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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 916

**Introduced by Assembly ~~Member~~ Members V. Manuel Pérez and
Alejo**

(Principal coauthor: Senator Cannella)

(Coauthors: Assembly Members Bill Berryhill, and Perea)

(Coauthor: Senator Rubio)

February 18, 2011

An act to ~~amend Section 1216 of the Health and Safety Code, relating to public health~~ 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 916, as amended, V. Manuel Pérez. ~~Health: underserved communities.~~ Undocumented workers: California Agricultural and Service Worker Act.

Existing provisions of federal law regulate immigration. Under federal law, state laws regulating immigration are 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 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 law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. Existing law provides that federally qualified health center services, as defined, are covered benefits under the Medi-Cal program.~~

~~Existing law requires every clinic holding a license to file annually with the Office of Statewide Health Planning and Development a verified report showing prescribed information. Violation of these provisions is a crime.~~

~~This bill would require all federally qualified health centers operated by a county to file this report, except as specified, commencing in the 2015 calendar year. By changing the definition of a crime, this bill would create a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: *yes-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 and Service Worker Act.*

3 *SEC. 2. The Legislature finds and declares all of the following:*

4 *(a) Since 2007, California's agricultural industry has*
5 *experienced the highest agricultural sales recorded to date*
6 *(\$36,300,000,000 in 2007, \$38,400,000,000 in 2008,*
7 *\$34,800,000,000 in 2009, and \$37,500,000,000 in 2010) and*
8 *continues to lead the nation in gross 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*
12 *in 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*
25 *would impose a substantial human cost on hundreds of thousands*
26 *of farmworkers and their children, most of whom are United States*
27 *citizens.*

28 *(d) The federal employment-based immigration system is broken.*
29 *The programs for admitting foreign workers for temporary and*
30 *permanent jobs are rigid, cumbersome, inefficient, do little to*
31 *protect the wages and working conditions of foreign and domestic*
32 *workers, do not respond very well to employers' needs, and give*
33 *almost no attention to adapting the number and characteristics of*
34 *foreign workers to domestic labor shortages.*

35 *(e) Nevertheless, Congress has repeatedly failed to pass*
36 *comprehensive immigration reform including the Agricultural Job*
37 *Opportunity, Benefits, and Security Act. Instead Congress is*
38 *considering making the E-Verify program mandatory for all*

1 employers. Requiring agricultural employers to verify whether
2 workers are employment-authorized would eliminate a significant
3 portion of the existing agricultural workforce with no certainty
4 that these vacancies will be filled by legal residents.

5 (f) Due to the absence of federal action on comprehensive
6 immigration reform, the counterproductive results of E-Verify,
7 and the unworkable framework of the federal H-2A guest worker
8 program, agricultural interests in Oklahoma and Utah have
9 introduced legislation creating state guest worker programs and
10 several other states are considering the introduction of similar
11 state initiatives.

12 (g) Among California's key economic industry sectors, the
13 hospitality and tourism sector plays a central role in stimulating
14 California's sluggish economy. In 2011, the leisure and hospitality
15 industry accounted for over 100 billion dollars in travel-related
16 spending. According to state records, more than two million
17 employees, or 14 percent of all employees in California, work in
18 leisure, hospitality, and other services. These workers serve as a
19 foundational workforce for the state's 1.8-trillion-dollar economy.

20 (h) Recognizing the significant contributions that unauthorized
21 workers make to California's economy and the need to bring these
22 workers out of the shadows in order to improve worker conditions
23 and at the same time provide a legal workforce for the agricultural
24 and service industries, it is imperative that a program be created
25 for current unauthorized workers in these industries.

26 (i) It is the intent of the Legislature that the executive and
27 legislative branches of the federal government give the highest
28 priority to enacting comprehensive immigration reform legislation
29 that would confer legal status to reside in the United States to
30 persons who would participate in the program described in this
31 act.

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

1 *CHAPTER 8. CALIFORNIA AGRICULTURAL AND SERVICE WORKER*
2 *PROGRAM*

3
4 Article 1. General Provisions

5
6 11050. As used in this chapter:

7 (a) “Employee” means an agricultural employee, as defined in
8 Section 1140.4 of the Labor Code, and a person employed to
9 provide domestic services, janitorial or building maintenance
10 services, food preparation services, or housekeeping services.

11 (b) “Employer” means an agricultural employer, as defined in
12 Section 1140.4 of the Labor Code, a farm labor contractor, and
13 a service industry employer.

14 (c) “Farm labor contractor” means a contractor, as defined in
15 Section 1682 of the Labor Code.

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

20 (e) “Immediate family member” means a spouse or child under
21 18 years of age or 18 years or older if the child is enrolled in an
22 accredited program as described in paragraph (1) of subdivision
23 (c) of Section 11056.

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

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

32 (h) “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. (a) No later than February 1, 2013, the Employment
36 Development Department and the Department of Food and
37 Agriculture shall convene a working group to consult with the
38 United States Department of Homeland Security and the United
39 States Department of Justice to determine the legal roles and
40 responsibilities of federal and state agencies in implementing a

1 program to provide undocumented persons who are agricultural
2 or service industry employees with a permit to work and live in
3 California.

4 (b) The working group shall consist of representatives from the
5 Employment Development Department, the Department of Food
6 and Agriculture, the Attorney General, two Members of the Senate,
7 two Members of the Assembly, and stakeholders, including, but
8 not limited to, agricultural and service industry employers, farm
9 labor contractors, farm labor organizations, and service labor
10 organizations.

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

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

15 (2) Documentation requirements for applicants.

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

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

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

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

26 (7) Protocols regarding tracking of employees 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) The working group shall create a report expressing its
2 recommendations, which shall incorporate 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, 2013.

6 (e) By August 1, 2013, the Governor, using the report described
7 in subdivision (d), shall either make a formal request to the federal
8 government to implement a program to provide undocumented
9 persons who are agricultural or service industry employees with
10 a permit to work and live in California, or issue an explanation
11 as to why a formal request was not made and make
12 recommendations to the Legislature for how a program to provide
13 undocumented persons who are agricultural or service industry
14 employees with a permit to work and live in California should be
15 structured.

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

21
22 Article 2. Model Program Requirements
23

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

28 11056. (a) The program should not be implemented until a
29 certification is made that there are not enough legal residents in
30 California to fill all open agricultural and service industry jobs
31 in California.

32 (b) The program should be limited to undocumented persons
33 who meet all of the following criteria:

34 (1) The undocumented person must be 18 years of age or older.

35 (2) The undocumented person must live in California.

36 (3) (A) The undocumented person must have performed
37 agricultural or service industry employment in the United States
38 for at least 863 hours or 150 workdays during the 24-month period
39 ending on January 25, 2012, or earned at least seven thousand
40 five hundred dollars (\$7,500) from agricultural or service industry

1 employment in the United States, and must have maintained
2 agricultural or service industry employment for 431 hours or 75
3 workdays, or earned three thousand seven hundred fifty dollars
4 (\$3,750) from that employment, on an annual basis after receiving
5 the permit.

6 (B) An undocumented person should be allowed to conclusively
7 establish employment status by submitting any of the following
8 records demonstrating the employment:

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

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

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

20 (i) Bank records.

21 (ii) Business records.

22 (iii) Remittance records.

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

29 (4) The undocumented person must submit to a fingerprinted
30 criminal history background check.

31 (5) The undocumented person must never have been convicted
32 of a felony, or three or more misdemeanors, as confirmed by the
33 fingerprinted criminal history background check.

34 (6) The undocumented person must pay a fee to cover the costs
35 of administering the program.

36 (c) The program should extend to an undocumented person who
37 is an immediate family member of a person to whom a work permit
38 has been issued. The immediate family member should be required
39 to meet all of the following:

1 (1) *The immediate family member must reside with the*
2 *undocumented person to whom a permit was issued or be enrolled*
3 *in an accredited two- or four-year college or graduate program*
4 *in California.*

5 (2) *The immediate family member must submit to a fingerprinted*
6 *criminal history background check.*

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

10 (4) *The immediate family member must pay a fee to cover the*
11 *costs of administering the program.*

12 11057. *Once the program becomes authorized and operational,*
13 *the following requirements should apply:*

14 (a) (1) *An official or employee of the state government should*
15 *not do any of the following:*

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

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

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

24 (2) *Information furnished by an applicant should be provided*
25 *to both of the following:*

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

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

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

1 (b) The entities administering the program should ensure that
2 employers employing workers authorized under the program make
3 each of the following assurances:

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

9 (2) That the wages and benefits provided to undocumented
10 persons working under a permit issued under the program are
11 comparable to the wages and benefits provided to legal residents,
12 but in no case less than the state minimum wage.

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

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

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

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

27 11059. Not later than three years after the program is
28 implemented, the administering entities should prepare and
29 transmit to the Assembly Committee on Labor and Employment
30 and the Senate Committee on Labor and Industrial Relations a
31 report describing the results of a review of the implementation of,
32 and compliance with, the requirements of the program. The report
33 should address and provide information as to all the following:

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

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

1 *terms and conditions of employment of eligible United States*
2 *workers.*

3 *(c) Recommendations for improving the operation of the*
4 *program for the benefit of participating employers, eligible United*
5 *States workers, participating undocumented workers, and*
6 *governmental agencies involved in the administration of the*
7 *program.*

8 *(d) Recommendations for the continuation or termination of the*
9 *program.*

10
11
12 **All matter omitted in this version of the bill**
13 **appears in the bill as amended in the**
14 **Senate, July 5, 2012. (JR11)**
15