

No. 89. An act relating to termination of occupancy of farm employee housing.

(H.680)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. LEGISLATIVE FINDINGS AND RECOMMENDATIONS

The general assembly finds:

(1) Vermont farmers frequently provide housing to their employees as a benefit of agricultural work performed.

(2) Farmers and their employees have a reasonable expectation that where housing is provided as a benefit of employment, each party has certain rights and responsibilities that should be mutually understood.

(3) The purpose of this act is to provide a clear and consistent framework for the rights and responsibilities of farmers and their employees where housing is provided, including due process protections for the farm employee.

(4) With the increasing presence of a mobile workforce, the general assembly recognizes that English may not be the primary language for a number of farm employees in Vermont.

(5) The general assembly therefore recommends that the agency of agriculture, food and markets, the department of health, the department of labor, the department of economic, housing and community development, and other appropriate agencies make available on their websites the notice

provisions set forth in 9 V.S.A. § 4469a(c) in the languages most commonly used by farm employees in Vermont.

(6) The general assembly further recommends that state agencies providing guidance on farm employer-employee relations direct farmers who provide housing to their employees:

(A) upon commencement of farm employment, to inform a farm employee in the employee's native language that, unless otherwise provided by contract, the right to occupy farm housing will end upon termination of farm employment; and

(B) upon termination of farm employment, to provide the notice provisions set forth in 9 V.S.A. § 4469a(c) to the farm employee in the farm employee's native language.

Sec. 2. 9 V.S.A. § 4469a is added to read:

4469a. TERMINATION OF OCCUPANCY OF FARM EMPLOYEE

HOUSING

(a) For the purposes of this section:

(1) "Farm employee" means an individual employed by a farm employer for farming operations.

(2) "Farm employer" means a person earning at least one-half of his or her annual gross income from the business of farming as that term is defined in Section 1.175-3 of the regulations issued by the United States Department of

the Treasury under the Internal Revenue Code of the United States, as amended.

(3) “Housing provided as a benefit of farm employment” means housing owned or controlled by the farm employer, whether located on or off the farm premises, and provided for the occupancy of the farm employee and the farm employee’s family or household members for no payment other than the farm employee’s labor. Payment of utility and fuel charges paid by the farm employee does not affect the designation of housing provided as a benefit of farm employment.

(b) Unless otherwise provided in a written employment contract, a farm employer who provides housing to a farm employee and the farm employee’s family or household members as a benefit of the employment may terminate that benefit and all rights of the employee and the employee’s family or household members to occupy the housing when the employee’s employment is terminated.

(c) The termination of the housing benefit shall be by written notice served upon the former farm employee by a law enforcement officer in accordance with Rule 4 of the Vermont Rules of Civil Procedure. The notice shall be served together with a summons and complaint seeking a writ of possession under this section to remove the former farm employee from occupancy of the

farm housing. The notice shall include the following statements, in boldface print:

“Your employment and housing benefit have been terminated.

“Your employer has filed a legal proceeding in _____ County superior court to obtain a court order directing you and any family or household member cohabitating in the dwelling to vacate and leave the dwelling and remove all of your possessions. The address and telephone number of the court are as follows: _____ .

“The court will hold a hearing on your former employer’s request for a court order directing you to leave and vacate the dwelling. The hearing will be held on _____ at _____ in the _____ am/pm at the courthouse at the address listed above. You have the right to be served with notice of the hearing at least ten days prior to the hearing date. You have the right to appear at this hearing. At the hearing, your former employer must prove that the dwelling is needed for housing a replacement employee, and that your failure to vacate is causing actual hardship.

“If you believe that your employment was terminated wrongfully, that your dwelling house was not habitable, or if you have any other claim against your former employer, you may file a counterclaim against your former employer as explained in the summons and complaint that are being served upon you with this notice.

“Filing a counterclaim against your former employer will not delay or stop the court from ordering you to leave and vacate the dwelling.

“You may wish to seek legal advice from a licensed attorney. If you believe you cannot afford an attorney, you may contact the clerk of the court listed above for information about the availability of an attorney at public expense, although you may not be entitled to an attorney at public expense.”

(d) A farm employer shall be entitled to a show cause hearing on an expedited basis for the purpose of demonstrating that the failure of the former farm employee to vacate the farm housing is causing an actual hardship to the farm employer. The show cause hearing shall be held not less than 10 calendar days after service on the former employee of the notice described in subsection (c) of this section. The issue before the court at the hearing shall be whether the farm employer has suffered actual hardship because of the unavailability of the farm housing for a replacement employee.

(e) If the court finds that the farm employer has suffered actual hardship because of the unavailability of the farm housing for a replacement employee, the court shall enter an order approving a writ of possession, which shall be executed no sooner than five days nor later than 30 days after the writ is served, to put the plaintiff into possession.

(f) If the court does not make a finding on behalf of the farm employer, the farm employer may seek an eviction pursuant to sections 4467 and 4468 of this

chapter and subchapter 3 of chapter 169 of Title 12. In any action pursuant to this section, the farm employer may file a motion for payment of the reasonable rental value of the premises into court pursuant to 12 V.S.A. § 4853a.

(g) The right of a former farm employee to pursue any claim that he or she may have against the former farm employer by way of a counterclaim in a civil action brought pursuant to this section is expressly preserved. The assertion of a counterclaim shall not have the effect of delaying or preventing the removal of the employee from the housing, nor shall the employee be entitled to obtain injunctive relief in the form of repossession of farm housing. A former employee who prevails on a counterclaim shall be entitled to relief as provided by applicable law.

(h) Sections 4455, 4461, and 4467 of this chapter shall not apply to housing provided to a farm employee as a benefit of the employment.

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

Approved: April 28, 2010