

AMENDED IN SENATE AUGUST 17, 2015
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

Introduced by Assembly Member Alejo

December 1, 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 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~~ *Labor and Workforce Development Agency* 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

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

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

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

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

30 ~~(g)~~

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

38 SEC. 3. It is the intent of the Legislature that the executive and
39 legislative branches of the federal government give the highest
40 priority to enacting comprehensive immigration reform legislation

1 that would confer legal status to reside in the United States to most
2 undocumented persons, including many undocumented
3 farmworkers living and working in California.

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

7
8 CHAPTER 8. CALIFORNIA AGRICULTURAL WORKER PROGRAM

9
10 Article 1. General Provisions

11
12 11050. As used in this chapter:

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

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

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

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

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

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

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

39 (b) The working group shall consist of representatives from the
40 ~~Employment Development Department~~, *Labor and Workforce*

1 *Development Agency*, the Department of Food and Agriculture,
2 the Attorney General, two Members of the Senate, *appointed by*
3 *the Senate Rules Committee*, two Members of the Assembly,
4 *appointed by the Speaker of the Assembly*, and stakeholders,
5 including, but not limited to, agricultural employers, farm labor
6 contractors, and farm labor organizations. *Industry stakeholders*
7 *shall be equally represented on the working group*. The legislative
8 members of the working group shall be nonvoting ex officio
9 members.

10 (c) Issues to be addressed by the working group shall include
11 the following:

12 (1) Qualifying criteria for undocumented persons to apply for
13 the program.

14 (2) Documentation requirements for applicants.

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

16 (4) Ensuring security, including through the development of
17 ~~non~~~~tamper-proof~~ *tamperproof* work authorization documentation
18 or security procedures and protocols, or all of these methods.

19 (5) A determination of the process and the agency that should
20 conduct background and security checks and the extent background
21 and security checks should be required.

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

25 (7) Protocols regarding tracking and monitoring of employees,
26 wages and working conditions, and other aspects under the
27 program.

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

29 (9) Consideration of the extent to which employees will be
30 allowed to travel out of the country and the requirements for that
31 travel.

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

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

37 (12) Any other procedures and legal requirements associated
38 with implementation of the program required by the federal
39 government to ensure the proper role and responsibilities of the
40 State of California.

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

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

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

18 (f) If the federal government approves or adopts a program to
 19 provide undocumented persons who are agricultural employees
 20 with a permit to work and live in California, it is the intent of the
 21 Legislature to enact necessary implementing legislation. The model
 22 program shall not be implemented until such implementing
 23 legislation is enacted by the Legislature.
 24

25 Article 2. Model Program Requirements

26
 27 11055. It is the intent of the Legislature that the provisions of
 28 this article provide a model and framework for a program to
 29 provide undocumented persons who are agricultural employees
 30 with a permit to work and live in California.

31 11056. (a) The program shall not be implemented until a
 32 certification is made by an entity, designated by the working group,
 33 that not enough legal residents in California will fill all open
 34 agricultural jobs in California.

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

- 37 (1) The undocumented person shall be 18 years of age or older.
- 38 (2) The undocumented person shall live in California.
- 39 (3) (A) The undocumented person has performed agricultural
 40 employment in the United States for at least 863 hours or 150

1 workdays during the 24-month period ending on January 26, 2016,
2 or earned seven thousand five hundred dollars (\$7,500) or more
3 from agricultural industry employment in the United States, and
4 has maintained agricultural employment for 431 hours or 75
5 workdays, or earned three thousand seven hundred fifty dollars
6 (\$3,750) or more from that employment, on an annual basis after
7 receiving the permit.

8 (B) An undocumented person shall be allowed to conclusively
9 establish employment status by submitting any of the following
10 records demonstrating the employment:

11 (i) Records maintained by the Social Security Administration,
12 Internal Revenue Service, or any other federal, state, or local
13 government agency, an employer, a labor organization, or day
14 labor center.

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

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

22 (i) Bank records.

23 (ii) Business records.

24 (iii) Remittance records.

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

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

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

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

38 (c) The program shall extend to an undocumented person who
39 is an immediate family member of a person to whom a work permit

1 under this program has been issued. The immediate family member
2 shall be required to meet all of the following:

3 (1) The immediate family member shall reside with the
4 undocumented person to whom a permit was issued or be enrolled
5 in high school, a GED program, an accredited vocational training
6 program, or an accredited two- or four-year college or graduate
7 program in California.

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

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

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

15 11057. Once the program becomes authorized and operational,
16 the following requirements shall apply:

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

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

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

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

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

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

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

35 (3) Any person who files an application under the program and
36 knowingly and willfully falsifies, conceals, or covers up a material
37 fact or makes any false, fictitious, or fraudulent statements or
38 representations, or makes or uses any false writing or document
39 knowing that it contains any false, fictitious, or fraudulent

1 statement or entry shall be disqualified from applying under the
2 program.

3 (b) The entities administering the program shall ensure that
4 employers employing workers authorized under the program make
5 each of the following assurances:

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

11 (2) That the wages and benefits provided to undocumented
12 persons working under a permit issued under the program are
13 comparable to the wages and benefits provided to legal residents,
14 but in no case less than the state minimum wage, and other
15 obligations under federal and state law.

16 (3) That an employer participating in the program shall comply
17 with all applicable federal, state, and local labor laws, including
18 laws affecting migrant and seasonal agricultural workers, with
19 respect to all United States workers, including workers obtaining
20 a permit under this program, and undocumented workers.

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

25 11058. (a) An employee permitted to work in this state under
26 the program shall be entitled to the same wage, hour, and working
27 condition protections provided to an employee who is a legal
28 resident of California.

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

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

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

1 (b) Whether the program ensured that undocumented persons
2 authorized to work under the program did not displace eligible,
3 qualified United States workers or diminished the wages and other
4 terms and conditions of employment of eligible United States
5 workers.

6 (c) Recommendations for improving the operation of the
7 program for the benefit of participating employers, and farm
8 workers in California, including United States workers and
9 participating undocumented workers, and governmental agencies
10 involved in the administration of the program.

11 (d) Recommendations for the continuation or termination of the
12 program.

13 (e) A report to be submitted pursuant to subdivision (a) shall
14 be submitted in compliance with Section 9795 of the Government
15 Code.