

SENATE, No. 2602

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 22, 2020

Sponsored by:

Senator M. TERESA RUIZ

District 29 (Essex)

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District 5 (Camden and Gloucester)

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Senator Diegnan

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: 7/16/2020)

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 of
5 New Jersey:

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

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

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

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

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

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

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

13

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

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

42 b. conduct, or authorize or require local boards of health, or, to
43 the extent that the commissioner and the local boards are not able to
44 provide sufficient personnel for the purpose, authorize or contract
45 with other entities, to conduct, in a timely manner, inspections of
46 each farm worksite and related farm employer-sponsored or farm
47 employer-authorized facility, and employer records, with follow-up

1 inspections where violations are found, to determine whether the
2 farm employers are meeting all standards, guidelines and guidance
3 issued by the commissioner or other authority declaring the public
4 health emergency or state of emergency, or required by law, which
5 shall include that each farm employer:

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

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

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

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

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

41 c. collaborate with the Commissioner of Labor and Workforce
42 Development, the Commissioner of Environmental Protection, the
43 Commissioner of Community Affairs, and the Secretary of
44 Agriculture to develop and implement a comprehensive program of
45 publicity and education to ensure that all farm employers and farm
46 workers are informed about their rights and responsibilities under
47 P.L. , c. (C.) (now pending before the Legislature at this
48 bill) and other public health, environmental, or labor laws

1 applicable to farm employment, including the remedies provided to
2 employees for violations of P.L.2005, c.222 (C.26:13-16). The
3 program shall include on-site training, and posters and other
4 materials providing agency contact information and other
5 information regarding how farm workers may file complaints for
6 retaliation or other violations of that act and the other applicable
7 laws. Posters, forms, notifications, and media materials of the
8 program shall be made available in the languages spoken by
9 significant numbers of farm workers, and any on-site training shall
10 utilize, to the extent practicable, representatives able to speak those
11 languages at sites where the farm workers speak them. The
12 participating departments, to the extent that they are not able to
13 provide sufficient personnel to implement the program, may
14 authorize or contract with other entities to assist in the
15 implementation.

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

46
47 5. This act shall be known and may be cited as the "Farm
48 Worker Epidemic Health and Safety Act."

1 6. This act shall take effect immediately.

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STATEMENT

5

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

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

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

36 2. Conduct, or have other entities conduct, inspections of each
37 worksite and facility, and of employer records, to determine
38 whether each farm employer is meeting all standards, guidelines
39 and guidances required by law or issued by the commissioner or
40 other authority declaring the emergency, which include that the
41 farm employer: cooperates fully in permitting access to the
42 worksites, facilities, and records for the inspections and educational
43 activities; implements, and provides necessary supplies for, good
44 hygiene and infection control practices; does not direct farm
45 workers to work when sick, and has exposed, infected or
46 symptomatic farm workers quarantined or separated as directed by
47 public health officials; implements policies to promote social
48 distancing at worksites and in farm employer-sponsored or farm

1 employer-authorized housing, transportation, and dining facilities;
2 and provides farm workers with recommended personal protective
3 equipment; and

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

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