

**Assembly Constitutional Amendment**

**No. 27**

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**Introduced by Assembly Member Fuentes**

May 10, 2012

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Assembly Constitutional Amendment No. 27—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by adding Article XXXVI thereto, relating to undocumented immigrants.

LEGISLATIVE COUNSEL'S DIGEST

ACA 27, as introduced, Fuentes. Taxation: undocumented immigrants.

Existing law creates within state government the Department of Justice, under the direction and control of the Attorney General. Existing law requires the Franchise Tax Board to, among other things, administer personal and corporation income tax laws and certain other nontax programs, including the collection of specified delinquent debt.

This measure would require the Franchise Tax Board, for each year from 2014 through 2018, to annually submit to the Legislature a report that details the tax receipts collected during the immediately preceding taxable year from qualified persons. The measure would define a qualified person as, among others, a person who is not eligible to receive a social security number, but who has filed a state income tax return with a valid individual taxpayer identification number. The measure would provide that a qualified person voluntarily participates in the reporting program pursuant to an application process to be administered by the Department of Justice. The measure would provide that information collected under the program is confidential and not subject to public disclosure, except for purposes authorized under this measure.

The measure would require the destruction of all records collected under this measure, as provided. The measure would provide that its provisions become inoperative on January 1, 2020.

The California Constitution provides that the powers of state government are legislative, executive, and judicial. Existing law requires that the Governor see that the law is faithfully executed. Existing law provides that the Governor is the sole official organ of communication between the state and the government of any other state or of the United States. Existing provisions of federal law regulate immigration.

This measure would require the Governor to request that the President of the United States to, among other things, direct the Department of Homeland Security, United States Immigration and Customs Enforcement (ICE), and other relevant federal agencies, to not expend money or resources during the term of the program to apprehend, detain, or remove any qualified person participating in the program, or to prosecute any individual employing a qualified person.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

1 WHEREAS, This measure shall be known and may be cited as  
 2 the California Opportunity and Prosperity Act.

3 *Resolved by the Assembly, the Senate concurring,* That the  
 4 Legislature of the State of California at its 2011–12 Regular  
 5 Session commencing on the sixth day of December 2010,  
 6 two-thirds of the membership of each house concurring, hereby  
 7 proposes to the people of the State of California, that the  
 8 Constitution of the State be amended as follows:

9 First—That Article XXXVI is added thereto, to read:

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ARTICLE XXXVI  
 UNDOCUMENTED IMMIGRANTS: STATE INCOME  
 TAXES

15 SECTION 1. (a) “Qualified person” means a natural person  
 16 who meets all of the following criteria:

- 17 (1) Is not eligible to receive a social security number.
- 18 (2) Filed a state income tax return with a valid individual
- 19 taxpayer identification number for the most recent taxable year
- 20 that a return was required to be made with respect to taxes imposed

1 under Part 10 (commencing with Section 17001) of Division 2 of  
2 the Revenue and Taxation Code, or its successor.

3 (3) Is not employed by a public entity, including, but not limited  
4 to, the federal government, the State of California, or any political  
5 subdivision of the State, including any city, county, city and county,  
6 district, or other local government agency or public agency  
7 authorized by law.

8 (4) Declares that he or she is able to speak and understand the  
9 English language or is enrolled in, or has applied to enroll in, an  
10 English-as-a-second-language class.

11 (5) Has not been convicted of a felony under the laws of the  
12 United States, the State of California, or any other state.

13 (6) Is not a member or suspected member of a terrorist  
14 organization and has not engaged and is not expected to engage  
15 in terrorist activities as those terms are defined in Section  
16 1182(a)(3)(B) of Title 8 of the United States Code.

17 (7) Is not a public charge within the meaning of Section  
18 1182(a)(4) of Title 8 of the United States Code.

19 (8) Declares that he or she has been a resident of California  
20 continuously since at least January 1, 2008.

21 (9) Consents to a background check and the disclosure of  
22 personal information as necessary to confirm eligibility for the  
23 program.

24 (10) Consents to the disclosure of his or her name and federal  
25 individual taxpayer identification number to the Franchise Tax  
26 Board in accordance with Section 5.

27 (b) The language requirement in paragraph (4) of subdivision  
28 (a) shall not apply to any person who meets any of the following  
29 criteria:

30 (1) Is unable because of physical or developmental disability  
31 or mental impairment to speak and understand English.

32 (2) Is over 50 years of age and has been living in the United  
33 States for at least 20 years.

34 (3) Is over 55 years of age and has been living in the United  
35 States for at least 15 years.

36 (c) “Program” means the program created by this article.

37 SEC. 2. There is hereby established a voluntary program to be  
38 administered by the Department of Justice until January 1, 2018.  
39 A qualified person may participate in the program under the  
40 requirements set forth in this article.

1 SEC. 3. (a) A written application for admission to the program  
2 by a qualified person shall be made in the form prescribed by the  
3 Department of Justice. The application shall require that an  
4 applicant provide a photograph or other electronically transmissible  
5 image of the applicant.

6 (b) (1) Upon receipt of an application for admission to the  
7 program and the fee provided for in Section 4, the Department of  
8 Justice shall cause an investigation to be made to determine  
9 whether the applicant is a qualified person.

10 (2) If the Department of Justice determines that an applicant is  
11 a qualified person, the Department of Justice shall admit the  
12 applicant into the program and shall provide the applicant with a  
13 confirmation of admission, which shall be valid for one year from  
14 the date of issue.

15 (3) The Department of Justice shall renew a person's admission  
16 into the program on an annual basis upon payment of the renewal  
17 application fee provided for in Section 4 and a demonstration that  
18 the person continues to be a qualified person.

19 SEC. 4. The Department of Justice shall charge each applicant  
20 for the program a fee or annual renewal fee in an amount that  
21 allows the agency to recover all reasonable costs incurred by it in  
22 administering the program, including startup costs and costs  
23 associated with confirming eligibility for the program.

24 SEC. 5. On or before December 31, 2013, and on or before  
25 December 31 of each successive year, through 2017, the  
26 Department of Justice shall provide the Franchise Tax Board with  
27 the name and federal individual taxpayer identification number of  
28 each qualified person who was admitted into the program during  
29 that calendar year. The Franchise Tax Board shall use the  
30 information solely to prepare the report required by Section 6 and  
31 shall not disclose the information for any purpose not expressly  
32 provided for in this article.

33 SEC. 6. On or before December 31, 2014, and on or before  
34 December 31 of each successive year through 2018, the Franchise  
35 Tax Board shall submit a report to the Legislature that details the  
36 tax receipts collected during the immediately preceding taxable  
37 year from qualified persons who participated in the program. The  
38 report submitted by the Franchise Tax Board pursuant to this  
39 section shall not contain any information that identifies any specific  
40 qualified person who participated in the program. The report shall

1 be submitted pursuant to procedures set forth in Section 9795 of  
2 the Government Code, or its successor.

3 SEC. 7. (a) Any information disclosed by an applicant for, or  
4 qualified person in, the program shall be used solely to administer  
5 the program and shall not be used for any purpose not expressly  
6 provided for in this article.

7 (b) Any record containing any identifying information of an  
8 applicant for, or qualified person in, the program shall not be  
9 disclosed for any purpose, except as provided for in this article,  
10 to the extent that the information is necessary to enforce a liability  
11 that arises out of the Revenue and Taxation Code or the Family  
12 Code, or as otherwise required by state or federal law. If identifying  
13 information of an applicant for, or qualified person in, the program  
14 is disclosed for a purpose authorized by this subdivision, the  
15 recipient shall use the information solely for that purpose and shall  
16 not disseminate the information.

17 (c) All identifying information of an applicant for, or qualified  
18 person in, the program shall be confidential and exempt from  
19 disclosure.

20 SEC. 8. Unless expressly authorized or required by federal  
21 law, this article shall not be deemed to grant a qualified person  
22 any right or privilege in any other state or to otherwise apply for  
23 any purpose in any other state.

24 SEC. 9. The Department of Justice and the Franchise Tax Board  
25 may adopt regulations in accordance with Chapter 3.5  
26 (commencing with Section 11340) of Part 1 of Division 3 of Title  
27 2 of the Government Code, or its successor, as necessary to  
28 implement this article.

29 SEC. 10. On January 1, 2019, or as soon as practicable  
30 thereafter, all records relating to the program that contain any  
31 identifying information of applicants for, or qualified persons who  
32 participated in, the program shall be destroyed including, without  
33 limitation, any applications for the program and records provided  
34 to the Franchise Tax Board pursuant to Sections 5 and 7. This  
35 section shall not obligate the Franchise Tax Board to destroy any  
36 tax returns or other records that are necessary to conduct an audit  
37 or appeal pursuant to the Revenue and Taxation Code or to process  
38 any taxpayer claim for refund.

39 SEC. 11. (a) On or after the effective date of this article, the  
40 Governor shall, as a ministerial act on behalf of the state, request

1 that the President of the United States direct the Department of  
2 Homeland Security, United States Immigration and Customs  
3 Enforcement (ICE), and other relevant federal agencies to not  
4 expend money or resources during the term of the program  
5 established by this article on either of the following:

6 (1) The apprehension, detention, or removal of a qualified person  
7 in the program or the qualified person's spouse or eligible  
8 dependent, unless the qualified person, spouse, or eligible  
9 dependent meets one of the priority enforcement criteria set forth  
10 in the then-existing ICE policy on civil immigration enforcement.

11 (2) The prosecution of a person for employing a qualified person  
12 pursuant to Section 1324a of Title 8 of the United States Code.

13 (b) On or after the effective date of this article, the Governor  
14 shall, as a ministerial act on behalf of the state, request that the  
15 President of the United States provide any available waivers,  
16 exemptions, or authorizations necessary to provide a safe harbor  
17 for individuals and businesses from federal civil and criminal  
18 liability arising out of a qualified person's participation in the  
19 program or the employment of a qualified person during the term  
20 of the program.

21 SEC. 12. This article shall become inoperative on January 1,  
22 2020.

23 Second—That provisions of this measure are severable. If any  
24 provision of this measure or its application is held invalid, that  
25 invalidity shall not affect other provisions or applications that can  
26 be given effect without the invalid provision or application.