private
25 home, unless performed in the course of the employer's trade, business,
26 or profession;

27 (c) Any individual employed in a bona fide executive,
28 administrative, or professional capacity or in the capacity of outside
29 salesman as those terms are defined and delimited by rules of the
30 director. However, those terms shall be defined and delimited by the
31 director of personnel pursuant to chapter 41.06 RCW for employees
32 employed under the director of personnel's jurisdiction;

33 (d) Any individual engaged in the activities of an educational,
34 charitable, religious, state or local governmental body or agency, or
35 nonprofit organization where the employer-employee relationship does
36 not in fact exist or where the services are rendered to such
37 organizations gratuitously. If the individual receives reimbursement
38 in lieu of compensation for normally incurred out-of-pocket expenses or

1 receives a nominal amount of compensation per unit of voluntary service
2 rendered, an employer-employee relationship is deemed not to exist for
3 the purpose of this section or for purposes of membership or
4 qualification in any state, local government or publicly supported
5 retirement system other than that provided under chapter 41.24 RCW;

6 (e) Any individual employed full time by any state or local
7 governmental body or agency who provides voluntary services but only
8 with regard to the provision of the voluntary services. The voluntary
9 services and any compensation therefor shall not affect or add to
10 qualification, entitlement or benefit rights under any state, local
11 government, or publicly supported retirement system other than that
12 provided under chapter 41.24 RCW;

13 (f) Any newspaper vendor or carrier;

14 (g) Any carrier subject to regulation by Part 1 of the Interstate
15 Commerce Act;

16 (h) Any individual engaged in forest protection and fire prevention
17 activities;

18 (i) Any individual employed by any charitable institution charged
19 with child care responsibilities engaged primarily in the development
20 of character or citizenship or promoting health or physical fitness or
21 providing or sponsoring recreational opportunities or facilities for
22 young people or members of the armed forces of the United States;

23 (j) Any individual whose duties require that he or she reside or
24 sleep at the place of his or her employment or who otherwise spends a
25 substantial portion of his or her work time subject to call, and not
26 engaged in the performance of active duties;

27 (k) Any resident, inmate, or patient of a state, county, or
28 municipal correctional, detention, treatment or rehabilitative
29 institution;

30 (l) Any individual who holds a public elective or appointive office
31 of the state, any county, city, town, municipal corporation or quasi
32 municipal corporation, political subdivision, or any instrumentality
33 thereof, or any employee of the state legislature;

34 (m) All vessel operating crews of the Washington state ferries
35 operated by the department of transportation;

36 (n) Any individual employed as a seaman on a vessel other than an
37 American vessel;

1 (o) Any farm intern providing his or her services to a small farm
2 which has a special certificate issued under section 1 of this act;

3 (6) "Occupation" means any occupation, service, trade, business,
4 industry, or branch or group of industries or employment or class of
5 employment in which employees are gainfully employed;

6 (7) "Retail or service establishment" means an establishment
7 seventy-five percent of whose annual dollar volume of sales of goods or
8 services, or both, is not for resale and is recognized as retail sales
9 or services in the particular industry.

10 NEW SECTION. Sec. 3. A new section is added to chapter 51.16 RCW
11 to read as follows:

12 The department shall adopt rules to provide special workers'
13 compensation risk class or classes for farm interns providing
14 agricultural labor pursuant to a farm internship program. The rules
15 must include any requirements for obtaining a special risk class that
16 must be met by small farms.

17 NEW SECTION. Sec. 4. A new section is added to chapter 50.04 RCW
18 to read as follows:

19 (1) The term "employment" shall not include service performed in
20 agricultural labor by a farm intern providing his or her services under
21 a farm internship program as established in section 1 of this act.

22 (2) For purposes of this section, "agricultural labor" means:

23 (a) Services performed on a farm, in the employ of any person, in
24 connection with the cultivation of the soil, or in connection with
25 raising or harvesting any agricultural or horticultural commodity,
26 including raising, shearing, feeding, caring for, training, and
27 management of livestock, bees, poultry, and furbearing animals and
28 wildlife, or in the employ of the owner or tenant or other operator of
29 a farm in connection with the operation, management, conservation,
30 improvement, or maintenance of such farm and its tools and equipment;

31 (b) Services performed in packing, packaging, grading, storing, or
32 delivering to storage, or to market or to a carrier for transportation
33 to market, any agricultural or horticultural commodity; but only if
34 such service is performed as an incident to ordinary farming
35 operations. The exclusions from the term "employment" provided in this
36 subsection (2)(b) shall not be deemed to be applicable with respect to

1 commercial packing houses, commercial storage establishments,
2 commercial canning, commercial freezing, or any other commercial
3 processing or with respect to services performed in connection with the
4 cultivation, raising, harvesting and processing of oysters or raising
5 and harvesting of mushrooms; or

6 (c) Direct local sales of any agricultural or horticultural
7 commodity after its delivery to a terminal market for distribution or
8 consumption.

9 NEW SECTION. **Sec. 5.** Appropriations made for purposes of this act
10 must be from the state general fund.

11 NEW SECTION. **Sec. 6.** This act expires December 31, 2011.

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