# STATE OF NEW YORK

9235

# IN ASSEMBLY

February 9, 2022

Introduced by M. of A. GONZALEZ-ROJAS -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to prohibiting oppressive agricultural child labor; and requiring heat illness prevention for agricultural employees

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. The labor law is amended by adding a new section 133-a to read as follows:

**§ 133-a. Prohibited employment of minors in agriculture. 1. As used in this section, the following terms shall have the following meanings:**

**a. "Oppressive agricultural child labor" means agricultural employment where (1) any employee who is under the age of sixteen years is employed in any occupation that involves performing a hazardous agricultural activity, or that is otherwise particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; (2) any employee who is under the age of sixteen years is employed by an employer when attendance upon instruction is not required by the education law, in any occupation that involves performing a hazardous agricultural activity, or that is otherwise particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; or (3) any employee who is under the age of sixteen years is employed by an employer unless such minor has an exception pursuant to section one hundred thirty of this article. Such term shall not apply to any minor employed in agriculture by such minor's parents or a person in a parental relationship with such minor on a farm owned by such parent or person in a parental relationship and the employment will not be detrimental to the minor's health or well-being.**

**b. "Hazardous agricultural activity" means any agricultural activity performed by any minor that creates a substantial risk of serious injury or serious illness to any person, including but not limited to:**

**(1) Operating an all-terrain vehicle or similar off-road vehicle;**

**(2) Operating a tractor, forklift, or other heavy equipment;**

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

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(3) Handling any part of a tobacco plant; and

(4) Any task that requires handling pesticides, open containers of pesticides, operating any equipment that may contain pesticide residue, assisting with application of pesticides, acting as a pesticide flagger, performing tasks as a crop advisor during any pesticide application, entering a pesticide treated area during an applicable restricted-entry interval or otherwise have significant risk to pesticide exposure.

c. "Serious injury or serious illness" means the permanent loss or substantial impairment of the function of a bodily member, organ or mental faculty; or permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand, or other body part.

2. No employer shall employ oppressive agricultural child labor or produce, manufacture, deal, ship, or deliver for shipment any goods produced where the employer knew or reasonably should have known that oppressive child labor was employed to yield such goods.

3. If the commissioner finds that an employer has violated any provision of this section or of a rule or regulation promulgated thereunder, the commissioner may by an order which shall describe particularly the nature of the violation, assess the employer a civil penalty of not less than five hundred dollars and not more than fifteen thousand dollars for each employee who was the subject of such violation, or to imprisonment for not more than five years, or both; and/or a fine of not less than fifteen thousand dollars and not more than sixty thousand one hundred fifteen dollars with regard to each such violation that results in the serious injury, serious illness, or death of any employee under the age of eighteen, which may be doubled where the violation is a repeated or a willful violation, or to imprisonment for not more than five years, or both.

4. a. The department shall annually collect and analyze data concerning children under the age of eighteen who are employed in agriculture, and each work-related injury, illness, or death of any such child.

b. Annually before December thirty-first the department shall submit to the governor and state legislature and publish on such department's website a report which shall include:

(1) A summary of the data collected pursuant to this subdivision;

(2) An evaluation, based on such data, that reflects the status of child labor and related safety and health hazards; and

(3) Any information, based on such data, that leads the commissioner to believe that children under the age of sixteen years may have been employed in violation of this section.

c. (1) Any employer, except a minor's parents or a person in a parental relationship with such minor, shall submit a report to the commissioner no later than five days thereafter when the employer is involved in any event related to:

(i) A work-related serious injury to an employee under the age of sixteen years employed in agriculture;

(ii) A work-related serious illness of an employee under the age of sixteen years employed in agriculture; or

(iii) A work-related death of an employee under the age of sixteen years employed in agriculture.

(2) Such report shall at a minimum include:

(i) The name and address of the employer;

(ii) The name, address, and age of the employee;

(iii) Details relevant to the incident, to include environmental hazards, chemical or pesticide exposure, use of machinery or tools at

the time of the incident, work tasks performed at the time of the incident, and other details relating to the incident; and

(iv) Any other information the commissioner may by regulation prescribe.

d. Any employer who fails to file a report as required pursuant to paragraph c of this subdivision may be assessed, by the commissioner in his or her discretion, a civil penalty of not less than five hundred dollars and not more than seven thousand dollars per violation.

5. Any employer who employs agricultural workers under the age of sixteen years shall develop and implement written procedures to comply with the provisions of this section.

6. In addition to the rulemaking authority set forth in subdivisions four and five of section one hundred thirty-three of this article, the commissioner shall promulgate any rule or regulation necessary to implement the provisions of this section.

§ 2. The labor law is amended by adding a new article 34 to read as follows:

## ARTICLE 34
## HEAT ILLNESS PREVENTION DURING AGRICULTURAL ACTIVITIES

Section 960. Heat illness prevention during agricultural activities.

§ 960. Heat illness prevention during agricultural activities. 1. As used in this section, the following terms shall have the following meanings:

a. "Agricultural activities" shall mean any condition or activity which occurs on a farm in connection with the commercial production of farm products and includes, but is not limited to, marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; movement, including, but not limited to, use of current county road ditches, streams, rivers, canals, and drains, and use of water for agricultural activities; ground and aerial application of seed, fertilizers, conditioners, and plant protection products; keeping of bees for production of agricultural or apicultural products; employment and use of labor; roadway movement of equipment and livestock; protection from damage by wildlife; prevention of trespass; construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, and similar features and maintenance of stream banks and watercourses; and conversion from one agricultural activity to another, including a change in the type of plant-related farm product being produced. The term includes use of new practices and equipment consistent with technological development within the agricultural industry.

b. "Farm" means the land, buildings, freshwater ponds, freshwater culturing and growing facilities, and machinery used in the commercial production of farm products.

c. "Farm product" means those plants and animals useful to humans and includes, but is not limited to, forages and sod crops, dairy and dairy products, poultry and poultry products, livestock, including breeding, grazing, and recreational equine use, fruits, vegetables, flowers, seeds, grasses, trees, freshwater fish and fish products, apiaries and apiary products, equine and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur.

2. Employees shall have access to potable drinking water that is fresh, pure, suitably cool, and provided to employees free of charge by the employer when performing agricultural activities. The water shall be located as close as practicable to the areas where employees are work-

ing. Employers shall provide water in sufficient quantity to allow employees to drink at least thirty-two fluid ounces of water per hour per employee. Employers shall encourage employees to drink water frequently.

3. a. Shade that is open to the air or provided with ventilation or cooling shall be present when the temperature exceeds eighty degrees Fahrenheit. Employers shall provide timely access to shade upon an employee's request when the temperature does not exceed eighty degrees Fahrenheit.

b. Employees shall be allowed a preventative cool-down rest in the shade for a minimum of five minutes per hour when performing agricultural activities.

c. Where the employer can demonstrate that it is unsafe or infeasible to have shade present on a continuous basis, the employer may utilize alternative procedures that provide equivalent protection.

d. Employees who experience symptoms of heat illness shall not be ordered back to work until any symptoms of heat illness have subsided and shall be provided timely appropriate first aid or emergency response.

4. The commissioner shall promulgate any rule or regulation necessary to implement the provisions of this section and that require employers to train supervisors and employees to protect employees from heat-related illness caused by heat stress.

§ 3. Paragraph f of subdivision 3 of section 131 of the labor law, as amended by chapter 975 of the laws of 1966, is amended to read as follows:

f. A minor fourteen or fifteen years of age may be employed in farm service pursuant to section one hundred thirty-three-a of this article, when attendance upon instruction is not required by the education law, provided such minor presents a farm work permit issued in accordance with the education law. Such permit shall be valid only when signed by the employer and it shall not be valid for work in or in connection with a factory.

§ 4. Subparagraph 1 of paragraph a of subdivision 3 of section 132 of the labor law, as amended by chapter 1017 of the laws of 1971, is amended to read as follows:

(1) Work on a farm pursuant to the provisions of section one hundred thirty-three-a of this article;

§ 5. Subdivision 1 of section 141 of the labor law, as amended by chapter 642 of the laws of 1991, is amended to read as follows:

1. [~~If~~] Notwithstanding the violations set forth in subdivision three of section one hundred thirty-three-a of this article, if the commissioner finds that an employer has violated any provision of this article or of a rule or regulation promulgated thereunder, the commissioner may by an order which shall describe particularly the nature of the violation, assess the employer a civil penalty of not more than one thousand dollars for the first such violation, not more than two thousand dollars for a second violation and not more than three thousand dollars for a third or subsequent violation. Such penalty shall be paid to the commissioner for deposit in the treasury of the state. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations and the failure to comply with record-keeping or other requirements, provided, however, that where such violation involves illegal employment during which a minor is seriously injured or dies,

such penalty shall be treble the maximum penalty allowable under the law for such violation. For the purposes of this subdivision, a minor shall be deemed to be seriously injured if such injury results in a permanent partial or permanent total disability as determined by the workers' compensation board.

§ 6. This act shall take effect on the thirtieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.