

ASSEMBLY, No. 4404

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JULY 16, 2020

Sponsored by:

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District 20 (Union)

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District 19 (Middlesex)

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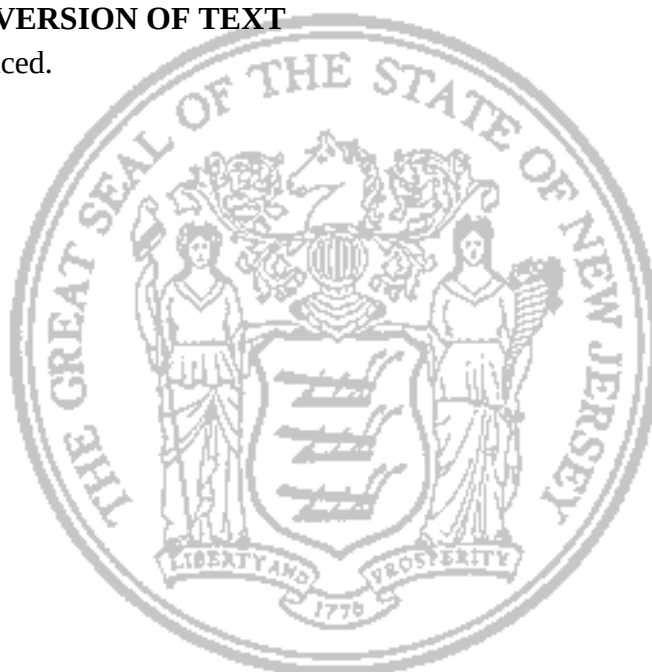
Assemblyman Conaway, Assemblywomen Speight, Murphy, Reynolds-Jackson and Vainieri Huttie

SYNOPSIS

“Farm Worker Epidemic Health and Safety Act”; concerns public health and certain protections for farm workers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/19/2020)

1 **AN ACT** concerning public health and certain protections for farm
2 workers, and supplementing Title 26 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. (New section) The Legislature hereby finds and declares
8 that:

9 a. The COVID-19 epidemic has made New Jersey more aware
10 of which populations are more vulnerable to the spread of
11 communicable disease, with the Department of Health classifying
12 farm workers, especially migrant farm workers, as being a highly
13 vulnerable population meriting a high priority in testing and other
14 health services during epidemics such as the COVID-19 epidemic.

15 b. Among the many aspects of their work which make farm
16 workers especially vulnerable to epidemics or pandemics of
17 communicable disease are the often close crowding of the workers
18 in worksites and in farm employer-sponsored or farm employer-
19 authorized housing, transportation and dining facilities, heightened
20 vulnerability to respiratory illness caused by exposure to pesticides
21 and fungi, the lack of health insurance coverage and paid sick days
22 for most of the workers, and limited access to water, bathrooms and
23 basic sanitation, making it difficult to implement important
24 preventive measures;

25 c. Because of the rapidity of the spread of communicable
26 disease which may occur under such circumstances, an outbreak
27 among farm workers can potentially shutter entire farm operations,
28 not only endangering the health, livelihoods, and even the lives of
29 the workers, but causing significant immediate disruption of the
30 supply of food and other agricultural products at a time of great
31 need for them, and potentially result in serious long-term damage to
32 the viability of the agricultural and food processing sectors of the
33 State's economy;

34 d. The potential harm from outbreaks of epidemic
35 communicable diseases to farm employers and farm workers is
36 inextricably tied to the great potential danger to public health from
37 outbreaks of contagious disease among workers who handle food
38 consumed by members of the general public; and

39 e. Therefore, preventing the spread of communicable disease at
40 workplaces in the farm sector is, above all, a public health goal of
41 the highest importance for the State and all of its citizens, meriting
42 a major effort of public health officials, farm employers, and farm
43 workers to ensure that all possible effective actions be taken
44 towards that goal, including designating farm workers as being
45 among the groups with the highest priority for testing for
46 communicable disease during declared emergencies.

1 2. (New section) As used in P.L. , c. (C.) (now
2 pending before the Legislature as this bill):

3 “Commissioner” means the Commissioner of Health.

4 “Department” means the Department of Health.

5 “Farm employer” means any employer who employs one or more
6 farm workers on a farm.

7 “Farm worker” means any employee engaged to labor on a farm
8 in the production, harvesting and processing of agricultural
9 products, and shall include any employee subject to the provisions
10 of subsection d. of section 5 of P.L.1966, c.113 (C.34:11-56a4).

11 “Public health emergency” means an occurrence or imminent
12 threat of an illness or health condition, caused by bioterrorism,
13 epidemic or pandemic disease, or a novel and highly fatal infectious
14 agent or biological toxin, that poses a substantial risk of a
15 significant number of human fatalities or incidents or permanent or
16 long-term disability, and which has been declared a public health
17 emergency by the Governor.

18 “State of emergency” means a natural or human-made disaster or
19 emergency, including an epidemic or other health emergency, for
20 which a state of emergency has been declared by the President of
21 the United States, the Governor, a municipal emergency
22 management coordinator, or other public authority permitted by law
23 to declare a state of emergency. If the state of emergency does not
24 apply to the entire State, an employee shall not be regarded as a
25 covered employee under P.L. , c. (C.) (now pending
26 before the Legislature as this bill) unless the employee is working
27 in the area subject to the state of emergency.

28

29 3. (New section) The commissioner shall, during a public
30 health emergency or state of emergency related to epidemic or
31 pandemic disease, collaborate with the Commissioner of Labor and
32 Workforce Development, the Commissioner of Community Affairs,
33 and Commissioner of Environmental Protection, and the Secretary
34 of Agriculture, and any other heads of State departments that the
35 commissioner deems appropriate, to establish a system to ensure
36 that those departments, on a timely basis, share with each other
37 information regarding violations of public health, environmental, or
38 labor laws applicable to worksites at farms, migrant labor camps,
39 and other housing, transportation or dining facilities of farm
40 employers, including the information from local boards of health
41 and other entities authorized to assist department inspection or
42 enforcement efforts. Each commissioner shall maximize
43 coordination of enforcement efforts by taking into consideration all
44 relevant information from the system regarding violations of those
45 laws when conducting inspections of worksites and facilities,
46 making determinations regarding violations of any of the laws, and
47 imposing the fines or other sanctions for the violations provided by
48 law to each commissioner. Each commissioner shall issue to the

1 Governor, the Legislature and the public a report of enforcement
2 activities of the department with respect to applicable laws,
3 including inspections conducted, violations determined, and fines or
4 other sanctions imposed by the department for the violations or by
5 local authorities in cooperation with the department. In the case of
6 the state of emergency declared by the Governor on March 9, the
7 reports shall be issued not later than December 31, 2020. In the
8 case of any subsequent public health emergency or state of
9 emergency, the reports shall be issued not later than 120 days after
10 the end of the emergency.

11

12 4. (New section) As part of the commissioner's responsibility
13 to protect the health of the public by regulating the detection,
14 prevention, and control of communicable, infectious and
15 preventable diseases, the commissioner, during a public health
16 emergency or state of emergency related to epidemic or pandemic
17 disease, shall, with respect to farm workers, utilize the powers
18 provided to the commissioner, including the powers provided by
19 sections 15 through 33 of P.L.1947, c.177 (C.26:1A-15 through
20 26:1A-33), chapter 4 of Title 26 of the Revised Statutes, and the
21 "Emergency Health Powers Act," P.L.2005, c.222 (C.26:13-1 et
22 seq.), to:

23 a. designate farm workers as being among the groups with the
24 highest priority for testing for communicable disease during the
25 emergency, and conduct, or authorize or require local boards of
26 health, or, to the extent that the commissioner and the local boards
27 are not able to provide sufficient personnel for the purpose,
28 authorize or contract with other entities, to conduct, the testing of
29 every farm worker working on a farm, at their workplace or at farm
30 employer-sponsored or farm employer-authorized housing facilities,
31 immediately following the effective date of P.L. , c. (C.)(now
32 pending before the Legislature as this bill), or, if later, at the time
33 that each farm worker commences employment with a farm
34 employer, and shall have testing repeated as frequently as the
35 commissioner deems appropriate, and, in a timely manner, make the
36 results, for each workplace and facility, of the testing available to
37 the public, except as prohibited by law, and provide the results of
38 the testing regarding individuals to local boards of health, the farm
39 employers and farm workers at each worksite and facility;

40 b. conduct, or authorize or require local boards of health, or, to
41 the extent that the commissioner and the local boards are not able to
42 provide sufficient personnel for the purpose, authorize or contract
43 with other entities, to conduct, in a timely manner, inspections of
44 each farm worksite and related farm employer-sponsored or farm
45 employer-authorized facility, and employer records, with follow-up
46 inspections where violations are found, to determine whether the
47 farm employers are meeting all standards, guidelines and guidance
48 issued by the commissioner or other authority declaring the public

1 health emergency or state of emergency, or required by law, which
2 shall include that each farm employer:

3 (1) Cooperates fully in permitting access to the worksites,
4 facilities, and records to the commissioner and entities authorized
5 by, or contracted with, the commissioner to conduct the inspections
6 pursuant to this section and implement the educational program
7 established pursuant to subsection c. of this section;

8 (2) Implements good hygiene and infection control practices
9 that comply with standards set by the commissioner, including
10 standards regarding all of the following: regular cleaning and
11 disinfecting of surfaces, equipment, and other elements of the work
12 environment; frequent and thorough hand washing; and the
13 providing of soap, water, places to wash, and alcohol-based
14 disinfectant hand rubs;

15 (3) Does not direct farm employees to work when sick and
16 requires exposed employees to be quarantined for a time period
17 deemed appropriate by public health officials if a farm employee
18 tests positive or shows symptoms of a communicable or infectious
19 disease or the farm employer otherwise has reason to believe that
20 employees have been exposed to a communicable or infectious
21 disease, and, in the case of farm employer-sponsored or farm
22 employer-authorized transportation, housing, or dining facilities,
23 provides, for employees who test positive or show disease
24 symptoms, with facilities separate from other employees, and
25 complies with the provisions of section 6 of P.L.2005, c.222
26 (C.26:13-16) and section 1 of P.L.2020, c.9 (C.34:11D-12)
27 regarding reinstatement to employment;

28 (4) Implements policies to promote practices at farm worksites
29 and in farm employer-sponsored or farm employer-authorized
30 transportation, housing or dining facilities, when feasible and
31 appropriate, to increase the physical distance, at the worksites and
32 in the facilities, between employees and between employees and
33 others; and

34 (5) Provides farm employees with the personal protective
35 equipment deemed appropriate for use in the public health
36 emergency or state of emergency by the department or the National
37 Institute for Occupational Safety and Health; and

38 c. collaborate with the Commissioner of Labor and Workforce
39 Development, the Commissioner of Environmental Protection, the
40 Commissioner of Community Affairs, and the Secretary of
41 Agriculture to develop and implement a comprehensive program of
42 publicity and education to ensure that all farm employers and farm
43 workers are informed about their rights and responsibilities under
44 P.L. , c. (C.) (now pending before the Legislature at this
45 bill) and other public health, environmental, or labor laws
46 applicable to farm employment, including the remedies provided to
47 employees for violations of P.L.2005, c.222 (C.26:13-16). The
48 program shall include on-site training, and posters and other

1 materials providing agency contact information and other
2 information regarding how farm workers may file complaints for
3 retaliation or other violations of that act and the other applicable
4 laws. Posters, forms, notifications, and media materials of the
5 program shall be made available in the languages spoken by
6 significant numbers of farm workers, and any on-site training shall
7 utilize, to the extent practicable, representatives able to speak those
8 languages at sites where the farm workers speak them. The
9 participating departments, to the extent that they are not able to
10 provide sufficient personnel to implement the program, may
11 authorize or contract with other entities to assist in the
12 implementation.

13 As an alternative to or in addition to any other sanctions
14 provided by law, when the commissioner finds that a farm employer
15 has taken any retaliatory action against farm worker for exercising
16 rights provided by the provisions of P.L. , c. (C.) (now
17 pending before the Legislature as this bill), or has willfully violated
18 any other provisions of that act, or any procedures contained
19 therein, the commissioner is authorized to take an action to assess
20 and collect an administrative fine of up to a maximum of \$250 for a
21 first violation and up to a maximum of \$500 for each subsequent
22 violation, specified in a schedule of penalties to be promulgated as a
23 rule or regulation by the commissioner in accordance with the
24 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
25 seq.). When determining the amount of the penalty imposed
26 because of a violation, the commissioner shall consider factors
27 which include the history of previous violations by the employer,
28 the seriousness of the violation, the good faith of the employer, and
29 the size of the employer's business. Each week in which the
30 violation occurs, and each worker subjected to the violation, shall
31 constitute a separate offense. If an administrative penalty order has
32 not been satisfied, the penalty may be recovered with costs by the
33 commissioner in a civil action brought in a summary proceeding
34 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
35 c.274 (C.2A:58-10 et seq.). The commissioner may undertake an
36 action pursuant to this section in response to a complaint by one or
37 more farm workers or an entity representing them. Any sum
38 collected as a fine or penalty pursuant to this section shall be
39 applied toward the department's costs of enforcement and
40 administration of the provisions of P.L. , c. (C.) (now
41 pending before the Legislature as this bill).

42

43 5. This act shall be known and may be cited as the "Farm
44 Worker Epidemic Health and Safety Act."

45

46 6. This act shall take effect immediately.

STATEMENT

The COVID-19 epidemic has made New Jersey more aware of which populations are more vulnerable to the spread of communicable disease, with the Department of Health classifying farm workers, especially migrant farm workers, as being a highly vulnerable population meriting a high priority in testing and other health services during epidemics such as the COVID-19 epidemic. The potential harm to farm employers and farm workers from outbreaks of epidemic communicable diseases and their rapid spread in crowded farms and migrant farm living quarters and related facilities is inextricably tied to the great potential danger to public health from outbreaks of contagious disease among workers who handle food consumed by members of the general public, making the control of those outbreaks a major public health concern.

Therefore, this bill directs the Commissioner of Health, as part of commissioner's responsibility to protect the health of the public by regulating the detection, prevention, and control of communicable, infectious and preventable diseases, to utilize the commissioner's powers during a public health emergency or state of emergency related to epidemic or pandemic disease to do the following with respect to farm workers:

1. Designate farm workers as being among the groups with the highest priority for testing for communicable disease during the emergency, and conduct or require the testing of all of those workers in their workplace, or in farm employer-sponsored or farm employer-authorized housing facilities, upon the commencement of their employment, and repeat as frequently as the commissioner deems appropriate, and, in a timely manner, make the testing results of the testing public and provide them to local boards of health and to the farm employers and farm workers;

2. Conduct, or have other entities conduct, inspections of each worksite and facility, and of employer records, to determine whether each farm employer is meeting all standards, guidelines and guidances required by law or issued by the commissioner or other authority declaring the emergency, which include that the farm employer: cooperates fully in permitting access to the worksites, facilities, and records for the inspections and educational activities; implements, and provides necessary supplies for, good hygiene and infection control practices; does not direct farm workers to work when sick, and has exposed, infected or symptomatic farm workers quarantined or separated as directed by public health officials; implements policies to promote social distancing at worksites and in farm employer-sponsored or farm employer-authorized housing, transportation, and dining facilities; and provides farm workers with recommended personal protective equipment; and

1 3. Collaborate with the Commissioners of Labor and
2 Workforce Development, Community Affairs, and Environmental
3 Protection, and the Secretary of Agriculture to develop a
4 comprehensive program of publicity and education, including on-
5 site training, to ensure that all farm employers and farm workers are
6 informed about their rights and responsibilities under the bill and
7 other public health, environmental, or labor laws applicable to farm
8 employment.

9 The bill directs the commissioner to collaborate during the
10 emergency with the Commissioners of Labor and Workforce
11 Development, Community Affairs, and Environmental Protection,
12 and the Secretary of Agriculture to establish a system to ensure that
13 those departments, on a timely basis, share with each other
14 information regarding violations of public health, environmental, or
15 labor laws applicable to worksites at farms, migrant labor camps,
16 and other housing, transportation or dining facilities of farm
17 employers, including the information from local boards of health
18 and other entities authorized to assist department inspection or
19 enforcement efforts. The commissioners are directed to maximize
20 coordination of enforcement efforts when conducting inspections,
21 making determinations regarding violations, and imposing
22 penalties.