

AMENDED IN ASSEMBLY APRIL 30, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 20

Introduced by Assembly Member Alejo

December 1, 2014

An act to add Chapter 8 (commencing with Section 11050) to Part 1 of Division 3 of the Unemployment Insurance Code, relating to undocumented workers.

LEGISLATIVE COUNSEL'S DIGEST

AB 20, as amended, Alejo. Undocumented workers: California Agricultural Act.

Existing provisions of federal law regulate immigration. Under federal law, state law regulating immigration is preempted.

This bill would require the Employment Development Department and the Department of Food and Agriculture to convene a working group to consult with the United States Department of Homeland Security and the United States Department of Justice in order to determine the legal roles and responsibilities of federal and state agencies in implementing a program to provide undocumented persons who are agricultural employees with a permit to work and live in California. The bill would require the Governor, using the report, to either make a formal request to the federal government to implement a program to provide undocumented persons who are agricultural employees with a permit to work and live in California, or issue an explanation as to why a formal request was not made and make recommendations to the Legislature for how a program to provide

undocumented persons who are agricultural employees with a permit to work and live in California should be structured.

The bill would also describe a framework for a program to provide undocumented persons who are agricultural employees a permit to work and live in California if such a program were to be authorized by federal law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as the
2 California Agricultural Act.

3 SEC. 2. The Legislature finds and declares all of the following:

4 (a) Since 2007, California's agricultural industry has experienced
5 the highest agricultural sales recorded to date (\$36,300,000,000
6 in 2007, \$38,400,000,000 in 2008, \$34,800,000,000 in 2009,
7 \$37,500,000,000 in 2010, \$43,500,000,000 in 2011,
8 \$44,300,000,000 in 2012, and \$46,400,000,000 in 2013) and
9 continues to lead the nation in gross agricultural cash receipts.

10 (b) California's agricultural industry is dependent on immigrant
11 labor. One recent study of 13 California counties gathered
12 information from 2,300 farmworkers. The profile data reported in
13 this study suggests that 95 percent of California agricultural
14 workers were born outside the United States and 91 percent in
15 Mexico. On average, they have been in the United States 11.1
16 years. Twenty-two percent have been in the United States two
17 years or less, 10 percent are United States citizens, 33 percent have
18 green cards, and 57 percent are unauthorized. Of the newcomers
19 who have been here less than two years, 99 percent are
20 unauthorized.

21 (c) Immigration policies that seek to deport unauthorized
22 farmworkers or force them to abandon their jobs in agriculture
23 would wreak swift and substantial damage to the agricultural
24 industry in California. California agriculture would lose much of
25 its experienced work force that has made it the most productive
26 agricultural area in the world. At the same time, these policies
27 would impose a substantial human cost on hundreds of thousands
28 of farmworkers and their children, most of whom are United States
29 citizens.

1 (d) The federal employment-based immigration system is
2 broken. The programs for admitting foreign workers for temporary
3 and permanent jobs are rigid, cumbersome, inefficient, do little to
4 protect the wages and working conditions of foreign and domestic
5 workers, do not respond very well to employers' needs, and give
6 almost no attention to adapting the number and characteristics of
7 foreign workers to domestic labor shortages.

8 (e) Nevertheless, Congress has repeatedly failed to pass
9 comprehensive immigration reform including the Agricultural Job
10 Opportunity, Benefits, and Security Act. ~~Instead~~ *Instead*, Congress
11 is considering making the E-Verify program mandatory for all
12 employers. Requiring agricultural employers to verify whether
13 workers are employment-authorized would eliminate a significant
14 portion of the existing agricultural workforce with no certainty
15 that these vacancies will be filled by legal residents.

16 (f) Due to the absence of federal action on comprehensive
17 immigration reform, the counterproductive results of E-Verify,
18 and the unworkable framework of the federal H-2A guest worker
19 program, agricultural interests in Oklahoma and Utah have
20 introduced legislation creating state guest worker programs and
21 several other states are considering the introduction of similar state
22 initiatives.

23 (g) Recognizing the significant contributions that unauthorized
24 workers make to California's economy and the need to bring these
25 workers out of the shadows in order to improve worker conditions
26 and at the same time provide a legal workforce for the agricultural
27 industry, it is imperative that a program be created for current
28 unauthorized workers in these industries.

29 SEC. 3. It is the intent of the Legislature that the executive and
30 legislative branches of the federal government give the highest
31 priority to enacting comprehensive immigration reform legislation
32 that would confer legal status to reside in the United States to
33 persons who would participate in the program described in this
34 act.

35 SEC. 4. Chapter 8 (commencing with Section 11050) is added
36 to Part 1 of Division 3 of the Unemployment Insurance Code, to
37 read:

1 CHAPTER 8. CALIFORNIA AGRICULTURAL WORKER PROGRAM

2
3 Article 1. General Provisions

4
5 11050. As used in this chapter:

6 (a) “Employee” means an agricultural employee, as defined in
7 Section 1140.4 of the Labor Code.

8 (b) “Employer” means an agricultural employer, as defined in
9 Section 1140.4 of the Labor Code or a farm labor contractor.

10 (c) “Farm labor contractor” means a contractor, as defined in
11 Section 1682 of the Labor Code.

12 (d) “Farm labor organization” means a labor organization, as
13 defined in Section 1117 of the Labor Code, that represents
14 employees rendering personal services in connection with the
15 production of agricultural products.

16 (e) “Immediate family member” means a spouse or child under
17 18 years of age or 18 years or older if the child is enrolled in an
18 accredited program as described in paragraph (1) of subdivision
19 (c) of Section 11056.

20 (f) “Undocumented person” means a person who is an
21 unauthorized alien as defined in Section 1324a(h)(3) of Title 8 of
22 the United States Code.

23 11051. (a) No later than February 1, 2017, the Employment
24 Development Department and the Department of Food and
25 Agriculture shall convene a working group to consult with the
26 United States Department of Homeland Security and the United
27 States Department of Justice to determine the legal roles and
28 responsibilities of federal and state agencies in implementing a
29 program to provide undocumented persons who are agricultural
30 employees with a permit to work and live in California.

31 (b) The working group shall consist of representatives from the
32 Employment Development Department, the Department of Food
33 and Agriculture, the Attorney General, two Members of the Senate,
34 two Members of the Assembly, and stakeholders, including, but
35 not limited to, agricultural employers, farm labor contractors, and
36 farm labor organizations. The legislative members of the working
37 group shall be nonvoting ex-officio members.

38 (c) Issues to be addressed by the working group shall include
39 the following:

1 (1) Qualifying criteria for undocumented persons to apply for
2 the program.

3 (2) Documentation requirements for applicants.

4 (3) A determination of which agency will issue the permits.

5 (4) Ensuring security, including through the development of
6 non-tamper-proof work authorization documentation or security
7 procedures and protocols, or all of these methods.

8 (5) A determination of the process and the agency that should
9 conduct background and security checks and the extent background
10 and security checks should be required.

11 (6) A determination regarding the payment that should be
12 required for the submission and review of applications and
13 background and security checks.

14 (7) Protocols regarding tracking of employees under the
15 program.

16 (8) Consideration of a renewal process for the work permit.

17 (9) Consideration of the extent to which employees will be
18 allowed to travel out of the country and the requirements for that
19 travel.

20 (10) Determination of a fee structure to cover the costs of the
21 program, including who will pay and how often the fee should be
22 assessed to cover costs of the program.

23 (11) Determination of the costs involved in receiving,
24 processing, and issuing work permits.

25 (12) Any other procedures and legal requirements associated
26 with implementation of the program required by the federal
27 government to ensure the proper role and responsibilities of the
28 State of California.

29 (d) (1) The working group shall create a report expressing its
30 recommendations, which shall ~~incorporate~~ *be based upon* the model
31 program described in Article 2 (commencing with Section 11055).
32 This report shall be submitted to the Legislature and the Governor
33 no later than July 1, 2017.

34 (2) A report to be submitted pursuant to paragraph (1) shall be
35 submitted in compliance with Section 9795 of the Government
36 Code.

37 (e) By August 1, 2017, the Governor, using the report described
38 in subdivision (d), shall either make a formal request to the federal
39 government to implement a program to provide undocumented
40 persons who are agricultural employees with a permit to work and

1 live in California, or issue an explanation as to why a formal
2 request was not made and make recommendations to the
3 Legislature for how a program to provide undocumented persons
4 who are agricultural employees with a permit to work and live in
5 California should be structured.

6 (f) If the federal government approves or adopts a program to
7 provide undocumented persons who are agricultural employees
8 with a permit to work and live in California, it is the intent of the
9 Legislature to enact necessary implementing legislation.

10
11 Article 2. Model Program Requirements
12

13 11055. It is the intent of the Legislature that the provisions of
14 this article provide a model and framework for a program to
15 provide undocumented persons who are agricultural employees
16 with a permit to work and live in California.

17 11056. (a) The program ~~should~~ *shall* not be implemented until
18 a certification is made by ~~a designated entity~~ *an entity, designated*
19 *by the working group*, that not enough legal residents in California
20 will fill all open agricultural jobs in California.

21 (b) The program ~~should~~ *shall* be limited to an undocumented
22 person who meet all of the following criteria:

23 (1) The undocumented person shall be 18 years of age or older.

24 (2) The undocumented person shall live in California.

25 (3) (A) The undocumented person has performed agricultural
26 employment in the United States for at least 863 hours or 150
27 workdays during the 24-month period ending on January 26, 2015,
28 or earned seven thousand five hundred dollars (\$7,500) or more
29 from agricultural industry employment in the United States, and
30 has maintained agricultural employment for 431 hours or 75
31 workdays, or earned three thousand seven hundred fifty dollars
32 (\$3,750) or more from that employment, on an annual basis after
33 receiving the permit.

34 (B) An undocumented person shall be allowed to conclusively
35 establish employment status by submitting any of the following
36 records demonstrating the employment:

37 (i) Records maintained by the Social Security Administration,
38 Internal Revenue Service, or any other federal, state, or local
39 government agency, an employer, a labor organization, or day
40 labor center.

1 (ii) Itemized wage statements issued to the employee pursuant
2 to Section 226 of the Labor Code.

3 (C) An undocumented person who is unable to submit a
4 document described in subparagraph (B) should be allowed to
5 satisfy the requirement in subparagraph (A) by submitting at least
6 two other types of reliable documents that provide evidence of
7 employment, including any of the following:

8 (i) Bank records.

9 (ii) Business records.

10 (iii) Remittance records.

11 (D) The program shall be implemented in a manner that
12 recognizes and takes into account the difficulties encountered by
13 an undocumented person in obtaining evidence of employment
14 due to the person's undocumented status, including the crediting
15 of work in cases in which an undocumented person has been
16 employed under an assumed name.

17 (4) The undocumented person shall submit to a fingerprinted
18 criminal history background check.

19 (5) The undocumented person has not been convicted of a
20 felony, or three or more misdemeanors, as confirmed by the
21 fingerprinted criminal history background check.

22 (6) The undocumented person shall pay a fee to cover the costs
23 of administering the program.

24 (c) The program shall extend to an undocumented person who
25 is an immediate family member of a person to whom a work permit
26 has been issued. The immediate family member shall be required
27 to meet all of the following:

28 (1) The immediate family member shall reside with the
29 undocumented person to whom a permit was issued or be enrolled
30 in an accredited two- or four-year college or graduate program in
31 California.

32 (2) The immediate family member shall submit to a fingerprinted
33 criminal history background check.

34 (3) The immediate family member shall never have been
35 convicted of a felony, or three or more misdemeanors, as confirmed
36 by the fingerprinted criminal history background check.

37 (4) The immediate family member shall pay a fee to cover the
38 costs of administering the program.

39 11057. Once the program becomes authorized and operational,
40 the following requirements shall apply:

1 (a) (1) An official or employee of the state government may
2 not do any of the following:

3 (A) Use information furnished by an applicant for purposes of
4 applying for a permit under the program or any information
5 provided by an employer or former employer for any purpose other
6 than to make a determination on the application.

7 (B) Make any publication in which the information furnished
8 by any particular individual can be identified.

9 (C) Permit a person other than a sworn officer or employee of
10 the state to examine individual applications.

11 (2) Information furnished by an applicant shall be provided to
12 both of the following:

13 (A) A duly recognized state law enforcement entity in
14 connection with a criminal investigation or a prosecution, if the
15 information is requested in writing by the entity.

16 (B) An official coroner, for purposes of affirmatively identifying
17 a deceased individual, whether or not the death of the individual
18 resulted from a crime.

19 (3) Any person who files an application under the program and
20 knowingly and willfully falsifies, conceals, or covers up a material
21 fact or makes any false, fictitious, or fraudulent statements or
22 representations, or makes or uses any false writing or document
23 knowing that it contains any false, fictitious, or fraudulent
24 statement or entry shall be disqualified from applying under the
25 program.

26 (b) The entities administering the program shall ensure that
27 employers employing workers authorized under the program make
28 each of the following assurances:

29 (1) That the job opportunity for which an employer employs an
30 undocumented person authorized under the program is not vacant
31 because a worker is involved in a strike, lockout, or because of a
32 work stoppage in the course of a labor dispute involving the job
33 opportunity at the same place of employment.

34 (2) That the wages and benefits provided to undocumented
35 persons working under a permit issued under the program are
36 comparable to the wages and benefits provided to legal residents,
37 but in no case less than the state minimum wage.

38 (3) That an employer participating in the program shall comply
39 with all applicable federal, state, and local labor laws, including

1 laws affecting migrant and seasonal agricultural workers, with
2 respect to all United States workers and undocumented workers.

3 (c) An employer of a person permitted to work in this state under
4 the program should provide a written record of employment,
5 demonstrating the hours worked and wages paid, to the employee
6 issued a permit, and provide a copy of the record to the state.

7 11058. (a) An employee permitted to work in this state under
8 the program shall be entitled to the same wage, hour, and working
9 condition protections provided to an employee who is a legal
10 resident of California.

11 (b) A permit issued under the program may not limit an
12 employee to a single employer or occupation.

13 11059. No later than three years after the program is
14 implemented, the administering entities shall prepare and transmit
15 to the Assembly Committee on Labor and Employment and the
16 Senate Committee on Labor and Industrial Relations a report
17 describing the results of a review of the implementation of, and
18 compliance with, the requirements of the program. The report shall
19 address and provide information as to all the following:

20 (a) Whether the program ensured an adequate and timely supply
21 of qualified, eligible workers at the time and place needed by
22 employers.

23 (b) Whether the program ensured that undocumented persons
24 authorized to work under the program did not displace eligible,
25 qualified United States workers or diminished the wages and other
26 terms and conditions of employment of eligible United States
27 workers.

28 (c) Recommendations for improving the operation of the
29 program for the benefit of participating employers, eligible United
30 States workers, participating undocumented workers, and
31 governmental agencies involved in the administration of the
32 program.

33 (d) Recommendations for the continuation or termination of the
34 program.

35 (e) A report to be submitted pursuant to subdivision (a) shall
36 be submitted in compliance with Section 9795 of the Government
37 Code.