

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2014

Introduced by Assembly Member Alejo

February 20, 2014

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 2014, as amended, Alejo. Undocumented workers: ~~work permits.~~ *California Agricultural and Service Worker Act.*

Federal law regulates immigration and state laws that regulate immigration are preempted. Existing state law, the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975, grants agricultural employees the right to form and join labor organizations and engage in collective bargaining with respect to wages, terms of employment, and other employment conditions.

This bill would require the Employment Development Department and the Department of Food and Agriculture to convene a working group to consult with the United States Department of Homeland Security and the United States Department of Justice in order to determine the legal roles and responsibilities of federal and state agencies in implementing a program to provide undocumented persons who are agricultural or service industry employees with a permit to work and live in California. The bill would require the working group to create a report expressing its recommendations, which would be required to incorporate specified provisions describing a model program, and the bill would require the report to be submitted to the

Legislature and the Governor. The bill would require the Governor, using the report, to either make a formal request to the federal government to implement a program to provide undocumented persons who are agricultural or service industry employees with a permit to work and live in California or issue an explanation as to why a formal request was not made and make recommendations to the Legislature for how a program to provide undocumented persons who are agricultural or service industry employees with a permit to work and live in California should be structured.

~~Existing provisions of federal law regulate immigration, including the employment of aliens. Under federal law, state laws regulating immigration are generally preempted.~~

~~This bill would declare the intent of the Legislature to enact legislation that would require the Employment Development Department to administer a work permit program for undocumented persons, upon the state receiving the necessary authority under federal law.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

The people of the State of California do enact as follows:

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

4
5 CHAPTER 8. CALIFORNIA AGRICULTURAL AND SERVICE WORKER
6 PROGRAM

7
8 Article 1. General Provisions
9

10 11050. As used in this chapter:
11 (a) "Employee" means an agricultural employee, as defined in
12 Section 1140.4 of the Labor Code, and a person employed to
13 provide domestic services, janitorial or building maintenance
14 services, food preparation services, or housekeeping services.
15 (b) "Employer" means an agricultural employer, as defined in
16 Section 1140.4 of the Labor Code, a farm labor contractor, and
17 a service industry employer.
18 (c) "Farm labor contractor" means a contractor, as defined in
19 Section 1682 of the Labor Code.

1 (d) “Farm labor organization” means a labor organization, as
2 defined in Section 1117 of the Labor Code, that represents
3 employees rendering personal services in connection with the
4 production of agricultural products.

5 (e) “Immediate family member” means a spouse or child under
6 18 years of age or 18 years or older if the child is enrolled in an
7 accredited program as described in paragraph (1) of subdivision
8 (c) of Section 11056.

9 (f) “Service industry employer” means a person who is
10 self-employed for the purpose of, or who employs others to, provide
11 domestic services, janitorial or building maintenance services,
12 food preparation services, or housekeeping services.

13 (g) “Service labor organization” means a labor organization,
14 as defined in Section 1117 of the Labor Code, that represents
15 employees rendering personal services in connection with the
16 production of service industry products.

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

20 11051. (a) No later than February 1, 2016, the Employment
21 Development Department and the Department of Food and
22 Agriculture shall convene a working group to consult with the
23 United States Department of Homeland Security and the United
24 States Department of Justice to determine the legal roles and
25 responsibilities of federal and state agencies in implementing a
26 program to provide undocumented persons who are agricultural
27 or service industry employees with a permit to work and live in
28 California.

29 (b) The working group shall consist of representatives from the
30 Employment Development Department, the Department of Food
31 and Agriculture, the Attorney General, two Members of the Senate,
32 two Members of the Assembly, and stakeholders, including, but
33 not limited to, agricultural and service industry employers, farm
34 labor contractors, farm labor organizations, and service labor
35 organizations.

36 (c) Issues to be addressed by the working group shall include
37 the following:

38 (1) Qualifying criteria for undocumented persons to apply for
39 the program.

40 (2) Documentation requirements for applicants.

- 1 (3) *A determination of which agency will issue the permits.*
- 2 (4) *Ensuring security, including through the development of*
- 3 *non-tamper-proof work authorization documentation or security*
- 4 *procedures and protocols, or all of these methods.*
- 5 (5) *A determination of the process and the agency that shall*
- 6 *conduct background and security checks and the extent background*
- 7 *and security checks shall be required.*
- 8 (6) *A determination regarding the payment that shall be required*
- 9 *for the submission and review of applications and background*
- 10 *and security checks.*
- 11 (7) *Protocols regarding tracking of employees under the*
- 12 *program.*
- 13 (8) *Consideration of a renewal process for the work permit.*
- 14 (9) *Consideration of the extent to which employees will be*
- 15 *allowed to travel out of the country and the requirements for that*
- 16 *travel.*
- 17 (10) *Determination of a fee structure to cover the costs of the*
- 18 *program, including who will pay and how often the fee shall be*
- 19 *assessed to cover costs of the program.*
- 20 (11) *Determination of the costs involved in receiving,*
- 21 *processing, and issuing work permits.*
- 22 (12) *Any other procedures and legal requirements associated*
- 23 *with the implementation of the program required by the federal*
- 24 *government to ensure the proper role and responsibilities of the*
- 25 *State of California.*
- 26 (d) *The working group shall create a report expressing its*
- 27 *recommendations, which shall incorporate the model program*
- 28 *described in Article 2 (commencing with Section 11055). This*
- 29 *report shall be submitted to the Legislature and the Governor no*
- 30 *later than July 1, 2016.*
- 31 (e) *By August 1, 2016, the Governor, using the report described*
- 32 *in subdivision (d), shall either make a formal request to the federal*
- 33 *government to implement a program to provide undocumented*
- 34 *persons who are agricultural or service industry employees with*
- 35 *a permit to work and live in California, or issue an explanation*
- 36 *as to why a formal request was not made and make*
- 37 *recommendations to the Legislature for how a program to provide*
- 38 *undocumented persons who are agricultural or service industry*
- 39 *employees with a permit to work and live in California shall be*
- 40 *structured.*

1 (f) If the federal government approves or adopts a program to
2 provide undocumented persons who are agricultural or service
3 industry employees with a permit to work and live in California,
4 it is the intent of the Legislature to enact necessary implementing
5 legislation.

6
7 Article 2. Model Program Requirements
8

9 11055. It is the intent of the Legislature that the provisions of
10 this article provide a model and framework for a program to
11 provide undocumented persons who are agricultural or service
12 industry employees with a permit to work and live in California.

13 11056. (a) The program shall not be implemented until:

14 (1) The federal authorization necessary for its lawful application
15 is received.

16 (2) A certification is made that not enough legal residents in
17 California will fill all open agricultural and service industry jobs
18 in California.

19 (b) The program shall be limited to undocumented persons who
20 meet all of the following criteria:

21 (1) The undocumented person shall be 18 years of age or older.

22 (2) The undocumented person shall live in California.

23 (3) (A) The undocumented person shall have performed
24 agricultural or service industry employment in the United States
25 for at least 863 hours or 150 workdays during the 24-month period
26 ending on January 25, 2016, or earned at least seven thousand
27 five hundred dollars (\$7,500) from agricultural or service industry
28 employment in the United States, and shall have maintained
29 agricultural or service industry employment for 431 hours or 75
30 workdays, or earned three thousand seven hundred fifty dollars
31 (\$3,750) from that employment, on an annual basis after receiving
32 the permit.

33 (B) An undocumented person shall be allowed to conclusively
34 establish employment status by submitting any of the following
35 records demonstrating the employment:

36 (i) Records maintained by the Social Security Administration,
37 Internal Revenue Service, or any other federal, state, or local
38 government agency, an employer, a labor organization, service
39 labor organization, or day labor center.

- 1 (ii) *Itemized wage statements issued to the employee pursuant*
2 *to Section 226 of the Labor Code.*
- 3 (C) *An undocumented person who is unable to submit a*
4 *document described in subparagraph (B) shall be allowed to satisfy*
5 *the requirement in subparagraph (A) by submitting at least two*
6 *other types of reliable documents that provide evidence of*
7 *employment, including any of the following:*
- 8 (i) *Bank records.*
9 (ii) *Business records.*
10 (iii) *Remittance records.*
- 11 (D) *The program shall be implemented in a manner that*
12 *recognizes and takes into account the difficulties encountered by*
13 *an undocumented person in obtaining evidence of employment due*
14 *to the person's undocumented status, including the crediting of*
15 *work in cases in which an undocumented person has been employed*
16 *under an assumed name.*
- 17 (4) *The undocumented person shall submit to a fingerprinted*
18 *criminal history background check.*
- 19 (5) *The undocumented person shall never have been convicted*
20 *of a felony, or three or more misdemeanors, as confirmed by the*
21 *fingerprinted criminal history background check.*
- 22 (6) *The undocumented person shall pay a fee to cover the costs*
23 *of administering the program.*
- 24 (c) *The program shall extend to an undocumented person who*
25 *is an immediate family member of a person to whom a work permit*
26 *has been issued. The immediate family member shall be required*
27 *to meet all of the following:*
- 28 (1) *The immediate family member shall reside with the*
29 *undocumented person to whom a permit was issued or be enrolled*
30 *in an accredited two- or four-year college or graduate program*
31 *in California.*
- 32 (2) *The immediate family member shall submit to a fingerprinted*
33 *criminal history background check.*
- 34 (3) *The immediate family member shall never have been*
35 *convicted of a felony, or three or more misdemeanors, as confirmed*
36 *by the fingerprinted criminal history background check.*
- 37 (4) *The immediate family member shall pay a fee to cover the*
38 *costs of administering the program.*
- 39 11057. *Once the program becomes authorized and operational,*
40 *the following requirements shall apply:*

1 (a) (1) *An official or employee of the state government shall*
2 *not do any of the following:*

3 (A) *Use information furnished by an applicant for purposes of*
4 *applying for a permit under the program or any information*
5 *provided by an employer or former employer for any purpose other*
6 *than to make a determination on the application.*

7 (B) *Make any publication in which the information furnished*
8 *by any particular individual can be identified.*

9 (C) *Permit a person other than a sworn officer or employee of*
10 *the state to examine individual applications.*

11 (2) *Information furnished by an applicant shall be provided to*
12 *both of the following:*

13 (A) *A duly recognized state law enforcement entity in connection*
14 *with a criminal investigation or a prosecution, if the information*
15 *is requested in writing by the entity.*

16 (B) *An official coroner, for purposes of affirmatively identifying*
17 *a deceased individual, whether or not the death of the individual*
18 *resulted from a crime.*

19 (3) *Any person who files an application under the program and*
20 *knowingly and willfully falsifies, conceals, or covers up a material*
21 *fact or makes any false, fictitious, or fraudulent statements or*
22 *representations, or makes or uses any false writing or document*
23 *knowing that it contains any false, fictitious, or fraudulent*
24 *statement or entry shall be disqualified from applying under the*
25 *program.*

26 (b) *The entities administering the program shall ensure that*
27 *employers employing workers authorized under the program make*
28 *each of the following assurances:*

29 (1) *That the job opportunity for which an employer employs an*
30 *undocumented person authorized under the program is not vacant*
31 *because a worker is involved in a strike, lockout, or because of a*
32 *work stoppage in the course of a labor dispute involving the job*
33 *opportunity at the same place of employment.*

34 (2) *That the wages and benefits provided to undocumented*
35 *persons working under a permit issued under the program are*
36 *comparable to the wages and benefits provided to legal residents,*
37 *but in no case less than the state minimum wage.*

38 (3) *That an employer participating in the program shall comply*
39 *with all applicable federal, state, and local labor laws, including*

1 laws affecting migrant and seasonal agricultural workers, with
2 respect to all United States workers and undocumented workers.

3 (c) An employer of a person permitted to work in this state under
4 the program shall provide a written record of employment,
5 demonstrating the hours worked and wages paid, to the employee
6 issued a permit, and provide a copy of the record to the state.

7 11058. (a) An employee permitted to work in this state under
8 the program shall be entitled to the same wage, hour, and working
9 condition protections provided to an employee who is a legal
10 resident of California.

11 (b) A permit issued under the program shall not limit an
12 employee to a single employer or occupation.

13 11059. Not later than three years after the program is
14 implemented, the administering entities shall prepare and transmit
15 to the Assembly Committee on Labor and Employment and the
16 Senate Committee on Labor and Industrial Relations a report,
17 consistent with the requirements Section 9795 of the Government
18 Code, describing the results of a review of the implementation of,
19 and compliance with, the requirements of the program. The report
20 shall address and provide information as to all the following:

21 (a) Whether the program ensured an adequate and timely supply
22 of qualified, eligible workers at the time and place needed by
23 employers.

24 (b) Whether the program ensured that undocumented persons
25 authorized to work under the program did not displace eligible,
26 qualified United States workers or diminished the wages and other
27 terms and conditions of employment of eligible United States
28 workers.

29 (c) Recommendations for improving the operation of the
30 program for the benefit of participating employers, eligible United
31 States workers, participating undocumented workers, and
32 governmental agencies involved in the administration of the
33 program.

34 (d) Recommendations for the continuation or termination of the
35 program.

36 ~~SECTION 1. It is the intent of the Legislature to enact~~
37 ~~legislation that would require the Employment Development~~
38 ~~Department to administer a work permit program for undocumented~~
39 ~~persons in California, upon the state receiving the necessary federal~~
40 ~~authority.~~

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