

AMENDED IN ASSEMBLY APRIL 23, 2012

AMENDED IN ASSEMBLY MARCH 27, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1544

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

(Coauthors: Assembly Members Cedillo and Perea)

(Coauthor: Senator Rubio)

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~~

1 States born workers have not filled the significant labor shortages
2 in agriculture in these states. By October 2011, Georgia had
3 suffered a \$74,900,000 loss to its farming industry, while Alabama
4 experienced a farm labor shortage of 11,000 workers during the
5 spring and summer harvest.

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

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

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

21 (b) California’s agricultural industry is dependent on immigrant
22 labor. One recent study of 13 California counties gathered
23 information from 2,300 farmworkers. The profile data reported
24 in this study suggests that 95 percent of California agricultural
25 workers were born outside the United States and 91 percent in
26 Mexico. On average they have been in the United States 11.1 years.
27 Twenty-two percent have been in the United States two years or
28 less, 10 percent are United States citizens, 33 percent have green
29 cards, and 57 percent are unauthorized. Of the newcomers who
30 have been here less than two years, 99 percent are unauthorized.

31 (c) Immigration policies that seek to deport unauthorized
32 farmworkers or force them to abandon their jobs in agriculture
33 would wreak swift and substantial damage to the agricultural
34 industry in California. California agriculture would lose much of
35 its experienced work force that has made it the most productive
36 agricultural area in the world. At the same time these policies
37 would impose a substantial human cost on hundreds of thousands
38 of farmworkers and their children, most of whom are United States
39 citizens.

1 (d) *The federal employment-based immigration system is broken.*
 2 *The programs for admitting foreign workers for temporary and*
 3 *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 Congress is*
 11 *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 (i)

17 (f) *Due to the serious economic consequences caused by other*
 18 *states' immigration initiatives, the absence of federal action on*
 19 *comprehensive immigration reform, the counterproductive results*
 20 *of E-verify, and the unworkable framework of the federal H-2A*
 21 *guest worker program, agricultural interests in Oklahoma and Utah*
 22 *have introduced legislation creating state guest worker programs*
 23 *and several other states are considering the introduction of similar*
 24 *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 (g) *The large unauthorized workforce in California has*
 32 *produced an underground economy, without basic protections*
 33 *afforded to United States workers. Adjusting the status of*
 34 *unauthorized workers will give them full rights in the workplace.*
 35 *Thus, an inclusive, practical, and swift adjustment-of-status*
 36 *program will raise labor standards for all workers and avoid major*
 37 *economic dislocations in the affected industries.*

38 ~~(k)~~

39 (h) *Among California's key economic industry sectors, the*
 40 *hospitality and tourism sector plays a central role in stimulating*

1 California’s sluggish economy. In 2011, the leisure and hospitality
 2 industry accounted for over 100 billion dollars in travel-related
 3 spending. According to state records, more than two million
 4 employees, or 14 percent of all employees in California, work in
 5 leisure, hospitality, and other services. These workers serve as a
 6 foundational workforce for the state’s 1.8-trillion-dollar economy.

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

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

17 *(i) Recognizing the significant contributions that unauthorized*
 18 *workers make to California’s economy and the need to bring these*
 19 *workers out of the shadows in order to improve worker conditions*
 20 *and at the same time provide a legal workforce for the agricultural*
 21 *and service industries, it is imperative that state policy create an*
 22 *adjustment-of-status program for current unauthorized workers*
 23 *in these industries.*

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

27
 28 CHAPTER 8. CALIFORNIA AGRICULTURAL JOBS AND INDUSTRY
 29 STABILIZATION PROGRAM
 30

31 11050. As used in this chapter:

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

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

38 (c) “Immediate family member” means a spouse or child under
 39 18 years of age.

1 (d) “Program” means the California Agricultural Jobs and
2 Industry Stabilization Program.

3 (e) “Service industry employer” means a person who employs
4 25 or more employees who provide domestic services, janitorial
5 or building maintenance services, food preparation services, or
6 housekeeping services.

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

10 11051. The California Agricultural Jobs and Industry
11 Stabilization Program is hereby created and shall be administered
12 by the Employment Development Department.

13 11052. Upon certification by the department that there are not
14 enough legal residents of California to fill all open agricultural
15 and service industry jobs in California, the department shall issue
16 permits authorizing an undocumented person who meets all of the
17 following criteria to reside and work as an employee in California:

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

19 ~~(b) The person lives in California.~~

20 ~~(c) The person has performed agricultural or service industry
21 employment in the United States for at least 863 hours or 150
22 workdays during the 24-month period ending on December 31,
23 2008, or earned at least seven thousand five hundred dollars
24 (\$7,500) from agricultural or service industry employment in the
25 United States, and maintains agricultural or service industry
26 employment for 431 hours or 75 workdays, or earns three thousand
27 seven hundred fifty dollars (\$3,750) from that employment, on an
28 annual basis after receiving the permit.~~

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

32 ~~(e) The person submits to a fingerprinted criminal history
33 background check.~~

34 ~~(f) The person has never been convicted of a serious or violent
35 felony, as confirmed by the fingerprinted criminal history
36 background check.~~

37 ~~(g) The person pays a fee to the department to pay for the
38 department’s costs in administering the program.~~

1 (a) *The undocumented person has established that he or she*
2 *was present in California before January 25, 2012, and has been*
3 *continuously in California since that date.*

4 (b) (1) *The undocumented person has established that he or*
5 *she was employed in California, whether full time, part time,*
6 *seasonally, or self-employed, as an agricultural or service industry*
7 *worker before January 25, 2012.*

8 (2) *An undocumented person may conclusively establish*
9 *employment status by submitting to the department any of the*
10 *following records demonstrating the employment:*

11 (A) *Records maintained by any of the following:*

12 (i) *The Social Security Administration, Internal Revenue Service,*
13 *or any other federal, state, or local government agency.*

14 (ii) *An employer.*

15 (iii) *A labor union, day labor center, or an organization that*
16 *assists workers in matters related to employment.*

17 (B) *Itemized wage statements issued to the employee pursuant*
18 *to Section 226 of the Labor Code.*

19 (3) *An undocumented person who is unable to submit a*
20 *document described in paragraph (2) may satisfy the requirement*
21 *in paragraph (1) by submitting to the department at least two other*
22 *types of reliable documents that provide evidence of employment,*
23 *including any of the following:*

24 (A) *Bank records.*

25 (B) *Business records.*

26 (C) *Sworn affidavits from nonrelatives who have direct*
27 *knowledge of the undocumented person's work.*

28 (D) *Remittance records.*

29 (4) *It is the intent of the Legislature that the requirements in*
30 *this subdivision be interpreted and implemented in a manner that*
31 *recognizes and takes into account the difficulties encountered by*
32 *an undocumented person in obtaining evidence of employment due*
33 *to the person's undocumented status.*

34 (5) *An undocumented person has the burden of proving by a*
35 *preponderance of the evidence that he or she has satisfied the*
36 *requirements of this subdivision. An undocumented person may*
37 *meet this burden of proof by producing sufficient evidence to*
38 *demonstrate the employment as a matter of reasonable inference.*

39 (c) *The undocumented person has paid a fee to the department*
40 *to pay for the department's cost in administering the program.*

1 (d) *As verified pursuant to Section 11052.5, the undocumented*
 2 *person has not been convicted of a felony or misdemeanor an*
 3 *element of which involves bodily injury, threat of serious bodily*
 4 *injury, or property damage in excess of five hundred dollars (\$500).*

5 11052.5. (a) *The department shall not grant a permit to an*
 6 *undocumented person under Section 11052 or 11053 unless the*
 7 *undocumented person submits fingerprints in accordance with*
 8 *procedures established by the department.*

9 (b) *The department shall utilize fingerprints and other data*
 10 *provided by the undocumented person to conduct a background*
 11 *check of the undocumented person relating to criminal, national*
 12 *security, or other law enforcement actions that would render the*
 13 *undocumented person ineligible as described in Section 11052 or*
 14 *11053.*

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 (b) *As verified pursuant to Section 11052.5, the immediate family*
 31 *member has not been convicted of a felony or misdemeanor an*
 32 *element of which involves bodily injury, threat of serious bodily*
 33 *injury, or property damage in excess of five hundred dollars (\$500).*

34 (e)
 35 (c) The immediate family member ~~pays~~ *has paid* a fee to the
 36 department to pay for the department's costs in administering the
 37 program.

38 11054. Within 90 days of the implementation date of this
 39 chapter, an employer shall not employ an undocumented person
 40 who does not have a permit issued pursuant to Section 11052.

1 11055. An employer of a person permitted to work in this state
2 pursuant to this chapter shall provide a written record of
3 employment to the employee issued a permit, and shall provide a
4 copy to the department. This record shall include information
5 demonstrating the hours worked and wages paid to the employee.

6 11056. (a) An employee permitted to work in this state
7 pursuant to this chapter is entitled to all the same wage and hour
8 and working conditions protections under existing law provided
9 to an employee who is a legal resident of California.

10 (b) ~~An employee permitted to work in this state pursuant to this~~
11 ~~chapter may be employed by multiple employers.~~ *A permit issued*
12 *pursuant to Section 11052 does not limit an employee to a single*
13 *employer or occupation.*

14 11057. (a) Beginning the third year after the department makes
15 the certification required in Section 11052, the department, in
16 conjunction with the Legislative Analyst's Office, shall annually
17 publish a report analyzing whether the California Agricultural Jobs
18 and Industry Stabilization Program has caused the displacement
19 of employable legal residents of California in the agricultural and
20 service industries.

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

23 11058. The program created pursuant to this chapter is not
24 intended to confer legal status in a manner that would restrict the
25 enactment of superseding federal legislation that seeks to alter that
26 status.

27 11059. (a) There is hereby created in the General Fund the
28 California Agricultural Jobs and Industry Stabilization Program
29 Fund. The fees collected by the department pursuant to this chapter
30 shall be deposited in the California Agricultural Jobs and Industry
31 Stabilization Program Fund and shall only be used to pay for the
32 department's costs to administer the program, upon appropriation
33 by the Legislature.

34 (b) The department shall only be required to administer the
35 program and the program shall only continue in existence to the
36 extent the funds in the California Agricultural Jobs and Industry
37 Stabilization Program Fund and any appropriation made by the
38 Legislature for the purpose of funding the program cover the
39 department's costs to administer the program.

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

5 (b) This chapter, except this section, shall not be implemented
6 unless the Director of Employment Development receives the
7 necessary authority, consistent with federal law, to administer this
8 chapter.