

AMENDED IN SENATE JULY 14, 2015

AMENDED IN SENATE JULY 1, 2015

AMENDED IN ASSEMBLY JUNE 2, 2015

AMENDED IN ASSEMBLY APRIL 30, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 20**

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**Introduced by Assembly Member Alejo**

December 1, 2014

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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 20, as amended, Alejo. Undocumented workers: California Agricultural Act.

Existing provisions of federal law regulate immigration. Under federal law, state law regulating immigration is preempted.

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 employees with a permit to work and live in California. 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 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 employees with a permit to work and live in California should be structured.

The bill would also describe a framework for a program to provide undocumented persons who are agricultural employees a permit to work and live in California if such a program were to be authorized by federal law.

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 Act.

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,  
 7 \$37,500,000,000 in 2010, \$43,500,000,000 in 2011,  
 8 \$44,300,000,000 in 2012, and \$46,400,000,000 in 2013) and  
 9 continues to lead the nation in gross agricultural cash receipts.

10 (b) California’s agricultural industry is dependent on immigrant  
 11 labor. One recent study of 13 California counties gathered  
 12 information from 2,300 farmworkers. The profile data reported in  
 13 this study suggests that 95 percent of California agricultural  
 14 workers were born outside the United States and 91 percent in  
 15 Mexico. On average, they have been in the United States 11.1  
 16 years. Twenty-two percent have been in the United States two  
 17 years or less, 10 percent are United States citizens, 33 percent have  
 18 green cards, and 57 percent are unauthorized. Of the newcomers  
 19 who have been here less than two years, 99 percent are  
 20 unauthorized.

21 (c) Immigration policies that seek to deport unauthorized  
 22 farmworkers or force them to abandon their jobs in agriculture  
 23 would wreak swift and substantial damage to the agricultural  
 24 industry in California. California agriculture would lose much of

1 its experienced work force that has made it the most productive  
2 agricultural area in the world. At the same time, these policies  
3 would impose a substantial human cost on hundreds of thousands  
4 of farmworkers and their spouses, as well as their children, most  
5 of whom are United States citizens.

6 (d) The federal employment-based immigration system is  
7 broken. The programs for admitting foreign workers for temporary  
8 and permanent jobs are rigid, cumbersome, inefficient, do little to  
9 protect the wages and working conditions of foreign and domestic  
10 workers, do not respond very well to employers' needs, and give  
11 almost no attention to adapting the number and characteristics of  
12 foreign workers to domestic labor shortages.

13 (e) Nevertheless, Congress has repeatedly failed to pass  
14 comprehensive immigration reform including the Agricultural Job  
15 Opportunity, Benefits, and Security Act. Instead, Congress is  
16 considering making the E-Verify program mandatory for all  
17 employers. Requiring agricultural employers to verify whether  
18 workers are employment-authorized would eliminate a significant  
19 portion of the existing agricultural workforce with no certainty  
20 that these vacancies will be filled by work-authorized immigrants  
21 or citizens.

22 (f) Due to the absence of federal action on comprehensive  
23 immigration reform, the counterproductive results of E-Verify,  
24 and the unworkable framework of the federal H-2A guest worker  
25 program, agricultural interests in Oklahoma and Utah have  
26 introduced legislation creating state guest worker programs and  
27 several other states are considering the introduction of similar state  
28 initiatives.

29 (g) Recognizing the significant contributions that unauthorized  
30 workers make to California's economy and the need to bring these  
31 workers out of the shadows in order to improve worker conditions  
32 and at the same time provide a legal workforce for the agricultural  
33 industry, it is imperative that a program be created for current  
34 unauthorized workers to obtain authorization to live and work in  
35 California.

36 SEC. 3. It is the intent of the Legislature that the executive and  
37 legislative branches of the federal government give the highest  
38 priority to enacting comprehensive immigration reform legislation  
39 that would confer legal status to reside in the United States to most

1 undocumented persons, including many undocumented  
2 farmworkers living and working in California.

3 SEC. 4. Chapter 8 (commencing with Section 11050) is added  
4 to Part 1 of Division 3 of the Unemployment Insurance Code, to  
5 read:

6  
7 CHAPTER 8. CALIFORNIA AGRICULTURAL WORKER PROGRAM

8  
9 Article 1. General Provisions

10  
11 11050. As used in this chapter:

12 (a) "Employee" means an agricultural employee, as defined in  
13 Section 1140.4 of the Labor Code.

14 (b) "Employer" means an agricultural employer, as defined in  
15 Section 1140.4 of the Labor Code or a farm labor contractor.

16 (c) "Farm labor contractor" means a contractor, as defined in  
17 Section 1682 of the Labor Code.

18 (d) "Farm labor organization" means a labor organization, as  
19 defined in Section 1117 of the Labor Code, that represents  
20 employees rendering personal services in connection with the  
21 production of agricultural products.

22 (e) "Immediate family member" means a spouse or child under  
23 18 years of age or 18 years or older if the child is enrolled in an  
24 accredited program as described in paragraph (1) of subdivision  
25 (c) of Section 11056.

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

29 11051. (a) No later than February 1, 2017, the Employment  
30 Development Department and the Department of Food and  
31 Agriculture shall convene a working group to consult with the  
32 United States Department of Homeland Security and the United  
33 States Department of Justice to determine the legal roles and  
34 responsibilities of federal and state agencies in implementing a  
35 program to provide undocumented persons who are agricultural  
36 employees with a permit to work and live in California.

37 (b) The working group shall consist of representatives from the  
38 Employment Development Department, the Department of Food  
39 and Agriculture, the Attorney General, two Members of the Senate,  
40 two Members of the Assembly, and stakeholders, including, but

1 not limited to, agricultural employers, farm labor contractors, and  
2 farm labor organizations. The legislative members of the working  
3 group shall be nonvoting ex officio members.

4 (c) Issues to be addressed by the working group shall include  
5 the following:

6 (1) Qualifying criteria for undocumented persons to apply for  
7 the program.

8 (2) Documentation requirements for applicants.

9 (3) A determination of which agency will issue the permits.

10 (4) Ensuring security, including through the development of  
11 nontamper-proof work authorization documentation or security  
12 procedures and protocols, or all of these methods.

13 (5) A determination of the process and the agency that should  
14 conduct background and security checks and the extent background  
15 and security checks should be required.

16 (6) A determination regarding the payment that should be  
17 required for the submission and review of applications to  
18 participate in the program and background and security checks.

19 (7) Protocols regarding tracking and monitoring of ~~employees~~  
20 *employees, wages and working conditions, and other aspects* under  
21 the program.

22 (8) Consideration of a renewal process for the work permit.

23 (9) Consideration of the extent to which employees will be  
24 allowed to travel out of the country and the requirements for that  
25 travel.

26 (10) Determination of a fee structure to cover the costs of the  
27 program, including who will pay and how often the fee should be  
28 assessed to cover costs of the program.

29 (11) Determination of the costs involved in receiving,  
30 processing, and issuing work permits.

31 (12) Any other procedures and legal requirements associated  
32 with implementation of the program required by the federal  
33 government to ensure the proper role and responsibilities of the  
34 State of California.

35 (d) (1) The working group shall create a report expressing its  
36 recommendations, which shall be based upon the model program  
37 described in Article 2 (commencing with Section 11055). This  
38 report shall be submitted to the Legislature and the Governor no  
39 later than July 1, 2017.

1 (2) A report to be submitted pursuant to paragraph (1) shall be  
 2 submitted in compliance with Section 9795 of the Government  
 3 Code.

4 (e) By August 1, 2017, the Governor, using the report described  
 5 in subdivision (d), shall either make a formal request to the federal  
 6 government to implement a program to provide undocumented  
 7 persons who are agricultural employees with a permit to work and  
 8 live in California, or issue an explanation as to why a formal  
 9 request was not made and make recommendations to the  
 10 Legislature for how a program to provide undocumented persons  
 11 who are agricultural employees with a permit to work and live in  
 12 California should be structured.

13 (f) If the federal government approves or adopts a program to  
 14 provide undocumented persons who are agricultural employees  
 15 with a permit to work and live in California, it is the intent of the  
 16 Legislature to enact necessary implementing legislation. The model  
 17 program shall not be implemented until such implementing  
 18 legislation is enacted by the Legislature.

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 21

Article 2. Model Program Requirements

22 11055. It is the intent of the Legislature that the provisions of  
 23 this article provide a model and framework for a program to  
 24 provide undocumented persons who are agricultural employees  
 25 with a permit to work and live in California.

26 11056. (a) The program shall not be implemented until a  
 27 certification is made by an entity, designated by the working group,  
 28 that not enough legal residents in California will fill all open  
 29 agricultural jobs in California.

30 (b) The program shall be limited to an undocumented person  
 31 who meets all of the following criteria:

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

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

34 (3) (A) The undocumented person has performed agricultural  
 35 employment in the United States for at least 863 hours or 150  
 36 workdays during the 24-month period ending on January 26, ~~2015,~~  
 37 2016, or earned seven thousand five hundred dollars (\$7,500) or  
 38 more from agricultural industry employment in the United States,  
 39 and has maintained agricultural employment for 431 hours or 75  
 40 workdays, or earned three thousand seven hundred fifty dollars

1 (\$3,750) or more from that employment, on an annual basis after  
2 receiving the permit.

3 (B) An undocumented person shall be allowed to conclusively  
4 establish employment status by submitting any of the following  
5 records demonstrating the employment:

6 (i) Records maintained by the Social Security Administration,  
7 Internal Revenue Service, or any other federal, state, or local  
8 government agency, an employer, a labor organization, or day  
9 labor center.

10 (ii) Itemized wage statements issued to the employee pursuant  
11 to Section 226 of the Labor Code.

12 (C) An undocumented person who is unable to submit a  
13 document described in subparagraph (B) should be allowed to  
14 satisfy the requirement in subparagraph (A) by submitting at least  
15 two other types of reliable documents that provide evidence of  
16 employment, including any of the following:

17 (i) Bank records.

18 (ii) Business records.

19 (iii) Remittance records.

20 (D) The program shall be implemented in a manner that  
21 recognizes and takes into account the difficulties encountered by  
22 an undocumented person in obtaining evidence of employment  
23 due to the person's undocumented status, including the crediting  
24 of work in cases in which an undocumented person has been  
25 employed under an assumed name.

26 (4) The undocumented person shall submit to a fingerprinted  
27 criminal history background check.

28 (5) The undocumented person has not been convicted of a  
29 felony, or three or more misdemeanors, as confirmed by the  
30 fingerprinted criminal history background check.

31 (6) The undocumented person shall pay a fee to cover the costs  
32 of administering the program.

33 (c) The program shall extend to an undocumented person who  
34 is an immediate family member of a person to whom a work permit  
35 under this program has been issued. The immediate family member  
36 shall be required to meet all of the following:

37 (1) The immediate family member shall reside with the  
38 undocumented person to whom a permit was issued or be enrolled  
39 in high school, a GED program, an accredited vocational training

1 program, or an accredited two- or four-year college or graduate  
2 program in California.

3 (2) The immediate family member shall submit to a fingerprinted  
4 criminal history background check.

5 (3) The immediate family member shall never have been  
6 convicted of a felony, or three or more misdemeanors, as confirmed  
7 by the fingerprinted criminal history background check.

8 (4) The immediate family member shall pay a fee to cover the  
9 costs of administering the program.

10 11057. Once the program becomes authorized and operational,  
11 the following requirements shall apply:

12 (a) (1) An official or employee of the state government may  
13 not do any of the following:

14 (A) Use information furnished by an applicant for purposes of  
15 applying for a permit under the program or any information  
16 provided by an employer or former employer for any purpose other  
17 than to make a determination on the application.

18 (B) Make any publication in which the information furnished  
19 by any particular individual can be identified.

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

22 (2) Information furnished by an applicant shall be provided to  
23 both of the following:

24 (A) A duly recognized state law enforcement entity in  
25 connection with a criminal investigation or a prosecution, if the  
26 information is requested in writing by the entity.

27 (B) An official coroner, for purposes of affirmatively identifying  
28 a deceased individual, whether or not the death of the individual  
29 resulted from a crime.

30 (3) Any person who files an application under the program and  
31 knowingly and willfully falsifies, conceals, or covers up a material  
32 fact or makes any false, fictitious, or fraudulent statements or  
33 representations, or makes or uses any false writing or document  
34 knowing that it contains any false, fictitious, or fraudulent  
35 statement or entry shall be disqualified from applying under the  
36 program.

37 (b) The entities administering the program shall ensure that  
38 employers employing workers authorized under the program make  
39 each of the following assurances:

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

6 (2) That the wages and benefits provided to undocumented  
7 persons working under a permit issued under the program are  
8 comparable to the wages and benefits provided to legal residents,  
9 but in no case less than the state minimum wage, and other  
10 obligations under federal and state law.

11 (3) That an employer participating in the program shall comply  
12 with all applicable federal, state, and local labor laws, including  
13 laws affecting migrant and seasonal agricultural workers, with  
14 respect to all United States workers, including workers obtaining  
15 a permit under this program, and undocumented workers.

16 (c) An employer of a person permitted to work in this state under  
17 the program should provide a written record of employment,  
18 demonstrating the hours worked and wages paid, to the employee  
19 issued a permit, and provide a copy of the record to the state.

20 11058. (a) An employee permitted to work in this state under  
21 the program shall be entitled to the same wage, hour, and working  
22 condition protections provided to an employee who is a legal  
23 resident of California.

24 (b) A permit issued under the program may not limit an  
25 employee to a single employer or occupation.

26 11059. No later than three years after the program is  
27 implemented, the administering entities shall prepare and transmit  
28 to the Assembly Committee on Labor and Employment and the  
29 Senate Committee on Labor and Industrial Relations a report  
30 describing the results of a review of the implementation of, and  
31 compliance with, the requirements of the program. The report shall  
32 address and provide information as to all the following:

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

36 (b) Whether the program ensured that undocumented persons  
37 authorized to work under the program did not displace eligible,  
38 qualified United States workers or diminished the wages and other  
39 terms and conditions of employment of eligible United States  
40 workers.

- 1 (c) Recommendations for improving the operation of the
- 2 program for the benefit of participating employers, and farm
- 3 workers in California, including United States workers and
- 4 participating undocumented workers, and governmental agencies
- 5 involved in the administration of the program.
- 6 (d) Recommendations for the continuation or termination of the
- 7 program.
- 8 (e) A report to be submitted pursuant to subdivision (a) shall
- 9 be submitted in compliance with Section 9795 of the Government
- 10 Code.