

2247--B

2009-2010 Regular Sessions

I N S E N A T E

February 13, 2009

Introduced by Sens. ONORATO, BRESLIN, ADAMS, ADDABBO, DIAZ, DUANE, ESPADA, HASSELL-THOMPSON, HUNTLEY, C. JOHNSON, KLEIN, KRUEGER, MARCELLINO, MONSERRATE, MONTGOMERY, OPPENHEIMER, PADAVAN, PARKER, PERKINS, ROBACH, SAMPSON, SAVINO, SCHNEIDERMAN, SERRANO, SQUADRON, STAVISKY, STEWART-COUSINS, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to allowing farm workers one day of rest each week, and including farm laborers within the provisions pertaining to overtime compensation and unemployment insurance, and regulating the farm employment of certain employees whose earning capacity is affected or impaired by youth or age, and granting collective bargaining rights to certain farm laborers and establishing an advisory committee on collective bargaining; to amend the public health law, in relation to the application of the sanitary code to all farm and food processing labor camps for migrant workers; and to amend the workers' compensation law, in relation to the eligibility of farm laborers for disability benefits and the provision of claim forms to farm laborers injured in the course of employment and in relation to service as farm laborers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "Farmwork-
2 ers Fair Labor Practices Act".
3 S 2. Section 2 of the labor law is amended by adding a new subdivision
4 16 to read as follows:
5 16. "FARM LABOR" SHALL INCLUDE ALL SERVICES PERFORMED IN AGRICULTURAL
6 EMPLOYMENT IN CONNECTION WITH CULTIVATING THE SOIL, OR IN CONNECTION

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 WITH RAISING OR HARVESTING OF AGRICULTURAL COMMODITIES, INCLUDING
2 SERVICES PERFORMED ON ORCHARDS, PLANTATIONS, NURSERIES AND GREENHOUSES,
3 AND SHALL INCLUDE THE RAISING, HATCHING, SHEARING, CARING FOR AND
4 MANAGEMENT OF LIVESTOCK, POULTRY, DAIRY, BEES AND FUR-BEARING ANIMALS,
5 AND SHALL INCLUDE THE HARVESTING OR PRODUCTION OF MAPLE SYRUP OR MAPLE
6 SUGAR, AND SHALL INCLUDE THE OPERATION AND MAINTENANCE OF FARM EQUIPMENT
7 AND IMPROVEMENT OR MAINTENANCE OF FARM WATER USE AREAS, AND SHALL
8 INCLUDE THE PLANTING, DRYING, PACKAGING OR OTHER PROCESSING OF ANY AGRI-
9 CULTURAL OR HORTICULTURAL COMMODITY RAISED ON THE EMPLOYER'S FARM. THE
10 TERM "FARM LABOR" SHALL NOT INCLUDE SERVICES PERFORMED IN CONNECTION
11 WITH COMMERCIAL CANNING, FREEZING, GRADING OR OTHER PROCESSING OF ANY
12 AGRICULTURAL OR HORTICULTURAL COMMODITY NOT RAISED ON THE EMPLOYER'S
13 FARM. THIS PARAGRAPH SHALL NOT APPLY TO THE PARENT, CHILD, SPOUSE OR
14 OTHER MEMBER OF THE EMPLOYER'S FAMILY RELATED BY THE THIRD DEGREE OF
15 CONSANGUINITY OR AFFINITY.

16 S 3. Subdivision 1 of section 161 of the labor law is amended by
17 adding a new undesignated paragraph to read as follows:

18 EVERY PERSON EMPLOYED AS A FARM LABORER SHALL BE ALLOWED AT LEAST
19 TWENTY-FOUR CONSECUTIVE HOURS OF REST IN EACH AND EVERY CALENDAR WEEK. A
20 FARM LABORER MAY CONSENT IN WRITING TO WAIVE THIS RIGHT AND WORK ON THE
21 DAY OF REST, PROVIDED THAT HE OR SHE SHALL BE PAID AS PROVIDED UNDER
22 SECTION ONE HUNDRED SIXTY-THREE-A OF THIS TITLE. THIS PARAGRAPH SHALL
23 NOT APPLY TO THE PARENT, CHILD, SPOUSE OR OTHER MEMBER OF THE EMPLOYER'S
24 FAMILY RELATED BY THE THIRD DEGREE OF CONSANGUINITY OR AFFINITY. TWEN-
25 TY-FOUR CONSECUTIVE HOURS SPENT AT REST BECAUSE OF CIRCUMSTANCES, SUCH
26 AS WEATHER OR CROP CONDITIONS, SHALL BE DEEMED TO CONSTITUTE THE REST
27 REQUIRED BY THIS PARAGRAPH. THE DAY OF REST SHOULD BE THE SAME AS THE
28 TRADITIONAL DAY RESERVED BY THE FARM LABORER FOR RELIGIOUS WORSHIP,
29 WHENEVER POSSIBLE.

30 S 4. Paragraphs b and d of subdivision 2 of section 161 of the labor
31 law, as amended by chapter 281 of the laws of 1941, are amended to read
32 as follows:

33 b. Employees in [dairies, creameries,] milk condenseries, milk powder
34 factories, milk sugar factories, milk shipping stations, butter and
35 cheese factories, ice cream manufacturing plants and milk bottling
36 plants, where not more than seven persons are employed;

37 d. Employees whose duties include not more than three hours' work on
38 Sunday in setting sponges in bakeries, [caring for live animals,] main-
39 taining fires, or making necessary repairs to boilers or machinery.

40 S 5. The labor law is amended by adding a new section 163-a to read as
41 follows:

42 S 163-A. HOURS OF AGRICULTURAL EMPLOYMENT. NO PERSON OR CORPORATION
43 OPERATING A FARM SHALL REQUIRE ANY FARM LABORER TO WORK MORE THAN TEN
44 HOURS IN ANY DAY, SIXTY HOURS IN ANY CALENDAR WEEK, OR SIX DAYS IN ANY
45 CALENDAR WEEK, UNLESS SUCH FARM LABORER IS PAID AS FOLLOWS:

46 A. HOURLY RATE. (1) ANY FARM LABORER WHO IS PAID ON AN HOURLY BASIS
47 AND WHO IS EIGHTEEN YEARS OF AGE OR OVER, OR WHO IS SIXTEEN OR SEVENTEEN
48 YEARS OF AGE AND NOT REQUIRED BY LAW TO ATTEND SCHOOL SHALL NOT BE
49 EMPLOYED MORE THAN TEN HOURS IN ANY DAY, OR MORE THAN SIXTY HOURS IN ANY
50 CALENDAR WEEK, OR MORE THAN SIX DAYS IN ANY CALENDAR WEEK UNLESS THE
51 FARM LABORER RECEIVES ONE AND ONE-HALF TIMES THE REGULAR RATE AT WHICH
52 HE IS EMPLOYED FOR ALL HOURS WORKED IN EXCESS OF TEN HOURS IN ANY DAY OR
53 SIXTY HOURS IN ANY CALENDAR WEEK. ANY FARM LABORER WHO WORKS ON THE
54 SEVENTH DAY IN ANY CALENDAR WEEK SHALL RECEIVE ONE AND ONE-HALF TIMES
55 THE REGULAR RATE AT WHICH HE IS EMPLOYED FOR THE FIRST EIGHT HOURS

WORKED, AND TWO TIMES THE REGULAR RATE AT WHICH HE IS EMPLOYED FOR ALL HOURS WORKED IN EXCESS OF EIGHT HOURS THAT DAY.

(2) BEGINNING ON JANUARY FIRST, TWO THOUSAND THIRTEEN, ANY FARM LABORER WHO IS PAID AN HOURLY WAGE RATE SHALL NOT BE EMPLOYED MORE THAN TEN HOURS IN ANY DAY OR MORE THAN FIFTY-FIVE HOURS IN ANY CALENDAR WEEK UNLESS THE FARM LABORER RECEIVES ONE AND ONE-HALF TIMES THE REGULAR RATE AT WHICH HE IS EMPLOYED FOR ALL HOURS WORKED IN EXCESS OF TEN HOURS IN ANY DAY OR FIFTY-FIVE HOURS IN ANY CALENDAR WEEK. ANY FARM LABORER WHO WORKS ON THE SEVENTH DAY IN ANY CALENDAR WEEK SHALL RECEIVE ONE AND ONE-HALF TIMES THE REGULAR RATE AT WHICH HE IS EMPLOYED FOR THE FIRST EIGHT HOURS WORKED, AND TWO TIMES THE REGULAR RATE AT WHICH HE IS EMPLOYED FOR ALL HOURS WORKED IN EXCESS OF EIGHT HOURS THAT DAY.

B. PIECE WORK RATE. (1) ANY FARM LABORER WHO IS PAID ON A PIECE RATE BASIS SHALL BE PAID AT A RATE WHICH SHALL BE NO LESS THAN ONE HUNDRED FIFTY PERCENT OF THE MINIMUM WAGE RATE ESTABLISHED BY REGULATIONS OF THE DEPARTMENT FOR HOURS WORKED IN EXCESS OF TEN HOURS IN ANY DAY OR SIXTY HOURS IN ANY CALENDAR WEEK.

(2) BEGINNING ON JANUARY FIRST, TWO THOUSAND THIRTEEN, ANY FARM LABORER WHO IS PAID ON A PIECE WORK BASIS SHALL BE PAID AT A RATE NO LESS THAN ONE HUNDRED FIFTY PERCENT OF THE MINIMUM WAGE RATE ESTABLISHED BY REGULATIONS OF THE DEPARTMENT FOR HOURS WORKED IN EXCESS OF TEN HOURS IN ANY DAY OR FIFTY-FIVE HOURS IN ANY CALENDAR WEEK.

(3) ANY FARM LABORER WHO IS PAID A PIECE WORK RATE WHO WORKS ON THE SEVENTH DAY IN ANY CALENDAR WEEK SHALL BE PAID AT A RATE NO LESS THAN ONE HUNDRED FIFTY PERCENT OF THE MINIMUM WAGE RATE ESTABLISHED BY REGULATIONS OF THE DEPARTMENT FOR THE FIRST EIGHT HOURS AND TWO HUNDRED PERCENT OF THAT MINIMUM WAGE RATE FOR ANY HOURS WORKED IN EXCESS OF EIGHT ON THAT DAY. NOTHING IN THIS SECTION SHALL PROHIBIT A FARM EMPLOYER FROM PAYING A PIECE WORK RATE IN EXCESS OF THE RATES REQUIRED BY THIS SECTION.

S 6. Section 564 of the labor law, as added by chapter 675 of the laws of 1977, is amended to read as follows:

S 564. Agricultural labor. 1. Coverage. (a) Notwithstanding the provisions of section five hundred sixty of this article, an employer of persons engaged in agricultural labor shall become liable for contributions under this article if the employer:

(1) has paid cash remuneration of [twenty thousand] SIXTY-TWO HUNDRED FIFTY dollars or more in any calendar quarter to persons employed in agricultural labor, and such liability shall commence on the first day of such quarter, or

(2) has employed in agricultural labor ten or more persons on each of twenty days during a calendar year or the preceding calendar year, each day being in a different calendar week, and the liability shall in such event commence on the first day of the calendar year, or

(3) is liable for the tax imposed under the federal unemployment tax act as an employer of agricultural labor and the liability shall in such event commence on the first day of the calendar quarter in such calendar year when he first paid remuneration for agricultural labor in this state.

(b) An employer who becomes liable for contributions under paragraph (a) of this subdivision shall cease to be liable as of the first day of a calendar quarter next following the filing of a written application provided the commissioner finds that the employer:

(1) has not paid to persons employed in agricultural labor cash remuneration of [twenty thousand] SIXTY-TWO HUNDRED FIFTY dollars or more in any of the eight calendar quarters preceding such day, and

(2) has not employed in agricultural labor ten or more persons on each of twenty days during the current or the preceding calendar year, each day being in a different week, and

(3) is not liable for the tax imposed under the federal unemployment tax act as an employer of agricultural labor.

2. EXCLUSION FROM COVERAGE. THE TERM "EMPLOYMENT" DOES NOT INCLUDE SERVICES RENDERED BY AN INDIVIDUAL WHO IS AN ALIEN ADMITTED TO THE UNITED STATES TO PERFORM AGRICULTURAL LABOR PURSUANT TO SECTIONS 214(C) AND 101(A)(15)(H) OF THE FEDERAL IMMIGRATION AND NATIONALITY ACT IF, AT THE TIME SUCH SERVICES ARE RENDERED, THEY ARE EXCLUDED FROM THE DEFINITION OF EMPLOYMENT IN SECTION 3306(C) OF THE FEDERAL UNEMPLOYMENT TAX ACT.

3. Crew leader. Whenever a person renders services as a member of a crew which is paid and furnished by the crew leader to perform services in agricultural labor for another employer, such other employer shall, for the purpose of this article, be deemed to be the employer of such person, unless:

(a) the crew leader holds a valid certificate of registration under the federal farm labor contractor registration act of nineteen hundred sixty-three or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or cropdusting machinery or any other mechanized equipment which is provided by the crew leader, and

(b) the crew leader is not an employee of such other employer and has not entered into a written agreement with such employer under which he is designated as an employee.

S 7. Subdivision 1 of section 674 of the labor law, as added by chapter 552 of the laws of 1969, is amended to read as follows:

1. The commissioner may promulgate such regulations as he deems appropriate to carry out the purposes of this article and to safeguard minimum wage standards. Such regulations may include, but are not limited to, the defining of the circumstances or conditions for the acceptance of non-hourly rates and piece rates as equivalent to the minimum hourly rates established by this article. Such regulations also may include, but are not limited to, waiting time and call-in pay rates; wage provisions governing guaranteed earnings during specified periods of work; allowances for meals, lodging, and other items, services and facilities when furnished by the employer; [and the employment of individuals whose earning capacity is affected or impaired by youth or age,] or by physical or mental deficiency or injury, under special certificates issued by the commissioner, at such wages lower than the minimum wage established by this article and for such period as shall be prescribed in such regulations.

S 8. Paragraph (a) of subdivision 3 of section 701 of the labor law, as amended by chapter 43 of the laws of 1989, is amended to read as follows:

(a) The term "employees" includes but is not restricted to any individual employed by a labor organization; any individual whose employment has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment; and shall not be limited to the employees of a particular employer, unless the article explicitly states otherwise, but shall not include any individual employed by his parent or spouse or in the domestic service of and directly employed, controlled and paid by any person in his home, any individual whose primary responsibility is the care of a minor child or children and/or someone who lives in the home of a person for the

1 purpose of serving as a companion to a sick, convalescing or elderly
2 person or any individuals employed only for the duration of a labor
3 dispute, or any individuals employed as farm laborers BY A FARM EMPLOYER
4 WITH SALES OF UNDER SIX HUNDRED FIFTY THOUSAND DOLLARS DURING THE PREVI-
5 OUS CALENDAR YEAR ACCORDING TO THE UNITED STATES DEPARTMENT OF AGRICUL-
6 TURE NATIONAL AGRICULTURAL STATISTICS SERVICE, or, any individual who
7 participates in and receives rehabilitative or therapeutic services in a
8 charitable non-profit rehabilitation facility or sheltered workshop or
9 any individual employed in a charitable non-profit rehabilitation facil-
10 ity or sheltered workshop who has received rehabilitative or therapeutic
11 services and whose capacity to perform the work for which he is engaged
12 is substantially impaired by physical or mental deficiency or injury.

13 S 9. The labor law is amended by adding a new section 704-b to read as
14 follows:

15 S 704-B. UNFAIR LABOR PRACTICES; AGRICULTURE. 1. IT IS THE POLICY OF
16 THE STATE TO PROTECT THE RIGHTS OF FARM LABORERS WITHOUT CAUSING IMMEDI-
17 ATE AND IRREPARABLE HARM TO EMPLOYERS. IN RECOGNITION OF THE NEED TO
18 AVOID INTERRUPTION OF THE AGRICULTURAL PRODUCTION OF CROPS WITH A SHORT
19 PEAK HARVEST SEASON, THIS POLICY IS BEST ACHIEVED BY PROVIDING FARM
20 EMPLOYERS AND THEIR EMPLOYEES WITH A SHORT TEMPORARY PERIOD TO SETTLE
21 THEIR LABOR DISPUTE WITHOUT CAUSING IMMEDIATE OR IRREPARABLE HARM TO THE
22 EMPLOYER.

23 2. DEFINITIONS. WHEN USED IN THIS SECTION THE TERMS:

24 (A) "SHORT PEAK HARVEST SEASON" MEANS THE PERIOD FOR FRUITS AND VEGE-
25 TABLES THAT HAVE A MAXIMUM HARVEST PERIOD OF NO MORE THAN SIX WEEKS
26 DURING WHICH SUCH AGRICULTURAL PRODUCT IS HARVESTED FOR SALE, AS DETER-
27 MINED BY THE DEPARTMENT OF AGRICULTURE AND MARKETS.

28 (B) "WORK STOPPAGE" MEANS ANY STRIKE, OR CONCERTED CESSATION OR SLOW-
29 DOWN OF WORK BY EMPLOYEES.

30 (C) "LOCKOUT" MEANS A WORK STOPPAGE DURING WHICH AN EMPLOYER PREVENTS
31 EMPLOYEES FROM WORKING.

32 3. IN THE EVENT THAT THE BOARD AND ITS EMPLOYEES RECEIVE NOTICE THAT A
33 LABOR DISPUTE HAS ARISEN BETWEEN A FARM EMPLOYER THAT WILL OR MAY RESULT
34 IN A WORK STOPPAGE OR LOCKOUT, THE BOARD SHALL IMMEDIATELY INITIATE
35 SETTLEMENT PROCEEDINGS UNDER SECTION SEVEN HUNDRED TWO-A OF THIS ARTI-
36 CLE.

37 (A) AFTER THE INITIATION OF SETTLEMENT PROCEEDINGS, ANY WORK STOPPAGE
38 OR LOCKOUT SHALL CEASE FOR A PERIOD OF NOT MORE THAN TWENTY-ONE DAYS IF
39 BOTH OF THE FOLLOWING CIRCUMSTANCES EXIST:

40 (I) THE WORK STOPPAGE OR LOCKOUT OCCURS DURING A SHORT PEAK HARVEST
41 SEASON; AND

42 (II) THE WORK STOPPAGE OR LOCKOUT WILL CAUSE IMMEDIATE AND IRREPARABLE
43 INJURY, LOSS OR DAMAGE TO THE EMPLOYER.

44 (B) DURING SUCH TWENTY-ONE DAY PERIOD, BOTH PARTIES SHALL ENTER INTO
45 GOOD FAITH NEGOTIATIONS TO SETTLE THE LABOR DISPUTE, WHICH PERIOD SHALL
46 BE REFERRED TO AS A COOLING OFF PERIOD.

47 (C) THE BOARD SHALL CONDUCT AN IMMEDIATE AND EXPEDITED FACT-FINDING
48 HEARING TO DETERMINE WHETHER THE CIRCUMSTANCES UNDER PARAGRAPH (A) OF
49 THIS SUBDIVISION EXIST. EACH PARTY SHALL HAVE THE OPPORTUNITY TO SUBMIT
50 WRITTEN AND ORAL TESTIMONY AT THE HEARING. THE BOARD SHALL NOT BE BOUND
51 BY TECHNICAL RULES OF EVIDENCE PREVAILING IN COURTS OF LAW OR EQUITY.

52 (D) THE BOARD SHALL ISSUE ITS DETERMINATION IN WRITING WITHIN
53 FORTY-EIGHT HOURS OF THE CONCLUSION OF THE HEARING, WHICH SHALL INCLUDE
54 FINDINGS OF FACT AND A RATIONALE FOR ITS DETERMINATION. A COPY OF THE
55 BOARD'S DETERMINATION SHALL BE PROVIDED TO EACH PARTY WITHIN TWENTY-FOUR
56 HOURS.

(E) FOR PURPOSES OF THIS SECTION, AN EMPLOYEE WHO IS ABSENT FROM WORK WITHOUT PERMISSION, OR WHO ABSTAINS WHOLLY OR IN PART FROM THE FULL PERFORMANCE OF HIS OR HER EMPLOYMENT DUTIES WITHOUT PERMISSION ON THE DATE WHEN A WORK STOPPAGE OR LOCKOUT OCCURS SHALL BE PRESUMED TO HAVE ENGAGED IN SUCH WORK STOPPAGE OR LOCKOUT.

4. IF EITHER PARTY IS FOUND TO BE IN VIOLATION OF THE BOARD'S DETERMINATION, THE BOARD MAY FILE A PETITION WITH THE SUPREME COURT IN ALBANY COUNTY UPON NOTICE TO ALL PARTIES FOR TEMPORARY INJUNCTIVE RELIEF. THE BOARD SHALL NOT BE REQUIRED TO PROVIDE ANY UNDERTAKINGS OR BOND AND SHALL NOT BE LIABLE FOR ANY DAMAGES OR COSTS WHICH MAY HAVE BEEN SUSTAINED BY REASON OF ANY TEMPORARY INJUNCTIVE RELIEF ORDERED. IF THE BOARD FAILS TO ACT WITHIN TEN DAYS, THE BOARD SHALL BE DEEMED TO HAVE MADE A FINAL DETERMINATION NOT TO SEEK TEMPORARY INJUNCTIVE RELIEF.

S 10. The labor law is amended by adding a new section 719 to read as follows:

S 719. ADVISORY COMMITTEE ON AGRICULTURAL COLLECTIVE BARGAINING. 1. THERE IS HEREBY ESTABLISHED AN ADVISORY COMMITTEE ON COLLECTIVE BARGAINING BETWEEN FARM EMPLOYERS AND FARM LABORERS WHOSE MEMBERS SHALL BE APPOINTED BY THE GOVERNOR ON OR BEFORE APRIL FIRST, TWO THOUSAND TEN. THE ADVISORY COMMITTEE SHALL CONSIST OF SEVEN MEMBERS, INCLUDING THE COMMISSIONER OR HIS OR HER DESIGNEE, THE COMMISSIONER OF THE DEPARTMENT OF AGRICULTURE AND MARKETS OR HIS OR HER DESIGNEE, ONE UPON THE NOMINATION OF THE SPEAKER OF THE ASSEMBLY, ONE UPON NOMINATION OF THE TEMPORARY PRESIDENT OF THE SENATE, ONE UPON NOMINATION BY THE PRESIDENT OF THE NEW YORK STATE AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS, ONE UPON THE NOMINATION OF THE NEW YORK STATE FARM BUREAU, AND ONE MEMBER WITH EXPERIENCE AND EXPERTISE IN COLLECTIVE BARGAINING AND LABOR RELATIONS WHO SHALL BE APPOINTED TO CHAIR THE ADVISORY COMMITTEE.

2. THE ADVISORY COMMITTEE SHALL MAKE RECOMMENDATIONS FOR LEGISLATION TO IMPLEMENT COLLECTIVE BARGAINING STRUCTURES AND PROCEDURES WHERE APPROPRIATE, AND TO FOSTER LABOR-MANAGEMENT COOPERATION AND DISPUTE RESOLUTION BETWEEN FARM EMPLOYERS AND FARM LABORERS. IN MAKING ITS RECOMMENDATIONS, THE ADVISORY COMMITTEE SHALL CONSIDER THE PROVISIONS OF THE STATE LABOR RELATIONS ACT, THE LAWS OF OTHER STATES RELATING TO COLLECTIVE BARGAINING AND LABOR RELATIONS IN FARM EMPLOYMENT, AND THE UNIQUE CHARACTERISTICS OF THE AGRICULTURE INDUSTRY INCLUDING BUT NOT LIMITED TO LENGTH OF HARVEST AND GROWING SEASONS, SEASONAL FLUCTUATIONS IN EMPLOYMENT, ANNUAL SALES, AND IMPORT AND EXPORT CONDITIONS AFFECTING NEW YORK AGRICULTURE. THE ADVISORY COMMITTEE SHALL REPORT TO THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE SENATE ON OR BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND TEN.

3. THE MEMBERS OF THE ADVISORY COMMITTEE SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES, BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

S 11. Paragraph (m) of subdivision 5 of section 225 of the public health law, as amended by chapter 894 of the laws of 1958 and such subdivision as renumbered by chapter 626 of the laws of 1971, is amended to read as follows:

(m) require that application be made for a permit to operate a farm or food processing labor camp as defined in the sanitary code; authorize appropriate officers or agencies to issue such a permit when the applicant is in compliance with the established regulations; prescribe standards for living quarters at farm and food processing labor camps, including provisions for sanitary conditions; light, air, and safety; protection from fire hazards; maintenance; and such other matters as may

1 be appropriate for security of life or health, provided however, that
2 the provisions of the sanitary code established pursuant to the
3 provisions hereof shall apply to all farm and food processing labor
4 camps intended to house migrant workers and which are occupied [by five
5 or more persons]. In the preparation of such regulations, the public
6 health council may request and shall receive technical assistance from
7 the board of standards and appeals of the state department of labor and
8 the state building code commission. Such regulation shall be enforced in
9 the same manner as are other provisions of the sanitary code;

10 S 12. Section 51 of the workers' compensation law, as amended by chap-
11 ter 561 of the laws of 2003, is amended to read as follows:

12 S 51. Posting of notice regarding compensation. Every employer who has
13 complied with section fifty of this article shall post and maintain in a
14 conspicuous place or places in and about his place or places of business
15 typewritten or printed IN ENGLISH AND SPANISH notices in form prescribed
16 by the chairman, stating the fact that he has complied with all the
17 rules and regulations of the chairman and the board and that he has
18 secured the payment of compensation to his employees and their depen-
19 dents in accordance with the provisions of this chapter, but failure to
20 post such notice as herein provided shall not in any way affect the
21 exclusiveness of the remedy provided for by section eleven of this chap-
22 ter. Every employer who owns or operates automotive or horse-drawn vehi-
23 cles and has no minimum staff of regular employees required to report
24 for work at an established place of business maintained by such employer
25 and every employer who is engaged in the business of moving household
26 goods or furniture shall post such notices in each and every vehicle
27 owned or operated by him. Failure to post or maintain such notice in any
28 of said vehicles shall constitute presumptive evidence that such employ-
29 er has failed to secure the payment of compensation. The chairman may
30 require any employer to furnish a written statement at any time showing
31 the stock corporation, mutual corporation or reciprocal insurer in which
32 such employer is insured or the manner in which such employer has
33 complied with any provision of this chapter. Failure for a period of ten
34 days to furnish such written statement shall constitute presumptive
35 evidence that such employer has neglected or failed in respect of any of
36 the matters so required. Any employer who fails to comply with the
37 provisions of this section shall be required to pay to the board a fine
38 of [up to two hundred fifty] FIVE HUNDRED dollars for each violation, in
39 addition to any other penalties imposed by law to be deposited into the
40 uninsured employers' fund.

41 S 13. The workers' compensation law is amended by adding a new section
42 110-b to read as follows:

43 S 110-B. REPORTING OF INJURIES TO EMPLOYER. EVERY FARM LABOR CONTRAC-
44 TOR, FOREMAN OR SUPERVISOR OF FARM LABORERS WHO HAS NOTICE OF ANY INJURY
45 TO A FARM LABORER INCURRED DURING THE COURSE OF EMPLOYMENT SHALL BE
46 REQUIRED TO INFORM THE EMPLOYER, OWNER OR OPERATOR OF A FARM OF ANY SUCH
47 INJURY.

48 S 14. The first undesignated paragraph of section 120 of the workers'
49 compensation law, as amended by chapter 61 of the laws of 1989, is
50 amended to read as follows:

51 It shall be unlawful for any employer or his or her duly authorized
52 agent to discharge or in any other manner discriminate against an
53 employee as to his or her employment because such employee has claimed
54 or attempted to claim compensation from such employer, REQUESTED A CLAIM
55 FORM FOR INJURIES RECEIVED IN THE COURSE OF EMPLOYMENT, or because he or
56 she has testified or is about to testify in a proceeding under this

1 chapter and no other valid reason is shown to exist for such action by
2 the employer.

3 S 15. The opening paragraph of paragraph A of subdivision 6 of section
4 201 of the workers' compensation law, as amended by chapter 903 of the
5 laws of 1986, is amended to read as follows:

6 "Employment" means employment in any trade, business or occupation
7 carried on by an employer, except that the following shall not be deemed
8 employment under this article: services performed for the state, a
9 municipal corporation, local governmental agency, other political subdi-
10 vision or public authority; employment subject to the federal railroad
11 unemployment insurance act; service performed on or as an officer or
12 member of the crew of a vessel on the navigable water of the United
13 States or outside the United States; [service as farm laborers;] casual
14 employment and the first forty-five days of extra employment of employ-
15 ees not regularly in employment as otherwise defined herein; service as
16 golf caddies; and service during all or any part of the school year or
17 regular vacation periods as a part-time worker of any person actually in
18 regular attendance during the day time as a student in an elementary or
19 secondary school. The term "employment" shall not include the services
20 of a licensed real estate broker or sales associate if it be proven that
21 (a) substantially all of the remuneration (whether or not paid in cash)
22 for the services performed by such broker or sales associate is directly
23 related to sales or other output (including the performance of services)
24 rather than to the number of hours worked; (b) the services performed by
25 the broker or sales associate are performed pursuant to a written
26 contract executed between such broker or sales associate and the person
27 for whom the services are performed within the past twelve to fifteen
28 months; and (c) the written contract provided for in [paragraph] SUBPAR-
29 AGRAPH (b) herein was not executed under duress and contains the follow-
30 ing provisions:

31 S 16. Nothing in this act shall be deemed to diminish the rights,
32 privileges, or remedies of any farm laborer under any collective
33 bargaining agreement entered into on or after the effective date of this
34 act.

35 S 17. This act shall take effect April 1, 2010, provided that section
36 fifteen of this act shall take effect on the one hundred eightieth day
37 after it shall have become a law, provided further, that section five of
38 this act shall take effect January 1, 2011 and sections eight and nine
39 of this act shall take effect April 1, 2011.