

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 745

An Act to amend and reenact § 60.2-214 of the Code of Virginia, relating to unemployment compensation; agricultural employment.

[H 1555]

Approved April 6, 1996

Be it enacted by the General Assembly of Virginia:

1. That § 60.2-214 of the Code of Virginia is amended and reenacted as follows:

§ 60.2-214. Agricultural employment.

A. "Employment" includes service performed by an individual in agricultural labor as defined in § 60.2-201 when:

1. Such service is performed for a person who:

a. During any calendar quarter in either the current or the preceding calendar year paid wages of \$20,000 or more to individuals employed in agricultural labor, including labor performed by an alien referred to in subdivision 2 of this subsection, or

b. For some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor, including labor performed by an alien referred to in subdivision 2 of this subsection, ten or more individuals, regardless of whether they were employed at the same moment of time.

2. Such service is not performed in agricultural labor if performed before January 1, 1995, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to 8 U.S.C. § 214 (c) and 8 U.S.C. § 101 (a) (15) (H) of the Immigration and Nationality Act. Services performed and wages received by such alien workers after January 1, 1980, shall be counted in determining whether an employer is subject to the Virginia unemployment tax for his other farmworkers.

B. For the purposes of this section any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader if:

1. Such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Workers Protection Act of 1983 (29 U.S.C. § 1801 et seq.) or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by such crew leader, and

2. Such individual is not an employee of such other person within the meaning of subdivision 1 of subsection A of § 60.2-212.

C. For the purposes of this section, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection B of this section then:

1. Such other person and not the crew leader shall be treated as the employer of such individual, and

2. Such other person shall be treated as having paid wages to such individual in an amount equal to the amount of wages paid to such individual by the crew leader, either on his own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

D. For the purposes of this section, the term "crew leader" means an individual who:

1. Furnishes individuals to perform service in agricultural labor for any other person,

2. Pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for the service in agricultural labor performed by them, and

3. Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

2. That the provisions of this act shall become effective (i) on the effective date of amendments or changes to § 3306 (c) (1) B of the Federal Unemployment Taxation Act made by the Congress of the United States, or (ii) on the date such provision is finally adjudged invalid or unconstitutional by the Supreme Court of the United States rendering, in either event, the provisions of subdivision A 2 of § 60.2-214 stricken by this act invalid or without further effect. In such event, the Governor shall, within sixty days of the effective date of such amendment or change to § 3306 (c) (1) B of the Federal Unemployment Taxation Act, or from the date that such provision is finally adjudged invalid or unconstitutional, by proclamation so state.

3. That any employer taxes paid pursuant to the provisions of subdivision A 2 of § 60.2-214 after § 3306 (c) (1) B of the Federal Unemployment Taxation Act is amended or otherwise changed by the Congress of the United States, or is finally adjudged invalid or unconstitutional by the Supreme Court of the United States shall be refunded pursuant to § 60.2-524. Such refunds shall be retroactive to the effective date of such amendment, change or adjudication, which date shall be

set forth in the Governor's proclamation as provided in the second enactment herein.