

AMENDED IN ASSEMBLY MARCH 27, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1544

**Introduced by Assembly ~~Member~~ Members V. Manuel Pérez and
Halderman**

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 amended, 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

1 experienced a farm labor shortage of 11,000 workers during the
2 spring and summer harvest.

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

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

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

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

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

31 *(k) Among California’s key economic industry sectors, the*
32 *hospitality and tourism sector plays a central role in stimulating*
33 *California’s sluggish economy. In 2011, the leisure and hospitality*
34 *industry accounted for over 100 billion dollars in travel-related*
35 *spending. According to state records, more than two million*
36 *employees, or 14 percent of all employees in California, work in*
37 *leisure, hospitality, and other services. These workers serve as a*
38 *foundational workforce for the state’s 1.8-trillion-dollar economy.*

39 ~~(k)~~

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

(t)

(m) Recognizing the significant contribution of California's agricultural and service industries to the state's economy, and understanding that the state's success is highly dependent on the unauthorized workforce, it is imperative that state policy be created to assist business in these industries by providing a safe and legal way for their employees to work legally in California.

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

CHAPTER 8. CALIFORNIA AGRICULTURAL JOBS AND INDUSTRY
STABILIZATION PROGRAM

11050. As used in this chapter:

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

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

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

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

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

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

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

1 11052. Upon certification by the department that there are not
2 enough legal residents of California to fill all open agricultural
3 and service industry jobs in California, the department shall issue
4 permits authorizing an undocumented person who meets all of the
5 following criteria to reside and work as an employee in California:

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

7 (b) The person lives in California.

8 (c) The person has performed agricultural or service industry
9 employment in the United States for at least 863 hours or 150
10 workdays during the 24-month period ending on December 31,
11 2008, or earned at least seven thousand five hundred dollars
12 (\$7,500) from agricultural or service industry employment in the
13 United States, and maintains agricultural or service industry
14 employment for 431 hours or 75 workdays, or earns three thousand
15 seven hundred fifty dollars (\$3,750) from that employment, on an
16 annual basis after receiving the permit.

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

20 (e) The person submits to a fingerprinted criminal history
21 background check.

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

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

27 11053. The department shall issue permits authorizing an
28 undocumented person who is an immediate family member of a
29 person to whom the department issued a permit pursuant to Section
30 11052 and who meets all the following criteria to reside in
31 California:

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

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

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

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

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

6 11054. Within 90 days of the implementation date of this
7 chapter, an employer shall not employ an undocumented person
8 who does not have a permit issued pursuant to Section 11052.

9 11055. An employer of a person permitted to work in this state
10 pursuant to this chapter shall provide a written record of
11 employment to the employee issued a permit, and shall provide a
12 copy to the department. This record shall include information
13 demonstrating the hours worked and wages paid to the employee.

14 11056. (a) An employee permitted to work in this state
15 pursuant to this chapter is entitled to all the same wage and hour
16 and working conditions protections under existing law provided
17 to an employee who is a legal resident of California.

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

20 11057. (a) Beginning the third year after the department makes
21 the certification required in Section 11052, the department, in
22 conjunction with the Legislative Analyst's Office, shall annually
23 publish a report analyzing whether the California Agricultural Jobs
24 and Industry Stabilization Program has caused the displacement
25 of employable legal residents of California in the agricultural and
26 service industries.

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

29 11058. The program created pursuant to this chapter is not
30 intended to confer legal status in a manner that would restrict the
31 enactment of superseding federal legislation that seeks to alter that
32 status.

33 11059. (a) There is hereby created in the General Fund the
34 California Agricultural Jobs and Industry Stabilization Program
35 Fund. The fees collected by the department pursuant to this chapter
36 shall be deposited in the California Agricultural Jobs and Industry
37 Stabilization Program Fund and shall only be used to pay for the
38 department's costs to administer the program, upon appropriation
39 by the Legislature.

1 (b) The department shall only be required to administer the
2 program and the program shall only continue in existence to the
3 extent the funds in the California Agricultural Jobs and Industry
4 Stabilization Program Fund and any appropriation made by the
5 Legislature for the purpose of funding the program cover the
6 department's costs to administer the program.

7 11059.5. (a) By May 1, 2013, the Director of Employment
8 Development shall submit a formal request to the federal
9 government to receive the necessary authority to administer the
10 provisions of this chapter.

11 (b) This chapter, except this section, shall not be implemented
12 unless the Director of Employment Development receives the
13 necessary authority, consistent with federal law, to administer this
14 chapter.