

(b) Violations of section 1324a(a) of title 8

If a farm labor contractor who commits a violation of paragraph (1) or (2) of section 1324a(a) of title 8 has been refused issuance or renewal of, or has failed to obtain, a certificate of registration or is a farm labor contractor whose certificate has been suspended or revoked, the contractor shall, upon conviction, be fined not more than \$10,000 or sentenced to prison for a term not to exceed three years, or both.

(Pub. L. 97-470, title V, §501, Jan. 14, 1983, 96 Stat. 2596; Pub. L. 99-603, title I, §101(b)(1)(D), Nov. 6, 1986, 100 Stat. 3372.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-603 substituted “paragraph (1) or (2) of section 1324a(a) of title 8” for “section 1816 of this title”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-603 applicable to employment, recruitment, referral, or utilization of services of an individual occurring on or after first day of seventh month beginning after Nov. 6, 1986, see section 101(b)(2) of Pub. L. 99-603, as amended, set out as a note under section 1802 of this title.

EFFECTIVE DATE

Section effective 90 days from Jan. 14, 1983, see section 524 of Pub. L. 97-470, set out as a note under section 1801 of this title.

§ 1852. Judicial enforcement**(a) Injunctive relief**

The Secretary may petition any appropriate district court of the United States for temporary or permanent injunctive relief if the Secretary determines that this chapter, or any regulation under this chapter, has been violated.

(b) Control of civil litigation

Except as provided in section 518(a) of title 28, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this chapter, but all such litigation shall be subject to the direction and control of the Attorney General.

(Pub. L. 97-470, title V, §502, Jan. 14, 1983, 96 Stat. 2596.)

EFFECTIVE DATE

Section effective 90 days from Jan. 14, 1983, see section 524 of Pub. L. 97-470, set out as a note under section 1801 of this title.

§ 1853. Administrative sanctions**(a) Civil money penalties for violations; criteria for assessment**

(1) Subject to paragraph (2), any person who commits a violation of this chapter or any regulation under this chapter, may be assessed a civil money penalty of not more than \$1,000 for each violation.

(2) In determining the amount of any penalty to be assessed under paragraph (1), the Secretary shall take into account (A) the previous record of the person in terms of compliance with this chapter and with comparable requirements of the Farm Labor Contractor Registration Act

of 1963 [7 U.S.C. 2041 et seq.], and with regulations promulgated under this chapter and such Act, and (B) the gravity of the violation.

(b) Administrative review

(1) The person assessed shall be afforded an opportunity for agency hearing, upon request made within thirty days after the date of issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5. If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(2) If a hearing is requested, the initial agency decision shall be made by an administrative law judge, and such decision shall become the final order unless the Secretary modifies or vacates the decision. Notice of intent to modify or vacate the decision of the administrative law judge shall be issued to the parties within thirty days after the decision of the administrative law judge. A final order which takes effect under this paragraph shall be subject to review only as provided under subsection (c).

(c) Judicial review

Any person against whom an order imposing a civil money penalty has been entered after an agency hearing under this section may obtain review by the United States district court for any district in which he is located or the United States District Court for the District of Columbia by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered mail to the Secretary. The Secretary shall promptly certify and file in such court the record upon which the penalty was imposed. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5. Any final decision, order, or judgment of such District Court concerning such review shall be subject to appeal as provided in chapter 83 of title 28.

(d) Failure to pay assessment; maintenance of action

If any person fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the agency, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(e) Payment of penalties into Treasury of United States

All penalties collected under authority of this section shall be paid into the Treasury of the United States.

(Pub. L. 97-470, title V, §503, Jan. 14, 1983, 96 Stat. 2596.)

REFERENCES IN TEXT

The Farm Labor Contractor Registration Act of 1963, referred to in subsec. (a)(2), is Pub. L. 88-582, Sept. 7, 1964, 78 Stat. 920, as amended, which was classified generally to chapter 52 (§2041 et seq.) of Title 7, Agri-

culture, and was repealed by Pub. L. 97-470, title V, §523, Jan. 14, 1983, 96 Stat. 2600. See section 1801 et seq. of this title.

EFFECTIVE DATE

Section effective 90 days from Jan. 14, 1983, see section 524 of Pub. L. 97-470, set out as a note under section 1801 of this title.

§ 1854. Private right of action

(a) Maintenance of civil action in district court by aggrieved person

Any person aggrieved by a violation of this chapter or any regulation under this chapter by a farm labor contractor, agricultural employer, agricultural association, or other person may file suit in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy and without regard to the citizenship of the parties and without regard to exhaustion of any alternative administrative remedies provided herein.

(b) Appointment of attorney and commencement of action

Upon application by a complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action.

(c) Award of damages or other equitable relief; amount; criteria; appeal

(1) If the court finds that the respondent has intentionally violated any provision of this chapter or any regulation under this chapter, it may award damages up to and including an amount equal to the amount of actual damages, or statutory damages of up to \$500 per plaintiff per violation, or other equitable relief, except that (A) multiple infractions of a single provision of this chapter or of regulations under this chapter shall constitute only one violation for purposes of determining the amount of statutory damages due a plaintiff; and (B) if such complaint is certified as a class action, the court shall award no more than the lesser of up to \$500 per plaintiff per violation, or up to \$500,000 or other equitable relief.

(2) In determining the amount of damages to be awarded under paragraph (1), the court is authorized to consider whether an attempt was made to resolve the issues in dispute before the resort to litigation.

(3) Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of title 28.

(d) Workers' compensation benefits; exclusive remedy

(1) Notwithstanding any other provision of this chapter, where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker, the workers' compensation benefits shall be the exclusive remedy for loss of such worker under this chapter in the case of bodily injury or death in accordance with such State's workers' compensation law.

(2) The exclusive remedy prescribed by paragraph (1) precludes the recovery under subsection (c) of actual damages for loss from an in-

jury or death but does not preclude recovery under subsection (c) for statutory damages or equitable relief, except that such relief shall not include back or front pay or in any manner, directly or indirectly, expand or otherwise alter or affect (A) a recovery under a State workers' compensation law or (B) rights conferred under a State workers' compensation law.

(e) Expansion of statutory damages

If the court finds in an action which is brought by or for a worker under subsection (a) in which a claim for actual damages is precluded because the worker's injury is covered by a State workers' compensation law as provided by subsection (d) that—

(1)(A) the defendant in the action violated section 1841(b) of this title by knowingly requiring or permitting a driver to drive a vehicle for the transportation of migrant or seasonal agricultural workers while under the influence of alcohol or a controlled substance (as defined in section 802 of title 21) and the defendant had actual knowledge of the driver's condition, and

(B) such violation resulted in injury to or death of the migrant or seasonal worker by or for whom the action was brought and such injury or death arose out of and in the course of employment as determined under the State workers' compensation law,

(2)(A) the defendant violated a safety standard prescribed by the Secretary under section 1841(b) of this title which the defendant was determined in a previous judicial or administrative proceeding to have violated, and

(B) such safety violation resulted in an injury or death described in paragraph (1)(B),

(3)(A)(i) the defendant willfully disabled or removed a safety device prescribed by the Secretary under section 1841(b) of this title, or

(ii) the defendant in conscious disregard of the requirements of section 1841(b) of this title failed to provide a safety device required under such section, and

(B) such disablement, removal, or failure to provide a safety device resulted in an injury or death described in paragraph (1)(B), or

(4)(A) the defendant violated a safety standard prescribed by the Secretary under section 1841(b) of this title,

(B) such safety violation resulted in an injury or death described in paragraph (1)(B), and

(C) the defendant at the time of the violation of section 1841(b) of this title also was—

(i) an unregistered farm labor contractor in violation of section 1811(a) of this title, or

(ii) a person who utilized the services of a farm labor contractor of the type specified in clause (i) without taking reasonable steps to determine that the farm labor contractor possessed a valid certificate of registration authorizing the performance of the farm labor contracting activities which the contractor was requested or permitted to perform with the knowledge of such person,

the court shall award not more than \$10,000 per plaintiff per violation with respect to whom the court made the finding described in paragraph (1), (2), (3), or (4), except that multiple infrac-