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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 916

Introduced by Assembly Members V. Manuel Pérez and Alejo

(Principal coauthor: Senator Cannella)

**(Coauthors: Assembly Members Achadjian, Bill Berryhill, Cedillo,
and Perea)**

(Coauthor: Senator Rubio)

February 18, 2011

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, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 916, as amended, V. Manuel Pérez. 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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. 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 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 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, and
- 7 \$37,500,000,000 in 2010) and continues to lead the nation in gross
- 8 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 in
- 12 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

1 less, 10 percent are United States citizens, 33 percent have green
2 cards, and 57 percent are unauthorized. Of the newcomers who
3 have been here less than two years, 99 percent are unauthorized.

4 (c) Immigration policies that seek to deport unauthorized
5 farmworkers or force them to abandon their jobs in agriculture
6 would wreak swift and substantial damage to the agricultural
7 industry in California. California agriculture would lose much of
8 its experienced work force that has made it the most productive
9 agricultural area in the world. At the same time these policies
10 would impose a substantial human cost on hundreds of thousands
11 of farmworkers and their children, most of whom are United States
12 citizens.

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

20 (e) Nevertheless, Congress has repeatedly failed to pass
21 comprehensive immigration reform including the Agricultural Job
22 Opportunity, Benefits, and Security Act. Instead Congress is
23 considering making the E-Verify program mandatory for all
24 employers. Requiring agricultural employers to verify whether
25 workers are employment-authorized would eliminate a significant
26 portion of the existing agricultural workforce with no certainty
27 that these vacancies will be filled by legal residents.

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

35 (g) Among California's key economic industry sectors, the
36 hospitality and tourism sector plays a central role in stimulating
37 California's sluggish economy. In 2011, the leisure and hospitality
38 industry accounted for over 100 billion dollars in travel-related
39 spending. According to state records, more than two million
40 employees, or 14 percent of all employees in California, work in

1 leisure, hospitality, and other services. These workers serve as a
2 foundational workforce for the state's 1.8-trillion-dollar economy.

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

9 (i) It is the intent of the Legislature that the executive and
10 legislative branches of the federal government give the highest
11 priority to enacting comprehensive immigration reform legislation
12 that would confer legal status to reside in the United States to
13 persons who would participate in the program described in this
14 act.

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

18
19 CHAPTER 8. CALIFORNIA AGRICULTURAL AND SERVICE WORKER
20 PROGRAM

21
22 Article 1. General Provisions

23
24 11050. As used in this chapter:

25 (a) "Employee" means an agricultural employee, as defined in
26 Section 1140.4 of the Labor Code, and a person employed to
27 provide domestic services, janitorial or building maintenance
28 services, food preparation services, or housekeeping services.

29 (b) "Employer" means an agricultural employer, as defined in
30 Section 1140.4 of the Labor Code, a farm labor contractor, and a
31 service industry employer.

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

34 (d) "Farm labor organization" means a labor organization, as
35 defined in Section 1117 of the Labor Code, that represents
36 employees rendering personal services in connection with the
37 production of agricultural products.

38 (e) "Immediate family member" means a spouse or child under
39 18 years of age or 18 years or older if the child is enrolled in an

1 accredited program as described in paragraph (1) of subdivision
2 (c) of Section 11056.

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

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

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

14 11051. (a) No later than February 1, 2013, the Employment
15 Development Department and the Department of Food and
16 Agriculture shall convene a working group to consult with the
17 United States Department of Homeland Security and the United
18 States Department of Justice to determine the legal roles and
19 responsibilities of federal and state agencies in implementing a
20 program to provide undocumented persons who are agricultural
21 or service industry employees with a permit to work and live in
22 California.

23 (b) The working group shall consist of representatives from the
24 Employment Development Department, the Department of Food
25 and Agriculture, the Attorney General, two Members of the Senate,
26 two Members of the Assembly, and stakeholders, including, but
27 not limited to, agricultural and service industry employers, farm
28 labor contractors, farm labor organizations, and service labor
29 organizations.

30 (c) Issues to be addressed by the working group shall include
31 the following:

32 (1) Qualifying criteria for undocumented persons to apply for
33 the program.

34 (2) Documentation requirements for applicants.

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

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

1 (5) A determination of the process and the agency that should
2 conduct background and security checks and the extent background
3 and security checks should be required.

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

7 (7) Protocols regarding tracking of employees under the
8 program.

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

10 (9) Consideration of the extent to which employees will be
11 allowed to travel out of the country and the requirements for that
12 travel.

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

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

18 (12) Any other procedures and legal requirements associated
19 with implementation of the program required by the federal
20 government to ensure the proper role and responsibilities of the
21 State of California.

22 (d) The working group shall create a report expressing its
23 recommendations, which shall incorporate the model program
24 described in Article 2 (commencing with Section 11055). This
25 report shall be submitted to the Legislature and the Governor no
26 later than July 1, 2013.

27 (e) By August 1, 2013, the Governor, using the report described
28 in subdivision (d), shall either make a formal request to the federal
29 government to implement a program to provide undocumented
30 persons who are agricultural or service industry employees with
31 a permit to work and live in California, or issue an explanation as
32 to why a formal request was not made and make recommendations
33 to the Legislature for how a program to provide undocumented
34 persons who are agricultural or service industry employees with
35 a permit to work and live in California should be structured.

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

Article 2. Model Program Requirements

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

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

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

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

(2) The undocumented person must live in California.

(3) (A) The undocumented person must have performed agricultural or service industry employment in the United States for at least 863 hours or 150 workdays during the 24-month period ending on January 25, 2012, or earned at least seven thousand five hundred dollars (\$7,500) from agricultural or service industry employment in the United States, and must have maintained agricultural or service industry employment for 431 hours or 75 workdays, or earned three thousand seven hundred fifty dollars (\$3,750) from that employment, on an annual basis after receiving the permit.

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

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

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

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

(i) Bank records.

(ii) Business records.

1 (iii) Remittance records.

2 (D) The program should be implemented in a manner that
3 recognizes and takes into account the difficulties encountered by
4 an undocumented person in obtaining evidence of employment
5 due to the person's undocumented status, including the crediting
6 of work in cases in which an undocumented person has been
7 employed under an assumed name.

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

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

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

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

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

23 (2) The immediate family member must submit to a
24 fingerprinted criminal history background check.

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

28 (4) The immediate family member must pay a fee to cover the
29 costs of administering the program.

30 11057. Once the program becomes authorized and operational,
31 the following requirements should apply:

32 (a) (1) An official or employee of the state government should
33 not do any of the following:

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

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

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

3 (2) Information furnished by an applicant should be provided
4 to both of the following:

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

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

11 (3) Any person who files an application under the program and
12 knowingly and willfully falsifies, conceals, or covers up a material
13 fact or makes any false, fictitious, or fraudulent statements or
14 representations, or makes or uses any false writing or document
15 knowing that it contains any false, fictitious, or fraudulent
16 statement or entry should be disqualified from applying under the
17 program.

18 (b) The entities administering the program should ensure that
19 employers employing workers authorized under the program make
20 each of the following assurances:

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

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

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

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

38 11058. (a) An employee permitted to work in this state under
39 the program should be entitled to the same wage, hour, and working

1 condition protections provided to an employee who is a legal
2 resident of California.

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

5 11059. Not later than three years after the program is
6 implemented, the administering entities should prepare and transmit
7 to the Assembly Committee on Labor and Employment and the
8 Senate Committee on Labor and Industrial Relations a report
9 describing the results of a review of the implementation of, and
10 compliance with, the requirements of the program. The report
11 should address and provide information as to all the following:

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

15 (b) Whether the program ensured that undocumented persons
16 authorized to work under the program did not displace eligible,
17 qualified United States workers or diminished the wages and other
18 terms and conditions of employment of eligible United States
19 workers.

20 (c) Recommendations for improving the operation of the
21 program for the benefit of participating employers, eligible United
22 States workers, participating undocumented workers, and
23 governmental agencies involved in the administration of the
24 program.

25 (d) Recommendations for the continuation or termination of the
26 program.

27 *SEC. 4. This act is an urgency statute necessary for the*
28 *immediate preservation of the public peace, health, or safety within*
29 *the meaning of Article IV of the Constitution and shall go into*
30 *immediate effect. The facts constituting the necessity are:*

31 *In order to form a working group as soon as possible to*
32 *coordinate with the federal government, it is necessary for this*
33 *bill take immediate effect.*