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SENATE BILL DRS15263-LR-86D

Short Title: Day Laborer Protection Act. (Public)

Sponsors: Senators deViere, Van Duyn, and Waddell (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE LABOR LAWS TO ENACT THE DAY LABORER
3 PROTECTION ACT.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. This act shall be known and may be cited as the "Day Laborer
6 Protection Act."

7 SECTION 2. Chapter 95 of the General Statutes is amended by adding a new Article
8 to read:

9 "Article 2B.

10 "Day Laborer Protection Act.

11 "§ 95-25.30. Title.

12 This Article shall be known and may be cited as the "Day Laborer Protection Act."

13 "§ 95-25.31. Findings; purpose; definitions; scope.

14 (a) The General Assembly finds as follows:

15 (1) Thousands of individuals across the State seek work as day laborers as a way
16 to support themselves and their families.

17 (2) Studies and surveys of low-wage day laborers themselves indicate that as a
18 group, they are particularly vulnerable to abuse of their labor rights, including
19 unpaid wages, failure to pay for all hours worked, minimum wage and
20 overtime violations, and unlawful deduction from pay for meals,
21 transportation, equipment, and other items.

22 (b) The purpose of this Article is to protect the rights of day laborers in this State.

23 (c) The following definitions apply in this Article:

24 (1) Day laborer. – An individual who contracts for employment with a day labor
25 agency.

26 (2) Day labor. – Work performed by a day laborer at a third-party client, the
27 duration of which may be specific or undefined, pursuant to a contract or
28 understanding between the day labor agency and the third-party client. The
29 term does not include labor or employment of a professional or clerical nature.

30 (3) Day labor agency or agency. – Any person engaged in the business of
31 employing day laborers to provide services, for a fee, to or for any third-party
32 client pursuant to a contract with the day labor agency and the third-party
33 client.

34 (4) Department. – The Department of Labor.

35 (5) Hours worked. – The meaning ascribed to that term in G.S. 95-25.2(8) and as
36 used in Article 2A of this Chapter.



1 (6) Third-party client. – Any person that contracts with a day labor agency for
2 obtaining day laborers. The term does not include an individual home owner
3 or renter seeking help for a minor repair or a minor home improvement
4 project.

5 (d) This Article does not apply to:

6 (1) Labor or employment of a clerical or professional nature.

7 (2) Nonprofit day labor centers which charge no fee for their services and that
8 have been established to provide an alternative to soliciting work on street
9 corners.

10 **"§ 95-25.32. Employment notice.**

11 Whenever a day labor agency agrees to send one or more persons to work as day laborers,
12 the day labor agency shall provide to each day laborer, at the time of dispatch, a statement
13 containing the following items on a form approved by the Department:

14 (1) The name of the day laborer.

15 (2) The name and nature of the work to be performed and the types of equipment,
16 protective clothing, and training that are required for the task.

17 (3) The wages offered.

18 (4) The name and address of the destination of each day laborer.

19 (5) Terms of transportation.

20 (6) Whether a meal or equipment, or both, are provided, either by the day labor
21 agency or the third-party client, and the cost of the meal and equipment, if
22 any.

23 If a day laborer is assigned to the same assignment for more than one day, the day labor
24 agency is required to provide the employment notice only on the first day of the assignment and
25 on any day that any of the terms listed on the employment notice are changed.

26 If the day laborer is not placed with a third-party client or otherwise contracted to work for
27 that day, the day labor agency shall, upon request, provide the day laborer with a confirmation
28 that the day laborer sought work, signed by an employee of the day labor agency, which shall
29 include the name of the agency, the name and address of the day laborer, and the date and the
30 time that the day laborer receives the confirmation.

31 **"§ 95-25.33. Recordkeeping.**

32 (a) Whenever a day labor agency sends one or more persons to work as day laborers, the
33 day labor agency shall keep the following records relating to that transaction:

34 (1) The name, address, and telephone number of each third-party client, including
35 each work site, to which day laborers were sent by the agency and the date of
36 the transaction.

37 (2) For each day laborer: the name and address, the specific location sent to work,
38 the type of work performed, the number of hours worked, the hourly rate of
39 pay, and the date sent. The third-party client shall be required to remit all
40 information required under this subsection to the day labor agency no later
41 than seven days following the last day of the work week worked by the day
42 laborer. Failure of a third-party client to remit such information to a day labor
43 agency shall not be a defense to the recordkeeping requirement of this section.

44 (3) The name and title of the individual or individuals at each third-party client's
45 place of business responsible for the transaction.

46 (4) Any specific qualifications or attributes of a day laborer, requested by each
47 third-party client.

48 (5) Copies of all contracts, if any, with the third-party client and copies of all
49 invoices for the third-party client.

50 (6) Copies of all employment notices provided in accordance with
51 G.S. 95-25.32(a).

1 (7) Deductions to be made from each day laborer's compensation made by either
2 the third-party client or by the day labor agency for the day laborer's
3 transportation, food, equipment, withheld income tax, withheld social security
4 payments, and every other deduction.

5 (8) Verification of the actual cost of any equipment or meal charged to a day
6 laborer.

7 (9) Any additional information required by rules issued by the Department.

8 (b) The day labor agency shall maintain all records under this section for a period of three
9 years from their creation. The records shall be open to inspection by the Department during
10 normal business hours. Records described in subdivisions (1), (2), (3), (6), (7), and (8) of
11 subsection (a) of this section shall be available for review or copying by that day laborer during
12 normal business hours within five days following a written request. In addition, a day labor
13 agency shall make records related to the number of hours billed to a third-party client for that
14 individual day laborer's hours of work available for review or copying during normal business
15 hours within five days following a written request. The day labor agency shall make forms, in
16 duplicate, for such requests available to day laborers at the dispatch office. The day laborer shall
17 be given a copy of the request form.

18 It is a violation of this section to make any false, inaccurate, or incomplete entry into any
19 record required by this section, or to delete required information from any such record.

20 Failure by the third-party client to remit time records to the day labor agency as provided in
21 subdivision (a)(2) of this section shall constitute a notice violation by a third-party client under
22 this Chapter unless the third-party client has been precluded from submitting such time records
23 for reasons beyond its control. A failure by the third-party client to provide time records in
24 accordance with this subsection (b) of this section shall not be a notice violation and shall not be
25 the basis for a suit or other action against the day labor agency.

26 **"§ 95-25.34. Meals.**

27 A day labor agency or a third-party client shall not charge a day laborer for any meal not
28 consumed by the day laborer and, if consumed, no more than the actual cost of a meal. In no case
29 shall the purchase of a meal be a condition of employment for a day laborer.

30 **"§ 95-25.35. Transportation.**

31 A day labor agency or a third-party client or a contractor or agent of either shall charge no
32 fee to transport a day laborer to or from the designated work site.

33 **"§ 95-25.36. Day laborer equipment.**

34 For any safety equipment, clothing, accessories, or any other items required by the nature of
35 the work, either by law, custom, or as a requirement of the third-party client, the day labor agency
36 or the third-party client may charge the day laborer the market value of the item temporarily
37 provided to the day laborer by the third-party client if the day laborer fails to return such items
38 to the third-party client or the day labor agency. For any other equipment, clothing, accessories,
39 or any other items the day labor agency makes available for purchase, the day laborer shall not
40 be charged more than the actual market value for the item.

41 **"§ 95-25.37. Wage payment and notice.**

42 (a) At the time of payment of wages, a day labor agency shall provide each day laborer
43 with a detailed itemized statement, on the day laborer's paycheck stub or on a form approved by
44 the Department, listing the following:

45 (1) The name, address, and telephone number of each third-party client at which
46 the day laborer worked. If this information is provided on the day laborer's
47 paycheck stub, a code for each third-party client may be used so long as the
48 required information for each coded third-party client is made available to the
49 day laborer.

50 (2) The number of hours worked by the day laborer at each third-party client each
51 day during the pay period. If the day laborer is assigned to work at the same

1 work site of the same third-party client for multiple days in the same work
2 week, the day labor agency may record a summary of hours worked at that
3 third-party client's work site so long as the first and last day of that work week
4 are identified as well.

5 (3) The rate of payment for each hour worked, including any premium rate or
6 bonus.

7 (4) The total pay period earnings.

8 (5) All deductions made from the day laborer's compensation made either by the
9 third-party client or by the day labor agency, and the purpose for which
10 deductions were made, including for the day laborer's transportation, food,
11 equipment, withheld income tax, withheld social security payments, and every
12 other deduction.

13 (6) Any additional information required by rules adopted by the Department
14 under this Article or Article 2A of this Chapter.

15 (b) A day labor agency shall provide each worker an annual earnings summary within a
16 reasonable time after the preceding calendar year, but in no case later than February 1. A day
17 labor agency shall, at the time of each wage payment, give notice to day laborers of the
18 availability of the annual earnings summary or post such a notice in a conspicuous place in the
19 public reception area.

20 (c) Vouchers or any other method of payment which is not generally negotiable shall be
21 prohibited as a method of payment of wages.

22 (d) No day labor agency shall charge any day laborer for cashing a check issued by the
23 agency for wages earned by a day laborer who performed work through that agency. No day
24 labor agency or third-party client shall charge any day laborer for the expense of conducting any
25 consumer report, any criminal background check of any kind, or any drug test of any kind.

26 (e) Day laborers shall be paid no less than the wage rate established by G.S. 95-25.3 for
27 all the work performed on behalf of the third-party client in addition to the work listed in the
28 written description.

29 (f) The total amount deducted for meals and equipment may not cause a day laborer's
30 hourly wage to fall below the State or federal minimum wage. However, a day labor agency may
31 deduct the actual market value of reusable equipment provided to the day laborer by the day labor
32 agency which the day laborer fails to return, if the day laborer provides a written authorization
33 for such deduction at the time the deduction is made.

34 (g) A day laborer who is contracted by a day labor agency to work at a third-party client's
35 work site but is not utilized by the third-party client shall be paid by the day labor agency for a
36 minimum of four hours of pay at the agreed upon rate of pay. However, in the event the day labor
37 agency contracts the day laborer to work at another location during the same shift, the day laborer
38 shall be paid by the day labor agency for a minimum of two hours of pay at the agreed upon rate
39 of pay.

40 (h) A third-party client is required to pay wages and related payroll taxes to a licensed
41 day labor agency for services performed by the day laborer for the third-party client according to
42 payment terms outlined on invoices, service agreements, or stated terms provided by the day
43 labor agency. The Department shall review a complaint filed by a licensed day labor agency. The
44 Department shall review the payroll and accounting records of the day labor agency and the
45 third-party client for the period in which the violation of this Article is alleged to have occurred
46 to determine if wages and payroll taxes have been paid to the agency and that the day laborer has
47 been paid the wages owed him or her.

48 **"§ 95-25.38. Public access area.**

49 Each day labor agency shall provide adequate seating in the public access area of the offices
50 of the agency. The public access area shall be the location for the notices required by this Article

1 and any other State or federally mandated posting. The public access area shall allow for access
2 to restrooms and water.

3 **"§ 95-25.39. Work restriction.**

4 No day labor agency shall restrict the right of a day laborer to accept a permanent position
5 with a third-party client to whom the day laborer has been referred for work or restrict the right
6 of such third-party client to offer such employment to a day laborer.

7 **"§ 95-25.40. Registration.**

8 (a) A day labor agency which is located, operates, or transacts business within this State
9 shall register with the Department of Labor in accordance with rules adopted by the Department
10 for day labor agencies and shall be subject to this Article and any rules adopted under this Article.

11 (b) It is a violation of this Article to operate a day labor agency without first registering
12 with the Department in accordance with subsection (a) of this section. The Department shall
13 create and maintain the following lists at regular intervals on its Web site, accessible to the public:

14 (1) A list of all registered day labor agencies in the State whose registration is in
15 good standing.

16 (2) A list of day labor agencies in the State whose registration has been
17 suspended, including the reason for the suspension, the date the suspension
18 was initiated, and the date, if known, the suspension is to be lifted.

19 (3) A list of day labor agencies in the State whose registration has been revoked,
20 including the reason for the revocation and the date the registration was
21 revoked.

22 (c) An applicant is not eligible to register to operate a day labor agency under this Article
23 if the applicant or any of its officers, directors, partners, or managers or any owner of a
24 twenty-five percent (25%) or greater beneficial interest (i) has been involved, as owner, officer,
25 director, partner, or manager, of any day labor agency whose registration has been revoked or
26 has been suspended without being reinstated within the five years immediately preceding the
27 filing of the application or (ii) is under the age of 18.

28 (d) Every agency shall post and keep posted at each location, in a position easily
29 accessible to all employees, notices as supplied and required by the Department containing a
30 copy or summary of the provisions of the Article and a notice which informs the public of a
31 toll-free telephone number for day laborers and the public to file wage dispute complaints and
32 other alleged violations by day labor agencies. Such notices shall be in English or any other
33 language generally understood in the locale of the day labor agency.

34 **"§ 95-25.41. Administration of this Article; enforcement; violations.**

35 (a) This Article shall be enforced under the general supervision of the Commissioner of
36 Labor, who shall have the same powers and duties in the enforcement of this Article as in the
37 enforcement of Article 5A of this Chapter.

38 (b) Under rules adopted pursuant to this Article, a job day labor agency may be issued a
39 warning, citation or notice of violation, or may have its license revoked or suspended, or its
40 licensee reprimanded, censured, or placed on probation in substantially the same manner and
41 under substantially the same procedure as that provided for a private personnel service under
42 Article 5A of this Chapter.

43 (c) It is a violation of this Article for a third-party client to enter into a contract for the
44 employment of day laborers with any day labor agency not registered under this Article. A
45 third-party client has a duty to verify a day labor agency's status with the Department before
46 entering into a contract with such an agency.

47 (d) If a third-party client leases or contracts with a day labor agency for the services of a
48 day laborer, the third-party client shall share all legal responsibility and liability for the payment
49 of wages under Article 2A of this Chapter.

50 **"§ 95-25.42. Private right of action.**

1 (a) A person aggrieved by a violation of this Article or any rule adopted under this Article
2 by a day labor agency or a third-party client may file suit in the General Court of Justice in the
3 county where the alleged offense occurred or where any day laborer who is party to the action
4 resides, without regard to exhaustion of any alternative administrative remedies provided in this
5 Article.

6 A day labor agency aggrieved by a violation of this Article or any rule adopted under this
7 Article by a third-party client may file suit in the General Court of Justice in the county where
8 the alleged offense occurred or where the day labor agency which is party to the action is located.
9 Actions may be brought by one or more day laborers for and on behalf of themselves and other
10 day laborers similarly situated.

11 A day laborer whose rights have been violated under this Article by a day labor agency or a
12 third-party client or a day labor agency whose rights have been violated under this Article by a
13 third-party client is entitled to collect:

14 (1) In the case of a wage and hour violation, the amount of any wages, salary,
15 employment benefits, or other compensation denied or lost to the day laborer
16 or day labor agency by reason of the violation, plus an equal amount in
17 liquidated damages; and

18 (2) Attorney's fees and costs.

19 (b) The right of an aggrieved person to bring an action under this section terminates upon
20 the passing of three years from the final date of employment by the day labor agency or the
21 third-party client or upon the passing of three years from the date of termination of the contract
22 between the day labor agency and the third-party client. This limitations period is tolled if a day
23 labor employer has deterred a day labor agency or day laborer's exercise of rights under this
24 Article by contacting or threatening to contact law enforcement agencies.

25 **"§ 95-25.43. Day labor agency; recovery of attorney's fees and costs.**

26 A day labor agency may recover attorney's fees and costs in a civil action brought by the day
27 labor agency against a third-party client for breach of contract by the third-party client in relation
28 to services provided by the agency to the third-party client if the plaintiff prevails in the lawsuit.

29 **"§ 95-25.44. Severability.**

30 Should one or more of the provisions of this Article be held invalid, such invalidity shall not
31 affect any valid provisions hereof."

32 **SECTION 3.** G.S. 95-241(a)(1) reads as rewritten:

33 "(a) No person shall discriminate or take any retaliatory action against an employee
34 because the employee in good faith does or threatens to do any of the following:

- 35 (1) File a claim or complaint, initiate any inquiry, investigation, inspection,
36 proceeding or other action, or testify or provide information to any person
37 with respect to any of the following:
- 38 a. Chapter 97 of the General Statutes.
 - 39 b. ~~Article 2A~~ Article 2A, Article 2B, or Article 16 of this Chapter.
 - 40 c. Article 2A of Chapter 74 of the General Statutes.
 - 41 d. G.S. 95-28.1.
 - 42 e. Article 16 of Chapter 127A of the General Statutes.
 - 43 f. G.S. 95-28.1A.
 - 44 g. Article 52 of Chapter 143 of the General Statutes.
 - 45 h. Article 5F of Chapter 90 of the General Statutes."

46 **SECTION 4.** This act becomes effective January 1, 2020.