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AMENDED IN ASSEMBLY JUNE 2, 2015
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

1 would impose a substantial human cost on hundreds of thousands
2 of farmworkers and their *spouses, as well as their* children, most
3 of whom are United States citizens.

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

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

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

27 (g) Recognizing the significant contributions that unauthorized
28 workers make to California's economy and the need to bring these
29 workers out of the shadows in order to improve worker conditions
30 and at the same time provide a legal workforce for the agricultural
31 industry, it is imperative that a program be created for current
32 unauthorized workers ~~in these industries.~~ *to obtain authorization*
33 *to live and work in California.*

34 SEC. 3. It is the intent of the Legislature that the executive and
35 legislative branches of the federal government give the highest
36 priority to enacting comprehensive immigration reform legislation
37 that would confer legal status to reside in the United States to
38 ~~persons who would participate in the program described in this~~
39 ~~act.~~ *most undocumented persons, including many undocumented*
40 *farmworkers living and working in California.*

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

4
5 CHAPTER 8. CALIFORNIA AGRICULTURAL WORKER PROGRAM

6
7 Article 1. General Provisions

8
9 11050. As used in this chapter:

10 (a) "Employee" means an agricultural employee, as defined in
11 Section 1140.4 of the Labor Code.

12 (b) "Employer" means an agricultural employer, as defined in
13 Section 1140.4 of the Labor Code or a farm labor contractor.

14 (c) "Farm labor contractor" means a contractor, as defined in
15 Section 1682 of the Labor Code.

16 (d) "Farm labor organization" means a labor organization, as
17 defined in Section 1117 of the Labor Code, that represents
18 employees rendering personal services in connection with the
19 production of agricultural products.

20 (e) "Immediate family member" means a spouse or child under
21 18 years of age or 18 years or older if the child is enrolled in an
22 accredited program as described in paragraph (1) of subdivision
23 (c) of Section 11056.

24 (f) "Undocumented person" means a person who is an
25 unauthorized alien as defined in Section 1324a(h)(3) of Title 8 of
26 the United States Code.

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

35 (b) The working group shall consist of representatives from the
36 Employment Development Department, the Department of Food
37 and Agriculture, the Attorney General, two Members of the Senate,
38 two Members of the Assembly, and stakeholders, including, but
39 not limited to, agricultural employers, farm labor contractors, and

1 farm labor organizations. The legislative members of the working
2 group shall be nonvoting ~~ex-officio~~ *ex officio* members.

3 (c) Issues to be addressed by the working group shall include
4 the following:

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

7 (2) Documentation requirements for applicants.

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

9 (4) Ensuring security, including through the development of
10 ~~non-tamper-proof~~ *nontamper-proof* work authorization
11 documentation or security procedures and protocols, or all of these
12 methods.

13 (5) A determination of the process and the agency that should
14 conduct background and security checks and the extent background
15 and security checks should be required.

16 (6) A determination regarding the payment that should be
17 required for the submission and review of applications to
18 *participate in the program* and background and security checks.

19 (7) Protocols regarding tracking *and monitoring* of employees
20 under the program.

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

22 (9) Consideration of the extent to which employees will be
23 allowed to travel out of the country and the requirements for that
24 travel.

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

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

30 (12) Any other procedures and legal requirements associated
31 with implementation of the program required by the federal
32 government to ensure the proper role and responsibilities of the
33 State of California.

34 (d) (1) The working group shall create a report expressing its
35 recommendations, which shall be based upon the model program
36 described in Article 2 (commencing with Section 11055). This
37 report shall be submitted to the Legislature and the Governor no
38 later than July 1, 2017.

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

(e) By August 1, 2017, the Governor, using the report described in subdivision (d), shall 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.

(f) If the federal government approves or adopts a program to provide undocumented persons who are agricultural employees with a permit to work and live in California, it is the intent of the Legislature to enact necessary implementing legislation. The model program shall not be implemented until such implementing legislation is enacted by the Legislature.

Article 2. Model Program Requirements

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

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

(b) The program shall be limited to an undocumented person who meets all of the following criteria:

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

(2) The undocumented person shall live in California.

(3) (A) The undocumented person has performed agricultural employment in the United States for at least 863 hours or 150 workdays during the 24-month period ending on January 26, 2015, or earned seven thousand five hundred dollars (\$7,500) or more from agricultural industry employment in the United States, and has maintained agricultural employment for 431 hours or 75 workdays, or earned three thousand seven hundred fifty dollars

1 (\$3,750) or more from that employment, on an annual basis after
2 receiving the permit.

3 (B) An undocumented person shall be allowed to conclusively
4 establish employment status by submitting any of the following
5 records demonstrating the employment:

6 (i) Records maintained by the Social Security Administration,
7 Internal Revenue Service, or any other federal, state, or local
8 government agency, an employer, a labor organization, or day
9 labor center.

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

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

17 (i) Bank records.

18 (ii) Business records.

19 (iii) Remittance records.

20 (D) The program shall be implemented in a manner that
21 recognizes and takes into account the difficulties encountered by
22 an undocumented person in obtaining evidence of employment
23 due to the person's undocumented status, including the crediting
24 of work in cases in which an undocumented person has been
25 employed under an assumed name.

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

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

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

33 (c) The program shall extend to an undocumented person who
34 is an immediate family member of a person to whom a work permit
35 *under this program* has been issued. The immediate family member
36 shall be required to meet all of the following:

37 (1) The immediate family member shall reside with the
38 undocumented person to whom a permit was issued or be enrolled
39 in *high school, a GED program, an accredited vocational training*

1 *program, or an accredited two- or four-year college or graduate*
2 *program in California.*

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

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

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

10 11057. Once the program becomes authorized and operational,
11 the following requirements shall apply:

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

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

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

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

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

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

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

30 (3) Any person who files an application under the program and
31 knowingly and willfully falsifies, conceals, or covers up a material
32 fact or makes any false, fictitious, or fraudulent statements or
33 representations, or makes or uses any false writing or document
34 knowing that it contains any false, fictitious, or fraudulent
35 statement or entry shall be disqualified from applying under the
36 program.

37 (b) The entities administering the program shall ensure that
38 employers employing workers authorized under the program make
39 each of the following assurances:

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

6 (2) That the wages and benefits provided to undocumented
7 persons working under a permit issued under the program are
8 comparable to the wages and benefits provided to legal residents,
9 but in no case less than the state minimum-wage, ~~wage~~, and other
10 *obligations under federal and state law.*

11 (3) That an employer participating in the program shall comply
12 with all applicable federal, state, and local labor laws, including
13 laws affecting migrant and seasonal agricultural workers, with
14 respect to all United States ~~workers~~ *workers, including workers*
15 *obtaining a permit under this program*, and undocumented workers.

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

20 11058. (a) An employee permitted to work in this state under
21 the program shall be entitled to the same wage, hour, and working
22 condition protections provided to an employee who is a legal
23 resident of California.

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

26 11059. No later than three years after the program is
27 implemented, the administering entities shall prepare and transmit
28 to the Assembly Committee on Labor and Employment and the
29 Senate Committee on Labor and Industrial Relations a report
30 describing the results of a review of the implementation of, and
31 compliance with, the requirements of the program. The report shall
32 address and provide information as to all the following:

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

36 (b) Whether the program ensured that undocumented persons
37 authorized to work under the program did not displace eligible,
38 qualified United States workers or diminished the wages and other
39 terms and conditions of employment of eligible United States
40 workers.

- 1 (c) Recommendations for improving the operation of the
2 program for the benefit of participating employers, ~~eligible and~~
3 *farm workers in California, including* United States ~~workers,~~
4 *workers and* participating undocumented workers, and
5 governmental agencies involved in the administration of the
6 program.
7 (d) Recommendations for the continuation or termination of the
8 program.
9 (e) A report to be submitted pursuant to subdivision (a) shall
10 be submitted in compliance with Section 9795 of the Government
11 Code.