

Proposed Substitute House Bill 1141 (H-0734.1)

House Labor and Workplace Standards Committee

By Representative Ortiz-Self

Original Bill:

- Creates collective bargaining procedures for certain agricultural workers involved with cannabis production and processing.
 - Authorizes the Public Employment Relations Commission to administer and enforce these procedures.
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Proposed Substitute House Bill (H-0734.1) compared to the Original Bill:

- Requires the ballot for an exclusive bargaining representative election to include an option for employees to designate that *they do not desire* to be represented by any bargaining representative (Instead of requiring an option for employees to designate that *they desire* to be represented by any bargaining representative).
- Removes a process for cross checking if there is only one employee organization seeking certification as the exclusive bargaining representative of a bargaining unit with no incumbent exclusive bargaining representative.
- Makes technical changes to update the spelling of colocated in the definition of "employer."
- Breaks a subsection into two subsections to clarify that controlling, dominating, or interfering with a bargaining representative; and engaging in or creating the impression of surveillance of protected activities are distinct unfair labor practices for employers.
- Makes technical changes to section 5 to use consistent terms, by adding "representation" in two places and "prospective" in one place.

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1 AN ACT Relating to placing certain agricultural workers who are
2 engaged in cultivating, growing, harvesting, or producing cannabis
3 under the jurisdiction of the public employment relations commission
4 for purposes of collective bargaining; and adding a new chapter to
5 Title 49 RCW.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires
9 otherwise.

10 (1) "Bargaining representative" means any lawful organization
11 that represents employees in their employment relations with their
12 employers.

13 (2) "Collective bargaining" means the performance of the mutual
14 obligations of the employer and the exclusive bargaining
15 representative to meet at reasonable times, to confer and negotiate
16 in good faith, and to execute a written agreement with respect to
17 grievance procedures and collective negotiations on personnel
18 matters, including wages, hours, and working conditions, which may be
19 peculiar to an appropriate bargaining unit of such employer, except
20 that by such obligation neither party may be compelled to agree to a

1 proposal or be required to make a concession unless otherwise
2 provided in this chapter.

3 (3) "Commission" means the public employment relations commission
4 created in RCW 41.58.010.

5 (4) (a) "Employee" means any person who is employed by an employer
6 to perform the work of cultivating, growing, harvesting, or producing
7 cannabis, including defoliating, drying, bucking, precuring, curing,
8 drying, trimming, sorting, and loading, if performed on a farm.

9 (b) "Employee" does not include any person having authority, in
10 the interest of the employer, to hire, transfer, suspend, lay off,
11 recall, promote, discharge, assign, reward, or discipline other
12 employees, or responsibly to direct them, or to adjust their
13 grievances, or effectively to recommend such action, if in connection
14 with the foregoing the exercise of such authority is not of a merely
15 routine or clerical nature, but requires the use of independent
16 judgment.

17 (5) (a) "Employer" means an employer that is operating pursuant to
18 a cannabis producer's license issued under RCW 69.50.325(1), or a
19 cannabis processor's license issued under RCW 69.50.325(2) if the
20 licensed premises is colocated on a farm licensed for cannabis
21 production. "Employer" also includes any person acting as an agent of
22 an employer, directly or indirectly.

23 (b) In determining whether any person is acting as an agent of
24 another person to make such other person responsible for their acts,
25 the question of whether the specific acts performed were actually
26 authorized or subsequently ratified is not controlling.

27 (6) "Executive director" means the executive director of the
28 commission.

29 (7) "Labor dispute" includes any controversy concerning terms,
30 tenure, or conditions of employment, or concerning the association of
31 representation of persons in negotiating, fixing, maintaining,
32 changing, or seeking to arrange terms or conditions of employment,
33 regardless of whether the disputants stand in the proximate relation
34 of employer and employee. In the event of a dispute between an
35 employer and an exclusive bargaining representative over the matters
36 that are terms and conditions of employment, the commission shall
37 decide which items are mandatory subjects for bargaining.

38 (8) "Labor organization" means an organization of any kind, or an
39 agency or employee representation committee or plan, in which
40 employees participate and which exists for the primary purpose of

1 dealing with employers concerning grievances, labor disputes, wages,
2 rates of pay, hours of employment, or conditions of employment.

3 (9) "Person" includes one or more individuals, labor
4 organizations, partnerships, associations, corporations, legal
5 representatives, trustees in bankruptcy, or receivers.

6 (10) "Unfair labor practice" means any activity listed in
7 sections 14 and 15 of this act.

8 NEW SECTION. **Sec. 2.** No employer or other person may directly
9 or indirectly interfere with, restrain, coerce, or discriminate
10 against any employees or group of employees in the free exercise of
11 their right to organize and designate bargaining representatives of
12 their own choosing for the purpose of collective bargaining, or in
13 the free exercise of any other right under this chapter.

14 NEW SECTION. **Sec. 3.** If an employer and its employees are in
15 disagreement as to the selection of a bargaining representative, the
16 commission must be invited to intervene as is provided in sections 4
17 through 6 of this act.

18 NEW SECTION. **Sec. 4.** (1)(a) The commission, upon reasonable
19 notice, shall decide in each application for certification as an
20 exclusive bargaining representative, the unit appropriate for the
21 purpose of collective bargaining.

22 (b) In determining, modifying, or combining the bargaining unit,
23 the commission shall consider the duties, skills, and working
24 conditions of the employees; the history of collective bargaining by
25 the employees and their bargaining representatives; the extent of
26 organization among the employees; and the desire of the employees.

27 (2) The commission shall determine the bargaining representative
28 by conducting an election after a showing of interest by employees,
29 as provided in section 5 of this act.

30 (3) If a single employee organization is the exclusive bargaining
31 representative for two or more units, upon petition by the employee
32 organization, the units may be consolidated into a single larger unit
33 if the commission considers the larger unit to be appropriate. If
34 consolidation is appropriate, the commission shall certify the
35 employee organization as the exclusive bargaining representative of
36 the new unit.

37 (4) No question concerning representation may be raised if:

1 (a) Fewer than 12 months have elapsed since the last
2 certification or election; or

3 (b) A valid collective bargaining agreement is in effect, except
4 for that period of no more than 90 calendar days nor less than 60
5 calendar days before the expiration of the agreement.

6 NEW SECTION. **Sec. 5.** (1)(a) Upon request of a prospective
7 bargaining representative showing written proof of at least 30
8 percent representation of the employees within the unit, the
9 commission shall hold an election by ballot to determine the issue.

10 (b) The ballot must contain the name of the prospective
11 bargaining representative and of any other bargaining representative
12 showing written proof of at least 10 percent representation of the
13 employees within the unit, together with a choice for any employee to
14 designate that they do not desire to be represented by any bargaining
15 representative.

16 (c) Where more than one organization is on the ballot and neither
17 of the three or more choices receives a majority vote of valid
18 ballots cast, a runoff election must be held. The runoff ballot must
19 contain the two choices which received the largest and second largest
20 number of votes.

21 (2)(a) Upon request of a prospective bargaining representative
22 showing written proof of at least 50 percent representation of the
23 employees within a bargaining unit for which there is no incumbent
24 exclusive bargaining representative, the commission shall hold an
25 election through a cross-check process to determine the issue.

26 (b) The commission must compare the employee organization's
27 membership records or bargaining authorization cards against the
28 employment records of the employer.

29 NEW SECTION. **Sec. 6.** (1) The bargaining representative that has
30 been determined to represent a majority of the employees in a
31 bargaining unit must be certified by the commission as the exclusive
32 bargaining representative of, and must represent, all the employees
33 within the unit without regard to membership in the bargaining
34 representative.

35 (2) An employee at any time may present their grievance to the
36 employer and have such grievance adjusted without the intervention of
37 the exclusive bargaining representative, if the adjustment is not
38 inconsistent with the terms of a collective bargaining agreement then

1 in effect, and if the exclusive bargaining representative has been
2 given reasonable opportunity to be present at any initial meeting
3 called for the resolution of the grievance.

4 NEW SECTION. **Sec. 7.** RCW 41.56.037 applies to this chapter.

5 NEW SECTION. **Sec. 8.** No employer may refuse to engage in
6 collective bargaining with the exclusive bargaining representative.
7 Upon the failure of the employer and the exclusive bargaining
8 representative to conclude a collective bargaining agreement, any
9 matter in dispute may be submitted by either party to the commission.
10 If an employer implements its last and best offer where there is no
11 contract settlement, allegations that either party is violating the
12 terms of the implemented offer are subject to grievance arbitration
13 procedures as such procedures are set forth in the parties' last
14 contract or, should no such contract exist, as set forth in the
15 implemented offer.

16 NEW SECTION. **Sec. 9.** (1) Upon the authorization of an employee
17 within the bargaining unit and after the certification or recognition
18 of the bargaining unit's exclusive bargaining representative, the
19 employer must deduct from the payments to the employee the monthly
20 amount of dues as certified by the secretary of the exclusive
21 bargaining representative and must transmit the same to the treasurer
22 of the exclusive bargaining representative.

23 (2)(a) An employee's written, electronic, or recorded voice
24 authorization to have the employer deduct membership dues from the
25 employee's salary must be made by the employee to the exclusive
26 bargaining representative. If the employer receives a request for
27 authorization of deductions, the employer must forward the request to
28 the exclusive bargaining representative as soon as practicable.

29 (b) Upon receiving notice of the employee's authorization from
30 the exclusive bargaining representative, the employer must deduct
31 from the employee's salary membership dues and remit the amounts to
32 the exclusive bargaining representative.

33 (c) The employee's authorization remains in effect until
34 expressly revoked by the employee in accordance with the terms and
35 conditions of the authorization.

36 (d) An employee's request to revoke authorization for payroll
37 deductions must be in writing and submitted by the employee to the

1 exclusive bargaining representative in accordance with the terms and
2 conditions of the authorization.

3 (e) After the employer receives confirmation from the exclusive
4 bargaining representative that the employee has revoked authorization
5 for deductions, the employer must end the deduction no later than the
6 second payroll after receipt of the confirmation.

7 (f) The employer must rely on information provided by the
8 exclusive bargaining representative regarding the authorization and
9 revocation of deductions.

10 (3) If the employer and the exclusive bargaining representative
11 of a bargaining unit enter into a collective bargaining agreement
12 that includes requirements for deductions of other payments, the
13 employer must make such deductions upon authorization of the
14 employee.

15 NEW SECTION. **Sec. 10.** A collective bargaining agreement may
16 provide for binding arbitration of a labor dispute arising from the
17 application or the interpretation of the matters contained in a
18 collective bargaining agreement.

19 NEW SECTION. **Sec. 11.** (1) After the termination date of a
20 collective bargaining agreement, all the terms and conditions
21 specified in the collective bargaining agreement remain in effect
22 until the effective date of a subsequent agreement, not to exceed one
23 year from the termination date stated in the agreement. Thereafter,
24 the employer may unilaterally implement according to law.

25 (2) This section does not apply to provisions of a collective
26 bargaining agreement which both parties agree to exclude from the
27 provisions of subsection (1) of this section and to provisions within
28 the collective bargaining agreement with separate and specific
29 termination dates.

30 (3) This section does not apply to collective bargaining
31 agreements in effect or being bargained on the effective date of this
32 section.

33 NEW SECTION. **Sec. 12.** In addition to any other method for
34 selecting arbitrators, the parties may request the commission to
35 appoint a qualified person who may be an employee of the commission
36 to act as an arbitrator to assist in the resolution of a labor
37 dispute between the employer and the bargaining representative

1 arising from the application of the matters contained in a collective
2 bargaining agreement. The arbitrator must conduct the arbitration of
3 the dispute in a manner provided for in the collective bargaining
4 agreement. The commission may not collect any fees or charges from
5 the employer or the bargaining representative for services performed
6 by the commission under this chapter. The provisions of chapter 49.08
7 RCW do not apply to this chapter.

8 NEW SECTION. **Sec. 13.** (1) If the employer has the information
9 in the employer's records, the employer must provide to the exclusive
10 bargaining representative the following information for each employee
11 in an appropriate bargaining unit:

12 (a) The employee's name and date of hire;

13 (b) The employee's contact information, including: (i) Cellular,
14 home, and work telephone numbers; (ii) work and the most up-to-date
15 personal email addresses; and (iii) home address or personal mailing
16 address; and

17 (c) Employment information, including the employee's job title,
18 salary or rate of pay, and worksite location or duty station.

19 (2) The employer must provide the information to the exclusive
20 bargaining representative in an editable digital file format:

21 (a) Within 21 business days from the date of hire for a newly
22 hired employee in an appropriate bargaining unit; and

23 (b) Every 120 business days for all employees in an appropriate
24 bargaining unit.

25 (3) When there is a state-level representative of the exclusive
26 bargaining representative for a bargaining unit, the employer may
27 provide the information to the state-level representative.

28 (4) The exclusive bargaining representative may use the
29 information provided under this section only for representation
30 purposes. This section does not give authority to any exclusive
31 bargaining representative to sell or provide access to lists of
32 employees or the information provided to the exclusive bargaining
33 representative pursuant to this section requested for commercial
34 purposes.

35 (5) If an employer fails to comply with this section, the
36 exclusive bargaining representative may bring a court action to
37 enforce compliance. The court may order the employer to pay costs and
38 reasonable attorneys' fees incurred by the exclusive bargaining
39 representative.

1 NEW SECTION. **Sec. 14.** It is an unfair labor practice for an
2 employer to:

3 (1) Interfere with, restrain, or coerce employees in the exercise
4 of their rights guaranteed by this chapter;

5 (2) Control, dominate, or interfere with a bargaining
6 representative;

7 (3) Engage in or create the impression of surveillance of
8 activities protected by this chapter;

9 (4) Discriminate against an employee who has filed an unfair
10 labor practice charge or who has given testimony under this chapter;
11 or

12 (5) Refuse to engage in collective bargaining.

13 NEW SECTION. **Sec. 15.** It is an unfair labor practice for a
14 bargaining representative to:

15 (1) Interfere with, restrain, or coerce employees in the exercise
16 of their rights guaranteed by this chapter;

17 (2) Induce the employer to commit an unfair labor practice;

18 (3) Discriminate against an employee who has filed an unfair
19 labor practice charge or who has given testimony under this chapter;
20 or

21 (4) Refuse to engage in collective bargaining.

22 NEW SECTION. **Sec. 16.** (1) The commission must prevent unfair
23 labor practices and issue appropriate remedial orders. However, a
24 complaint may not be processed for an unfair labor practice occurring
25 more than six months before the filing of the complaint with the
26 commission or in superior court.

27 (2) If the commission determines that a person has engaged in or
28 is engaging in an unfair labor practice, the commission must issue
29 and serve upon the person an order requiring the person to cease and
30 desist from the unfair labor practice. The commission may take action
31 to carry out the purposes and policy of this chapter, including
32 requiring the person to pay damages and reinstate employees.

33 (3) The commission may petition the superior court for the county
34 in which the main office of the employer is located or in which the
35 person who has engaged or is engaging in the unfair labor practice
36 resides or transacts business, for the enforcement of its order and
37 for appropriate temporary relief.

1 NEW SECTION. **Sec. 17.** The commission may adopt rules necessary
2 to administer this chapter in conformity with the intent and purpose
3 of this chapter and consistent with the best standards of labor-
4 management relations.

5 NEW SECTION. **Sec. 18.** Sections 1 through 17 of this act
6 constitute a new chapter in Title 49 RCW.

7 NEW SECTION. **Sec. 19.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

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