

**NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.**



SENATE BILL 25-128

BY SENATOR(S) Pelton B. and Roberts, Amabile, Baisley, Bright, Carson, Catlin, Exum, Frizell, Kirkmeyer, Liston, Lundeen, Pelton R., Rich, Simpson;  
also REPRESENTATIVE(S) McCormick and Winter T., Bird, Caldwell, Garcia Sander, Gonzalez R., Johnson, Keltie, Martinez, Ricks, Soper, Suckla, Weinberg, McCluskie.

CONCERNING REPEALING CERTAIN PROVISIONS THAT PROHIBIT AN EMPLOYER FROM INTERFERING WITH AN AGRICULTURAL EMPLOYEE'S ACCESS TO SERVICE PROVIDERS, AND, IN CONNECTION THEREWITH, REPEALING PROVISIONS THAT PROHIBIT AN EMPLOYER FROM INTERFERING WITH AN AGRICULTURAL EMPLOYEE'S ACCESS TO SERVICE PROVIDERS ON PRIVATE LAND.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Legislative declaration.** (1) The general assembly finds and declares that:

(a) On June 25, 2021, the governor signed Senate Bill 21-087 into law, including the agricultural worker key service provider access provisions;

*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

(b) On June 23, 2021, after the general assembly passed Senate Bill 21-087, the United States supreme court announced its decision in *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021), which involved a California regulation that granted certain third parties a right of access to agricultural employers' property to meet with employees;

(c) In *Cedar Point Nursery*, the court held that the access provision "appropriates a right to invade the [employers'] property and therefore constitutes a *per se* physical taking" because it "appropriates for the enjoyment of third parties ... the [employers'] right to exclude.";

(d) The court found that such an access provision cannot be regarded as a mere regulatory restriction on the use of property, as "the right to exclude is 'universally held to be a fundamental element of the property right'";

(e) For these reasons, the court ruled that the access provision was a *per se* physical taking requiring just compensation under the fifth and fourteenth amendments to the United States constitution;

(f) Both the United States and Colorado constitutions contain takings clauses that prohibit the government from taking private property without just compensation;

(g) The fifth amendment to the United States constitution, applicable to the states through the fourteenth amendment, provides: "nor shall private property be taken for public use, without just compensation.";

(h) The Colorado constitution provides that "until [just compensation] shall be paid to the owner, or into court for the owner, the property shall not be needlessly disturbed, or the proprietary rights of the owner therein divested";

(i) The Colorado constitution's prohibition on takings is similar to the United States constitution's takings clause with one critical exception, which is that the Colorado constitution provides that compensation shall be paid prior to a taking; and

(j) The court's ruling in *Cedar Point Nursery* establishes that certain

agricultural worker key service provider access provisions in Senate Bill 21-087, like the California regulation, constitute a taking by appropriating an employer's fundamental property right, the right to exclude.

(2) Therefore, based on *Cedar Point Nursery*, the general assembly now determines that certain agricultural worker key service provider access provisions, including those set forth in section 8-13.5-202 (1)(b), Colorado Revised Statutes, are unconstitutional and unenforceable as applied to any location, as referenced in that section, that is privately owned.

**SECTION 2.** In Colorado Revised Statutes, 8-13.5-202, **amend** (1)(b) and (1)(c) as follows:

**8-13.5-202. Agricultural workers - right of access to key service providers - rules - definition.** (1) (b) (I) An employer shall not interfere with an agricultural worker's reasonable access to key service providers at any location OTHER THAN THE EMPLOYER'S PROPERTY during any time in which the agricultural worker is not performing compensable work or during paid or unpaid rest and meal breaks. ~~and with respect to health-care providers during any time, whether or not the agricultural worker is working.~~ AN EMPLOYER SHALL NOT INTERFERE WITH AN AGRICULTURAL WORKER'S REASONABLE ACCESS TO KEY SERVICE PROVIDERS THROUGH REMOTE CHANNELS, INCLUDING TELEHEALTH APPOINTMENTS, ON THE EMPLOYER'S PROPERTY.

(II) AS USED IN THIS SECTION, "EMPLOYER'S PROPERTY" MEANS PROPERTY IN WHICH THE EMPLOYER HOLDS AN OWNERSHIP OR POSSESSORY INTEREST OR A RIGHT TO EXCLUDE.

(c) (I) To ensure that agricultural workers have meaningful access to services, the director of the division ~~shall promulgate~~ MAY ADOPT rules regarding additional times during which an employer may not interfere with an agricultural worker's reasonable access to key service providers AT ANY LOCATION OTHER THAN THE EMPLOYER'S PROPERTY, including periods during which the agricultural worker is performing compensable work, especially during periods when the agricultural worker is required to work in excess of forty hours per week and may have difficulty accessing such services outside of work hours. ~~The rules must be proposed on or before October 31, 2021, and adopted on or before January 31, 2022.~~

(II) THE DIVISION SHALL NOT ADOPT RULES THAT INFRINGE UPON AN EMPLOYER'S PRIVATE PROPERTY RIGHTS BY APPROPRIATING A RIGHT OF ACCESS TO THE EMPLOYER'S PRIVATE PROPERTY, OTHER THAN THOSE LOCATIONS ON A EMPLOYER'S PROPERTY FOR WHICH ACCESS IS EXPRESSLY AUTHORIZED IN THIS SECTION, TO A THIRD PARTY WITHOUT THE EMPLOYER'S PERMISSION.

(III) THE DIVISION SHALL NOT ADOPT RULES THAT CONFLICT WITH THE COMMON LAW RIGHT OF AN INDIVIDUAL TO ACCESS PRIVATE PROPERTY IN A TIME OF EMERGENCY.

**SECTION 3. Applicability.** This act applies to conduct occurring on or after the effective date of this act.

**SECTION 4. Safety clause.** The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for

the support and maintenance of the departments of the state and state institutions.

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James Rashad Coleman, Sr.  
PRESIDENT OF  
THE SENATE

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Julie McCluskie  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Esther van Mourik  
SECRETARY OF  
THE SENATE

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Vanessa Reilly  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED \_\_\_\_\_

(Date and Time)

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Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO