

ASSEMBLY BILL

No. 1546

Introduced by Assembly Member V. Manuel Pérez

January 25, 2012

An act to add Article 7 (commencing with Section 9950) to Chapter 2 of Part 1 of Division 3 of the Unemployment Insurance Code, relating to immigration.

LEGISLATIVE COUNSEL'S DIGEST

AB 1546, as introduced, V. Manuel Pérez. California High-Skilled Worker Retention and Family Act of 2012.

Existing federal law provides that a nonresident seeking admission to the United States as an immediate relative of a citizen of the United States or as a family sponsored immigrant is inadmissible as a public charge, unless, among other methods, a person petitioning for that person's admission has executed an affidavit of support with respect to that person. The affidavit of support requires that the sponsor pledge to take certain actions to maintain and support the nonresident while he or she resides in the United States.

This bill would establish the California High-Skilled Worker Retention and Family Act of 2012. This bill would require the Employment Development Department to create a program that would authorize a foreign national who meets certain requirements to apply to the department for resident immigrant status. This bill would require that in order to be eligible for the program the foreign national must be sponsored by a person or small business. This bill would require that the sponsor of the foreign national execute an affidavit of sponsorship that would impose a contractual obligation on the sponsor to support the foreign national, and to reimburse certain entities for any

means-tested public benefit provided to the foreign national. This bill would provide that an affidavit of sponsorship may be terminated only under certain circumstances.

This bill would authorize the department to approve the application for resident immigrant status based on certain criteria, and to issue to the foreign national a permit that grants to the foreign national resident immigrant status. This bill would authorize a resident immigrant to work, study, and live in this state. This bill would require a resident immigrant, or a resident immigrant’s employer, to pay all income taxes and employment taxes, fees, or charges. This bill would authorize the Franchise Tax Board to adopt regulations that would authorize a person that employs a resident immigrant to withhold from compensation paid to the resident immigrant an amount that is as close as possible to the amount that would be withheld under state law if the resident immigrant had a social security number.

This bill would provide that none of the provisions of this bill shall be carried out unless the Director of Employment Development receives the necessary authority, consistent with federal law, from the federal government to administer the program.

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. Article 7 (commencing with Section 9950) is
2 added to Chapter 2 of Part 1 of Division 3 of the Unemployment
3 Insurance Code, to read:

4
5 Article 7. California High-Skilled Worker Retention and Family
6 Act of 2012
7

8 9950. This article shall be known, and may be cited, as the
9 California High-Skilled Worker Retention and Family Act of 2012.

10 9951. The Legislature finds and declares all of the following:

11 (a) Federal immigration policy provides that approximately
12 140,000 employment visas may be issued annually to enable
13 individuals with extraordinary abilities, professionals with
14 advanced degrees, and other skilled workers to be sponsored by
15 United States companies to live and work in the United States.

1 (b) As part of that federal program, the spouse and unmarried
2 children of the worker being sponsored are also provided visas,
3 thereby reducing the number of visas actually available to United
4 States companies to use for sponsoring and employing workers in
5 their businesses.

6 (c) The federal government has placed a cap on the number of
7 employment visas that can be issued to each country. A cap has
8 also been placed on the number of visas that can be used for family
9 reunification.

10 (d) Due to the process established by the federal government,
11 United States-born workers are not adversely impacted by this visa
12 program.

13 (e) Some United States businesses contend the caps in the federal
14 program limit economic and job growth. They have advocated for
15 a shift from a family-based immigration policy to a work-based
16 immigration policy similar to what other governments such as
17 those of Canada, Australia, and Hong Kong, have adopted.

18 (f) Many experts and lawyers in the field of United States
19 immigration policy contend that the limits and program
20 requirements embedded in the visa program create a pull factor
21 for illegal migration into the United States.

22 (g) Seeking to address the negative consequences of these
23 limitations, in November 2011, the House of Representatives
24 passed the Fairness for High Skilled Immigrants Act (H.R. 3012)
25 that will phase out the use of caps. This action will reduce the
26 waiting period for highly skilled workers needed in United States
27 companies and for families seeking reunification.

28 (h) Due to the economic contributions of highly skilled foreign
29 workers that are enjoyed by all of California, it is in the best interest
30 of the state to develop a complementary sponsorship program
31 authorized to use and apply employment and family visas in a
32 manner that would stabilize, stimulate, and expand California's
33 economy.

34 9952. As used in this article, the following terms have the
35 following meanings:

36 (a) "Department" means the Employment Development
37 Department.

38 (b) "Federal poverty line" has the same meaning as provided
39 in Section 1183a(h) of Title 8 of the United States Code.

1 (c) “Foreign national” has the same meaning as “alien” as
2 provided in Section 1101(a)(3) of Title 8 of the United States Code,
3 except that it does not include a person who is not lawfully present
4 in the United States.

5 (d) “Local agency” or “local government entity” means a city,
6 county, or city and county.

7 (e) “Means-tested public benefit” has the same meaning as
8 provided in Section 213a.1 of Title 8 of the Code of Federal
9 Regulations.

10 (f) “Permit” means an identification permit issued pursuant to
11 subdivision (c) of Section 9951.

12 (g) “Program” means the program carried out under this article.

13 (h) “Resident immigrant” means a foreign national who has
14 been accepted into the program by the department in accordance
15 with the provisions of this article.

16 (i) “Small business” has the same meaning as provided in
17 Section 11342.610 of the Government Code.

18 (j) “Sponsor” means a person or a small business that agrees to
19 assume financial responsibility for a foreign national by executing
20 an affidavit of sponsorship.

21 9953. (a) The department shall create a program to grant
22 resident immigrant status to individuals who meet the requirements
23 of this article.

24 (b) In order to be eligible for approval for resident immigrant
25 status, a foreign national shall do all of the following:

26 (1) (A) File an application for resident immigrant status with
27 the department.

28 (B) Attach to that application an affidavit of sponsorship
29 executed by a sponsor pursuant to Section 9954.

30 (2) Complete and pass a health and background screening.

31 (3) Provide evidence that he or she has not been convicted of a
32 serious felony within the meaning of subdivision (c) of Section
33 1192.7 of the Penal Code, or a violent felony within the meaning
34 of subdivision (c) of Section 667.5 of the Penal Code.

35 (4) Pay a fee that does not exceed the reasonable costs to the
36 department of issuing the permit.

37 (5) Provide evidence that he or she is living outside of the United
38 States at the time that the application for the program is filed.

1 (c) A foreign national shall not be eligible for the program if
2 the foreign national is living in the United States at the time the
3 application for the program is filed.

4 (d) (1) The department shall review the application, and may
5 grant a foreign national resident immigrant status in accordance
6 with the procedures established by this article, and the quota
7 described in subdivision (b) of Section 9955.

8 (2) The department shall issue to an approved resident immigrant
9 a permit created pursuant to Section 9955.

10 (3) A foreign national may appeal the department's decision to
11 the Director of Employment Development.

12 (4) The department shall cooperate with the federal Department
13 of Homeland Security to ensure that no resident immigrant poses
14 a risk to national security.

15 (e) (1) A resident immigrant may reside, work, and study in
16 the state.

17 (2) Unless expressly authorized by federal law, a resident
18 immigrant permit is effective only in this state.

19 9954. (a) A person may sponsor a foreign national as a resident
20 immigrant by filing an affidavit of sponsorship with the department
21 in accordance with the provisions of this section. An affidavit of
22 sponsorship shall be executed by the sponsor and the foreign
23 national as a contract that shall contain the following provisions:

24 (1) A requirement that the sponsor agree to provide support to
25 maintain the sponsored foreign national at an annual income that
26 is not less than 125 percent of the federal poverty line during the
27 period in which the affidavit is enforceable.

28 (2) A requirement that the affidavit is legally enforceable against
29 the sponsor by the resident immigrant, the federal government,
30 the state, a local agency, or any other entity that provides a public
31 benefit to the resident immigrant.

32 (3) A requirement that the sponsor agrees to submit to the
33 jurisdiction of any federal or state court for the purpose of actions
34 brought under subdivision (c).

35 (b) (1) A person is eligible to be a sponsor if he or she meets
36 all of the following requirements:

37 (A) Is a citizen of the United States or an alien who is lawfully
38 admitted to the United States for permanent residence.

39 (B) Is a resident of the state.

40 (C) Is at least 18 years of age.

- 1 (D) Is domiciled in the state.
- 2 (E) Demonstrates the means to maintain an annual income
- 3 greater than or equal to 125 percent of the federal poverty line.
- 4 (F) Demonstrates a compelling humanitarian reason to sponsor
- 5 the foreign national.
- 6 (2) A small business is eligible to be a sponsor if it meets all of
- 7 the following requirements:
- 8 (A) Is domiciled in the state.
- 9 (B) Demonstrates the means to maintain an annual income
- 10 greater than or equal to 125 percent of the federal poverty line.
- 11 (3) A person or small business may demonstrate the means to
- 12 maintain an annual income under this section by following any of
- 13 the methods described in Section 1183a(g)(6) of Title 8 of the
- 14 United States Code.
- 15 (4) The department shall adopt regulations in accordance with
- 16 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
- 17 3 of Title 2 of the Government Code to determine eligibility
- 18 requirements for a sponsor that are consistent with paragraphs (1)
- 19 to (3), inclusive.
- 20 (c) (1) If a resident immigrant receives any means-tested public
- 21 benefit, then the private, federal, state, or local government entity
- 22 that provided that benefit may request reimbursement by the
- 23 sponsor in an amount that is equal to the unreimbursed costs of
- 24 that benefit.
- 25 (2) If within 45 days after a request for reimbursement under
- 26 paragraph (1) the appropriate entity has not received a response
- 27 from the sponsor indicating a willingness to commence payment,
- 28 then an action may be brought against the sponsor pursuant to the
- 29 affidavit of sponsorship.
- 30 (3) If the sponsor fails to abide by the repayment terms
- 31 established by the appropriate entity, then the entity may bring an
- 32 action against the sponsor pursuant to the affidavit of sponsorship.
- 33 (4) No cause of action may be brought under this subdivision
- 34 more than 10 years after the date that the sponsored alien last
- 35 received any public benefit to which the affidavit of sponsorship
- 36 applies.
- 37 (d) The sponsor shall notify the department within 30 days of
- 38 any change of address of the sponsor during the period that an
- 39 affidavit of sponsorship is enforceable.

1 (e) An affidavit of sponsorship shall be enforceable with respect
2 to benefits provided to the resident immigrant until one of the
3 following events occurs:

4 (1) The resident immigrant is naturalized as a citizen of the
5 United States.

6 (2) The term of the permit has expired.

7 (3) The sponsor has terminated the affidavit of sponsorship by
8 proving to the satisfaction of the department that the resident
9 immigrant no longer resides in the United States.

10 (4) The department has determined that the resident immigrant
11 no longer resides in the United States, or is otherwise disqualified
12 from the program pursuant to Section 9957.

13 9955. (a) The department shall create a resident immigrant
14 permit to be issued to a foreign national that is approved for
15 resident immigrant status pursuant to Section 9953. The permit
16 shall meet all of the following requirements:

17 (1) Be of impervious material that is resistant to wear or damage.

18 (2) Be designed to minimize the risk that the permit may be
19 counterfeited, falsified, or forged.

20 (3) Include a photograph of the resident immigrant to whom
21 the permit is issued.

22 (4) Prominently state the date that the permit expires.

23 (5) Prominently state the type of permit.

24 (6) Include a unique identifier.

25 (b) The department shall not issue more permits per year than
26 the amount authorized by the federal government. The department
27 shall issue no more than three-fourths of the available permits per
28 year to small business sponsors, and one-quarter of the available
29 permits per year to individual sponsors.

30 9956. (a) A person in the state may employ a resident
31 immigrant.

32 (b) A resident immigrant, or a resident immigrant's employer,
33 shall pay all income taxes and employment taxes, fees, or charges
34 in accordance with the program.

35 (c) (1) The Franchise Tax Board shall, by adopting regulations
36 in accordance with Chapter 3.5 (commencing with Section 11340)
37 of Part 1 of Division 3 of Title 2 of the Government Code, provide
38 a means that is effective as of the day that the department begins
39 implementation of the program for a person who receives services
40 from a resident immigrant to withhold from compensation paid to

1 the resident immigrant an amount to be determined by Franchise
2 Tax Board rule that, as closely as possible, equals the income taxes
3 that would be withheld under state law if the resident immigrant
4 were an employee with a social security number.

5 (2) As part of the program, the department shall provide a
6 method to collect and remit to the federal government the money
7 collected that is equivalent to the income and employment taxes
8 that would be withheld under federal law if a resident immigrant
9 were an employee with a social security number.

10 9957. A resident immigrant is disqualified from the program
11 if, after becoming a resident immigrant, he or she does either of
12 the following:

13 (a) Is convicted of a serious felony, within the meaning of
14 subdivision (c) of Section 1192.7 of the Penal Code, or a violent
15 felony, within the meaning of subdivision (c) of Section 667.5 of
16 the Penal Code.

17 (b) Violates the terms and restrictions of the program.

18 9958. (a) The department shall adopt regulations in accordance
19 with Chapter 3.5 (commencing with Section 11340) of Part 1 of
20 Division 3 of Title 2 of the Government Code on the following
21 topics:

22 (1) The qualifications necessary to pass a health screening to
23 be eligible for acceptance into the program. At a minimum, an
24 individual is eligible to participate in the program if he or she does
25 not have a medical condition that would make the individual
26 inadmissible for health-related grounds under Section 1182(a)(1)
27 of Title 8 of the United States Code.

28 (2) The qualifications necessary to pass a background screening
29 to be eligible for acceptance into the program.

30 (3) The term that a foreign national shall be considered a resident
31 immigrant.

32 (4) The process that a foreign national must undergo to obtain
33 a resident immigrant permit.

34 (5) What qualifies as a means-tested public benefit under Section
35 9954.

36 (b) When making a rule under this article, the department shall
37 use federal standards as a guideline to avoid unnecessary
38 duplication and additional costs.

39 9959. (a) The Director of Employment Development shall, no
40 later than May 1, 2013, submit a formal request to the federal

1 government to receive the necessary and appropriate authority to
2 administer this article. In that request, the director shall also ask
3 the federal government the total number of permits that may be
4 issued per year.

5 (b) This article, except for 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 article.

9 (c) The Director of Employment Development shall, upon
10 receiving the necessary authority pursuant to subdivision (b), post
11 a notice on the Employment Development Department's Internet
12 Web site that the program will be implemented.

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