

AMENDED IN ASSEMBLY MAY 30, 2012

AMENDED IN ASSEMBLY APRIL 23, 2012

AMENDED IN ASSEMBLY MARCH 27, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1544**

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**Introduced by Assembly ~~Member~~ Members V. Manuel Pérez and  
Alejo  
(Coauthors: Assembly Members Cedillo and Perea)  
(Coauthor: Senator Rubio)**

January 25, 2012

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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) California's agricultural industry is dependent on immigrant  
10    labor. One recent study of 13 California counties gathered  
11    information from 2,300 farmworkers. The profile data reported in  
12    this study suggests that 95 percent of California agricultural  
13    workers were born outside the United States and 91 percent in  
14    Mexico. On average they have been in the United States 11.1 years.  
15    Twenty-two percent have been in the United States two years or  
16    less, 10 percent are United States citizens, 33 percent have green  
17    cards, and 57 percent are unauthorized. Of the newcomers who  
18    have been here less than two years, 99 percent are unauthorized.  
19    (c) Immigration policies that seek to deport unauthorized  
20    farmworkers or force them to abandon their jobs in agriculture  
21    would wreak swift and substantial damage to the agricultural  
22    industry in California. California agriculture would lose much of  
23    its experienced work force that has made it the most productive  
24    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 children, most of whom are United States  
3 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 (f) Due to the serious economic consequences caused by other  
20 states' immigration initiatives, the absence of federal action on  
21 comprehensive immigration reform, the counterproductive results  
22 of E-verify, and the unworkable framework of the federal H-2A  
23 guest worker program, agricultural interests in Oklahoma and Utah  
24 have introduced legislation creating state guest worker programs  
25 and several other states are considering the introduction of similar  
26 state initiatives.

27 (g) The large unauthorized workforce in California has produced  
28 an underground economy, without basic protections afforded to  
29 United States workers. Adjusting the status of unauthorized  
30 workers will give them full rights in the workplace. Thus, an  
31 inclusive, practical, and swift adjustment-of-status program will  
32 raise labor standards for all workers and avoid major economic  
33 dislocations in the affected industries.

34 (h)  
35 Among California's key economic industry sectors, the  
36 hospitality and tourism sector plays a central role in stimulating  
37 California's sluggish economy. In 2011, the leisure and hospitality  
38 industry accounted for over 100 billion dollars in travel-related  
39 spending. According to state records, more than two million  
40 employees, or 14 percent of all employees in California, work in

1 leisure, hospitality, and other services. These workers serve as a  
2 foundational workforce for the state's 1.8-trillion-dollar economy.

3 (i) Recognizing the significant contributions that unauthorized  
4 workers make to California's economy and the need to bring these  
5 workers out of the shadows in order to improve worker conditions  
6 and at the same time provide a legal workforce for the agricultural  
7 and service industries, it is imperative that state policy create an  
8 adjustment-of-status program for current unauthorized workers in  
9 these industries.

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

13  
14 CHAPTER 8. CALIFORNIA AGRICULTURAL JOBS AND INDUSTRY  
15 STABILIZATION PROGRAM  
16

17 11050. As used in this chapter:

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

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

24 (c) "Immediate family member" means a spouse or child under  
25 18 years of age.

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

28 (e) "Service industry employer" means a person who employs  
29 25 or more employees who provide domestic services, janitorial  
30 or building maintenance services, food preparation services, or  
31 housekeeping services.

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

35 11051. The California Agricultural Jobs and Industry  
36 Stabilization Program is hereby created and shall be administered  
37 by the Employment Development Department.

38 11052. Upon certification by the department that there are not  
39 enough legal residents of California to fill all open agricultural  
40 and service industry jobs in California, the department shall issue

1 permits authorizing an undocumented person who meets all of the  
2 following criteria to reside and work as an employee in California:

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

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

10 *(a) The undocumented person is 18 years of age or older.*

11 *(b) The undocumented person lives in California.*

12 *(c) (1) The undocumented person has performed agricultural*  
13 *or service industry employment in the United States for at least*  
14 *863 hours or 150 workdays during the 24-month period ending*  
15 *on January 25, 2012, or earned at least seven thousand five*  
16 *hundred dollars (\$7,500) from agricultural or service industry*  
17 *employment in the United States, and maintains agricultural or*  
18 *service industry employment for 431 hours or 75 workdays, or*  
19 *earns three thousand seven hundred fifty dollars (\$3,750) from*  
20 *that employment, on an annual basis after receiving the permit.*

21 *(2) An undocumented person may conclusively establish*  
22 *employment status by submitting to the department any of the*  
23 *following records demonstrating the employment:*

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

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

27 *(ii) An employer.*

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

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

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

37 *(A) Bank records.*

38 *(B) Business records.*

39 ~~(C) Sworn affidavits from nonrelatives who have direct~~  
40 ~~knowledge of the undocumented person's work.~~

1     ~~(D)~~

2     (C) Remittance records.

3     (4) It is the intent of the Legislature that the requirements in  
4 this subdivision be interpreted and implemented in a manner that  
5 recognizes and takes into account the difficulties encountered by  
6 an undocumented person in obtaining evidence of employment  
7 due to the person's undocumented status.

8     (5) An undocumented person has the burden of proving by a  
9 preponderance of the evidence that he or she has satisfied the  
10 requirements of this subdivision. An undocumented person may  
11 meet this burden of proof by producing sufficient evidence to  
12 demonstrate the employment as a matter of reasonable inference.

13     ~~(d) The undocumented person submits to a fingerprinted~~  
14 ~~criminal history background check.~~

15     ~~(e) The undocumented person has never been convicted of a~~  
16 ~~felony, as confirmed by the fingerprinted criminal history~~  
17 ~~background check.~~

18     ~~(e)~~

19     (f) The undocumented person has paid a fee to the department  
20 to pay for the department's cost in administering the program.

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

25     ~~(g) The undocumented person submits evidence of ongoing~~  
26 ~~efforts to become proficient in the English language.~~

27     11052.5. (a) The department shall not grant a permit to an  
28 undocumented person under Section 11052 or 11053 unless the  
29 undocumented person submits fingerprints in accordance with  
30 procedures established by the department.

31     (b) The department shall utilize fingerprints and other data  
32 provided by the undocumented person to conduct a background  
33 check of the undocumented person relating to criminal, national  
34 security, or other law enforcement actions that would render the  
35 undocumented person ineligible as described in Section 11052 or  
36 11053.

37     11053. The department shall issue permits authorizing an  
38 undocumented person who is an immediate family member of a  
39 person to whom the department issued a permit pursuant to Section

1 11052 and who meets all the following criteria to reside in  
2 California:

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

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

9 (b) *The immediate family member submits to a fingerprinted*  
10 *criminal history background check.*

11 (c) *The immediate family member has never been convicted of*  
12 *a felony, as confirmed by the fingerprinted criminal history*  
13 *background check.*

14 (e)

15 (d) The immediate family member has paid a fee to the  
16 department to pay for the department's costs in administering the  
17 program.

18 *11054. The Attorney General, Department of Justice,*  
19 *department, or an employee or officer of these agencies shall not*  
20 *use the information provided by an applicant pursuant to this*  
21 *chapter for any purpose other than to make a determination*  
22 *relating to an application made pursuant to this chapter.*

23 ~~11054.~~

24 *11055. Within 90 days of the implementation date of this*  
25 *chapter, an employer shall not employ an undocumented person*  
26 *who does not have a permit issued pursuant to Section 11052.*

27 ~~11055.~~

28 *11056. An employer of a person permitted to work in this state*  
29 *pursuant to this chapter shall provide a written record of*  
30 *employment to the employee issued a permit, and shall provide a*  
31 *copy to the department. This record shall include information*  
32 *demonstrating the hours worked and wages paid to the employee.*

33 *11057. It is the intent of the Legislature that the federal*  
34 *government authorize an undocumented worker or immediate*  
35 *family member participating in the program created pursuant to*  
36 *this section to be allowed to travel to his or her country of origin*  
37 *for no more than a total of 30 days each year, or up to a total of*  
38 *45 days each year if because of an emergency or other*  
39 *circumstances outside of the participant's control return to the*  
40 *United States could not be accomplished within 30 days.*

1     ~~11056.~~

2     11058. (a) An employee permitted to work in this state  
3 pursuant to this chapter is entitled to all the same wage and hour  
4 and working conditions protections under existing law provided  
5 to an employee who is a legal resident of California.

6     (b) A permit issued pursuant to Section 11052 does not limit  
7 an employee to a single employer or occupation.

8     ~~11057.~~

9     11059. (a) Beginning the third year after the department makes  
10 the certification required in Section 11052, the department, in  
11 conjunction with the Legislative Analyst's Office, shall annually  
12 publish a report analyzing whether the California Agricultural Jobs  
13 and Industry Stabilization Program has caused the displacement  
14 of employable legal residents of California in the agricultural and  
15 service industries.

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

18     ~~11058.~~

19     11060. The program created pursuant to this chapter is not  
20 intended to confer legal status in a manner that would restrict the  
21 enactment of superseding federal legislation that seeks to alter that  
22 status.

23     ~~11059.~~

24     11061. (a) There is hereby created in the General Fund the  
25 California Agricultural Jobs and Industry Stabilization Program  
26 Fund. The fees collected by the department pursuant to this chapter  
27 shall be deposited in the California Agricultural Jobs and Industry  
28 Stabilization Program Fund and shall only be used to pay for the  
29 department's costs to administer the program, upon appropriation  
30 by the Legislature.

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

37     ~~11059.5.~~

38     11062. (a) By May 1, 2013, the Director of Employment  
39 Development shall submit a formal request to the federal



1 government to receive the necessary authority to administer the  
2 provisions of this chapter.

3 (b) This chapter, except this section *and Section 11063*, shall  
4 not be implemented unless the Director of Employment  
5 Development receives the necessary authority, consistent with  
6 federal law, to administer this chapter.

7 *11063. Recognizing that this chapter cannot be implemented*  
8 *without the authorization of the federal government because state*  
9 *governments do not have the authority to confer legal immigration*  
10 *status to undocumented workers, it is the intent of the Legislature*  
11 *that the executive and legislative branches of the federal*  
12 *government give the highest priority to enacting comprehensive*  
13 *immigration reform legislation that would confer legal status to*  
14 *reside in the United States to persons that participate in the*  
15 *program that would be created pursuant to this chapter.*