

ASSEMBLY BILL

No. 1885

**Introduced by Assembly Members Eduardo Garcia, Caballero,
and Mathis**

(Principal coauthor: Senator Cannella)

January 18, 2018

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 1885, as introduced, Eduardo Garcia. Undocumented workers: California Agricultural and Service Worker Act.

Existing provisions of federal law regulate immigration.

This bill would require the Employment Development Department and the Department of Food and Agriculture to convene a working group to address the issues relating to a work permit program for undocumented persons who are agricultural or service industry employees to work and live in the state and to serve as liaison to the United States Department of Homeland Security and the United States Department of Justice to ensure that state departments are not taking on responsibilities in matters dealing with immigration policy that are the jurisdiction of the federal government. The bill would require the working group to create and submit to the Legislature and Governor a report expressing its recommendations, which would be required to incorporate specified provisions describing a model program. 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. The bill would state the intent of the Legislature to enact necessary implementing legislation if the federal government approves or adopts a program to provide undocumented persons who are agricultural or service industry employees with a permit to work and live in California.

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 and Service Worker Act.

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

4 (a) Since 2007, California’s farms and ranches continue to
5 experience the highest agricultural output in the nation. In 2015,
6 they generated an estimated \$47 billion, which was 17 percent
7 lower than in 2014, when they generated \$54 billion. In 2013, they
8 generated \$51.3 billion. This is a substantial increase from the
9 \$36.3 billion in 2007 and \$37.5 billion in 2010. Despite severe
10 droughts and labor shortages, California continues to lead the
11 nation in cash farm receipts.

12 (b) California’s agricultural industry is dependent on immigrant
13 labor, as evidenced by the most recent National Agricultural
14 Workers Survey, which found that most of the state’s agricultural
15 workers were born in Mexico and that 60 percent of crop workers
16 have been unauthorized for the last 10 years.

17 (c) A previous study of the status of 2,300 farmworkers in
18 California in 13 counties suggested that 95 percent of California
19 agricultural workers were born outside the United States and 91
20 percent in Mexico. On average, they have been in the United States
21 11.1 years. Twenty-two percent have been in the United States
22 two years or less, 10 percent are United States citizens, 33 percent
23 have a Green Card, officially known as a Permanent Resident
24 Card, and 57 percent are unauthorized. Of the newcomers who
25 have been here less than two years, 99 percent are unauthorized.

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

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

17 (f) Nevertheless, the United States Congress has repeatedly
18 failed to pass comprehensive immigration reform, instead choosing
19 to annually introduce primarily interior and border
20 enforcement-only legislation and temporary worker proposals that
21 ignore the socioeconomic profile of this essential workforce.

22 (g) Congress has also had strong advocacy for having the
23 E-Verify program become mandatory for all employers. The
24 agricultural employer community throughout the United States
25 believes the E-Verify program requirement would eliminate a
26 significant portion of the existing agricultural workforce with no
27 certainty that these vacancies will be filled by United States citizens
28 and legal residents.

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

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

1 14 percent of all employees in California, work in leisure,
2 hospitality, and other services. These workers serve as a
3 foundational workforce for the state's \$1.8 trillion economy.

4 (j) Despite well-documented labor shortages, especially in
5 agriculture where hourly wages have increased significantly and
6 housing and health care services are being offered, United
7 States-born citizens continue to avoid employment in agriculture.
8 Observers have also begun to see the consequences to the health
9 care of the current agricultural workforce in the state of the
10 immigration enforcement activities of the United States Department
11 of Homeland Security. These health care consequences have been
12 well documented over a two-year study of agricultural workers
13 and their healthcare profiles included in the longest running
14 longitudinal birth cohort study based in a United States farmworker
15 community, the Center for the Health Assessment of Mothers and
16 Children of Salinas (CHAMACOS) Study. The two-year study
17 found a clear link between the fear of deportations and multiple
18 heart health risk factors in female farmworkers. The researchers
19 at UC San Francisco and UC Berkeley's Center for Environmental
20 Research and Children's Health published this recent study in
21 January 2018, further underscoring the vulnerability of the current
22 agricultural workforce.

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

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

35 (m) It is the intent of the Legislature that the costs of the working
36 group established pursuant to this act be covered by nonstate
37 funding sources.

38 SEC. 3. Chapter 8 (commencing with Section 11050) is added
39 to Part 1 of Division 3 of the Unemployment Insurance Code, to
40 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 a
13 service industry employer.

14 (c) “Farm labor contractor” shall have the same meaning as 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 the production of
19 agricultural products.

20 (e) “Immediate family member” means a spouse or child under
21 18 years of age or 18 years of age or older if the child is enrolled
22 in an accredited program as described in paragraph (1) of
23 subdivision (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,
26 provide domestic services, janitorial or building maintenance
27 services, food preparation services, or housekeeping services.

28 (g) “Service labor organization” means a labor organization, as
29 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 March 1, 2019, the Employment
36 Development Department and the Department of Food and
37 Agriculture shall determine the extent of labor shortages in the
38 agricultural and service industries in the state. This information
39 shall be provided not later than March 20, 2019, to the United
40 States Department of Labor, the United States Department of

1 Agriculture, and the United States Department of Homeland
2 Security. The information shall also be provided to members of
3 the California congressional delegation. Recognizing the short
4 timeframe for this work, the Employment Development Department
5 and the Department of Food and Agriculture are also requested to
6 provide as much detail as possible associated with these labor
7 shortages and the consequences to the state's economy. Lastly, it
8 is requested that the Employment Development Department and
9 the Department of Food and Agriculture address whether there is
10 a viable, available, and efficient workforce of United States-born
11 workers in California or other states that would be able to fill these
12 labor shortages.

13 (b) No later than April 1, 2019, the Employment Development
14 Department and the Department of Food and Agriculture shall
15 convene a working group to address the issues listed in subdivision
16 (d) and serve as liaison to the United States Department of
17 Homeland Security and the United States Department of Justice
18 to ensure that state departments are not taking on responsibilities
19 in matters dealing with immigration policy that are the jurisdiction
20 of the federal government.

21 (c) The working group shall consist of representatives from the
22 Employment Development Department, the Department of Food
23 and Agriculture, the California Attorney General, two Members
24 of the Senate appointed by the Senate Committee on Rules, two
25 Members of the Assembly appointed by the Speaker of the
26 Assembly, and stakeholders, including, but not limited to,
27 agricultural and service industry employers, farm labor contractors,
28 farm and service labor organizations, academia, and policy experts
29 in the field of immigration reform policy.

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

32 (1) Qualifying criteria for undocumented persons to apply for
33 a permit to work and live in California.

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 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 (e) Notwithstanding Section 10231.5 of the Government Code,
23 the working group, in compliance with Section 9795 of the
24 Government Code, shall create a report expressing its
25 recommendations, which shall incorporate the model program
26 described in Article 2 (commencing with Section 11055). This
27 report shall be submitted to the Legislature and the Governor no
28 later than July 1, 2019.

29 (f) By August 1, 2019, the Governor, using the report described
30 in subdivision (d), shall either make a formal request to the federal
31 government to implement a program to provide undocumented
32 persons who are agricultural or service industry employees with
33 a permit to work and live in California, or issue an explanation as
34 to why a formal request was not made and make recommendations
35 to the Legislature for how a program to provide undocumented
36 persons who are agricultural or service industry employees with
37 a permit to work and live in California should be structured.

38 (g) If the federal government approves or adopts a program to
39 provide undocumented persons who are agricultural or service
40 industry employees with a permit to work and live in California,

1 it is the intent of the Legislature to enact necessary implementing
2 legislation.

3

4

Article 2. Model Program Requirements

5

6 11055. It is the intent of the Legislature that this article provide
7 a model and framework for a program to provide undocumented
8 persons who are agricultural or service industry employees with
9 a permit to work and live in California.

10 11056. (a) The program shall be implemented based on the
11 information gathered by the Employment Development Department
12 and the Department of Food and Agriculture and provided to the
13 federal government and members of the California congressional
14 delegation pursuant to subdivision (a) of Section 11051.

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

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

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

19 (3) (A) The undocumented person must have performed
20 agricultural or service industry employment in the United States
21 for at least 863 hours or 150 workdays during the 24-month period
22 ending on January 25, 2019, or earned at least seven thousand five
23 hundred dollars (\$7,500) from agricultural or service industry
24 employment in the United States, and must have maintained
25 agricultural or service industry employment for 431 hours or 75
26 workdays, or earned three thousand seven hundred fifty dollars
27 (\$3,750) from that employment, on an annual basis after receiving
28 the permit.

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

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

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

38 (C) An undocumented person who is unable to submit a
39 document described in subparagraph (B) should be allowed to
40 satisfy the requirement in subparagraph (A) by submitting at least

1 two other types of reliable documents that provide evidence of
2 employment, including any of the following:

- 3 (i) Bank records.
- 4 (ii) Business records.
- 5 (iii) Remittance records.

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

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

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

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

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

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

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

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

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

34 11057. Once the program becomes authorized and operational,
35 the following requirements should apply:

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

38 (A) Use information furnished by an applicant for purposes of
39 applying for a permit under the program or any information

1 provided by an employer or former employer for any purpose other
2 than to make a determination on the application.

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

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

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

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

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

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

22 (b) The entities administering the program should ensure that
23 employers employing workers authorized under the program make
24 each of the following assurances:

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

30 (2) That the wages and benefits provided to undocumented
31 persons working under a permit issued under the program are
32 comparable to the wages and benefits provided to legal residents
33 who are United States citizens, but in no case less than the state
34 minimum wage.

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

39 (c) An employer of a person permitted to work in this state under
40 the program should provide a written record of employment,

1 demonstrating the hours worked and wages paid, to the employee
2 issued a permit, and provide a copy of the record to the state.

3 11058. (a) An employee permitted to work in this state under
4 the program should be entitled to the same wage, hour, and working
5 condition protections provided to an employee who is a legal
6 resident of California.

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

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

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

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

24 (c) Recommendations for improving the operation of the
25 program for the benefit of participating employers, eligible United
26 States workers, participating undocumented workers, and
27 governmental agencies involved in the administration of the
28 program.

29 (d) Recommendations for the continuation or termination of the
30 program.

31 (e) Recommendations to increase and improve enforcement of
32 state labor law protections for employees in the agricultural and
33 service industry to provide greater assurances that these workers'
34 rights and worksite conditions are in compliance by employers.

35 (f) Recommendations for addressing the process for determining
36 and providing local and regional affordable housing needs for
37 farmworkers.

38 (g) Recommendations for how the individual employer, pool
39 of employers, or countywide health care system can provide an
40 essential package of comprehensive preventive primary health

- 1 care services, including, but not limited to, mental health and dental
- 2 care for farmworkers participating in this program.

O