

**First Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 25-0746.01 Renee Leone x2695

SENATE BILL 25-128

SENATE SPONSORSHIP

Pelton B. and Roberts,

HOUSE SPONSORSHIP

McCormick and Winter T.,

Senate Committees

Agriculture & Natural Resources

House Committees

A BILL FOR AN ACT

101 **CONCERNING REPEALING CERTAIN PROVISIONS THAT PROHIBIT AN**
102 **EMPLOYER FROM INTERFERING WITH AN AGRICULTURAL**
103 **EMPLOYEE'S ACCESS TO SERVICE PROVIDERS, AND, IN**
104 **CONNECTION THEREWITH, REPEALING PROVISIONS THAT**
105 **PROHIBIT AN EMPLOYER FROM INTERFERING WITH AN**
106 **AGRICULTURAL EMPLOYEE'S ACCESS TO SERVICE PROVIDERS ON**
107 **PRIVATE LAND.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.*

The bill repeals current state law provisions that, in part, govern agricultural workers' key service providers' access to private property.

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

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

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

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

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

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

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

23 (f) Both the United States and Colorado constitutions contain
24 takings clauses that prohibit the government from taking private property

1 without just compensation;

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

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

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

14 (j) The court's ruling in *Cedar Point Nursery* establishes that
15 certain agricultural worker key service provider access provisions in
16 Senate Bill 21-087, like the California regulation, constitute a taking by
17 appropriating an employer's fundamental property right, the right to
18 exclude.

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

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

27 **8-13.5-202. Agricultural workers - right of access to key**

1 service providers - rules - definition. (1) (a) An employer shall not
2 interfere with an agricultural worker's reasonable access to visitors at the
3 agricultural worker's employer-provided housing, INCLUDING HOUSING
4 USED BY RANGE WORKERS ON THE OPEN RANGE, during any time when the
5 agricultural worker is present at such housing.

6 (b) (I) An employer shall not interfere with an agricultural
7 worker's reasonable access to key service providers at any location OTHER
8 THAN THE EMPLOYER'S PROPERTY during any time in which the
9 agricultural worker is not performing compensable work or during paid
10 or unpaid rest and meal breaks. and with respect to health-care providers
11 during any time, whether or not the agricultural worker is working.

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

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

26 (II) THE DIVISION SHALL NOT ADOPT RULES THAT INFRINGE UPON
27 AN EMPLOYER'S PRIVATE PROPERTY RIGHTS BY APPROPRIATING A RIGHT OF

1 ACCESS TO THE EMPLOYER'S PRIVATE PROPERTY, OTHER THAN THOSE
2 LOCATIONS ON A EMPLOYER'S PROPERTY FOR WHICH ACCESS IS EXPRESSLY
3 AUTHORIZED IN THIS SECTION, TO A THIRD PARTY WITHOUT THE
4 EMPLOYER'S PERMISSION.

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

7 **SECTION 4. Safety clause.** The general assembly finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, or safety or for appropriations for
10 the support and maintenance of the departments of the state and state
11 institutions.