

ASSEMBLY BILL

No. 1544

Introduced by Assembly Member V. Manuel Pérez

January 25, 2012

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 1544, as introduced, V. Manuel Pérez. Undocumented workers: California Agricultural Jobs and Industry Stabilization Program.

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

This bill would, upon the state receiving the necessary authority under federal law, require the Employment Development Department to administer a California Agricultural Jobs and Industry Stabilization Program. This bill would require the Employment Development Department to certify that there are not enough legal residents of California to fill all open agricultural and service industry jobs in California. Once the department makes that certification, this bill would authorize the department to issue permits to undocumented aliens to work in the agricultural and service industries and who meet specified criteria. This bill would also authorize the department to issue permits to reside in California to the immediate family members, as defined, of an undocumented alien permitted as a worker under the program. This bill would require, prior to the issuance of a permit, an undocumented alien to pay a fee to the department and would require those fees to be deposited into the California Agricultural Jobs and Industry Stabilization Program Fund, established by this bill. This bill would also require the

department, in conjunction with the Legislative Analyst’s Office, to annually publish a report analyzing whether the program has caused the displacement of employable legal residents of California in the agricultural and service industries.

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 Jobs and Industry Stabilization Act of 2012.

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, and
7 \$37,500,000,000 in 2010) and continues to lead the nation in
8 agricultural cash receipts.

9 (b) The expansion of fruit, vegetable, and horticulture
10 commodity production, the ability to secure labor, and the
11 industry’s dependency on labor from outside of California and the
12 nation are principal factors for this economic success.

13 (c) The United States Department of Labor estimates that half
14 of the total agricultural workforce is comprised of unauthorized
15 workers, while agricultural growers contend that the percentage
16 of unauthorized workers exceeds 75 percent.

17 (d) Studies have found that foreign born workers in agriculture
18 do not displace employment hours worked by workers born in the
19 United States. However, in 2011 Alabama and Georgia passed
20 laws to prohibit the employment of unauthorized workers,
21 contending that this would provide employment opportunities to
22 its unemployed workers born in the United States.

23 (e) Agricultural employers in Alabama and Georgia have
24 attempted to fill open agricultural jobs with United States born
25 workers. Despite various hiring incentives and initiatives, United
26 States born workers have not filled the significant labor shortages
27 in agriculture in these states. By October 2011, Georgia had
28 suffered a \$74,900,000 loss to its farming industry, while Alabama
29 experienced a farm labor shortage of 11,000 workers during the
30 spring and summer harvest.

1 (f) In June 2011, the United Farm Workers launched the “Take
2 Our Jobs Campaign” designed to match United States born workers
3 and legal residents in agriculture. While 8,600 people filled out
4 the online application, as of September 2011, only seven
5 individuals had accepted employment.

6 (g) E-verify, a program that requires employers to verify whether
7 workers are United States citizens or legal residents, has spurred
8 criticism by the United States agricultural industry, which argues
9 it will eliminate a significant portion of the existing agricultural
10 workforce with no certainty that these vacancies will be filled by
11 workers born in the United States or legal residents.

12 (h) The federal H-2A guest worker program has also been
13 proposed as a means of securing an adequate workforce. However,
14 most growers in the United States agricultural industry do not
15 consider this program viable to secure workers on a timely basis.

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

23 (j) In California’s service industry, similar workforce dynamics
24 have been documented among businesses that provide domestic
25 services, janitorial or building maintenance services, food
26 preparation services, and housekeeping services, whereby these
27 employers rely heavily on unauthorized workers as a sustainable
28 labor supply.

29 (k) Historical trends and patterns of employment suggest that
30 the labor supply for California’s agricultural and service industries
31 will continue to be dependent on workers from outside of the state
32 and nation in order to maintain economic production and revenues.

33 (l) Recognizing the significant contribution of California’s
34 agricultural and service industries to the state’s economy, and
35 understanding that the state’s success is highly dependent on the
36 unauthorized work force, it is imperative that state policy be created
37 to assist business in these industries by providing a safe and legal
38 way for their employees to work legally in California.

1 SEC. 3. 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 JOBS AND INDUSTRY
6 STABILIZATION PROGRAM
7

8 11050. As used in this chapter:

9 (a) "Employee" means an agricultural employee, as defined in
10 Section 1140.4 of the Labor Code, and a person employed to
11 provide domestic services, janitorial or building maintenance
12 services, food preparation services, or housekeeping services.

13 (b) "Employer" means an agricultural employer, as defined in
14 Section 1140.4 of the Labor Code, and a service industry employer.

15 (c) "Immediate family member" means a spouse or child under
16 18 years of age.

17 (d) "Program" means the California Agricultural Jobs and
18 Industry Stabilization Program.

19 (e) "Service industry employer" means a person who employs
20 25 or more employees who provide domestic services, janitorial
21 or building maintenance services, food preparation services, or
22 housekeeping services.

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

26 11051. The California Agricultural Jobs and Industry
27 Stabilization Program is hereby created and shall be administered
28 by the Employment Development Department.

29 11052. Upon certification by the department that there are not
30 enough legal residents of California to fill all open agricultural
31 and service industry jobs in California, the department shall issue
32 permits authorizing an undocumented person who meets all of the
33 following criteria to reside and work as an employee in California:

34 (a) The person is 18 years of age or older.

35 (b) The person lives in California.

36 (c) The person has performed agricultural or service industry
37 employment in the United States for at least 863 hours or 150 work
38 days during the 24-month period ending on December 31, 2008,
39 or earned at least seven thousand five hundred dollars (\$7,500)
40 from agricultural or service industry employment in the United

1 States, and maintains agricultural or service industry employment
2 for 431 hours or 75 workdays, or earns three thousand seven
3 hundred fifty dollars (\$3,750) from that employment, on an annual
4 basis after receiving the permit.

5 (d) The person passes an English proficiency exam, as developed
6 by the department, or submits evidence of ongoing efforts to
7 become proficient in the English language.

8 (e) The person submits to a fingerprinted criminal history
9 background check.

10 (f) The person has never been convicted of a serious or violent
11 felony, as confirmed by the fingerprinted criminal history
12 background check.

13 (g) The person pays a fee to the department to pay for the
14 department's costs in administering the program.

15 11053. The department shall issue permits authorizing an
16 undocumented person who is an immediate family member of a
17 person to whom the department issued a permit pursuant to Section
18 11052 and who meets all the following criteria to reside in
19 California:

20 (a) The immediate family member resides with the
21 undocumented person to whom a permit was issued.

22 (b) The immediate family member passes an English proficiency
23 exam, as developed by the department, or submits evidence of
24 ongoing efforts to become proficient in the English language.

25 (c) The immediate family member submits to a fingerprinted
26 criminal history background check.

27 (d) The immediate family member has never been convicted of
28 a serious or violent felony, as confirmed by the fingerprinted
29 criminal history background check.

30 (e) The immediate family member pays a fee to the department
31 to pay for the department's costs in administering the program.

32 11054. Within 90 days of the implementation date of this
33 chapter, an employer shall not employ an undocumented person
34 who does not have a permit issued pursuant to Section 11052.

35 11055. An employer of a person permitted to work in this state
36 pursuant to this chapter shall provide a written record of
37 employment to the employee issued a permit, and shall provide a
38 copy to the department. This record shall include information
39 demonstrating the hours worked and wages paid to the employee.

1 11056. (a) An employee permitted to work in this state
2 pursuant to this chapter is entitled to all the same wage and hour
3 and working conditions protections under existing law provided
4 to an employee who is a legal resident of California.

5 (b) An employee permitted to work in this state pursuant to this
6 chapter may be employed by multiple employers.

7 11057. (a) Beginning the third year after the department makes
8 the certification required in Section 11052, the department, in
9 conjunction with the Legislative Analyst’s Office, shall annually
10 publish a report analyzing whether the California Agricultural Jobs
11 and Industry Stabilization Program has caused the displacement
12 of employable legal residents of California in the agricultural and
13 service industries.

14 (b) The department shall request the federal Governmental
15 Accountability Office to also comply with subdivision (a).

16 11058. The program created pursuant to this chapter is not
17 intended to confer legal status in a manner that would restrict the
18 enactment of superseding federal legislation that seeks to alter that
19 status.

20 11059. (a) There is hereby created in the General Fund the
21 California Agricultural Jobs and Industry Stabilization Program
22 Fund. The fees collected by the department pursuant to this chapter
23 shall be deposited in the California Agricultural Jobs and Industry
24 Stabilization Program Fund and shall only be used to pay for the
25 department’s costs to administer the program, upon appropriation
26 by the Legislature.

27 (b) The department shall only be required to administer the
28 program and the program shall only continue in existence to the
29 extent the funds in the California Agricultural Jobs and Industry
30 Stabilization Program Fund and any appropriation made by the
31 Legislature for the purpose of funding the program cover the
32 department’s costs to administer the program.

33 11059.5. (a) By May 1, 2013, the Director of Employment
34 Development shall submit a formal request to the federal
35 government to receive the necessary authority to administer the
36 provisions of this chapter.

37 (b) This chapter, except this section, shall not be implemented
38 unless the Director of Employment Development receives the

- 1 necessary authority, consistent with federal law, to administer this
- 2 chapter.

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