

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 2543 (Arambula)  
Version: March 21, 2024  
Hearing Date: June 25, 2024  
Fiscal: Yes  
Urgency: No  
ID

**SUBJECT**

Small Business Procurement and Contract Act: eligibility

**DIGEST**

This bill specifies that the Small Business Procurement and Contract Act is a state law that provides assistance and services for undocumented persons within the meaning of a federal law providing for an exemption to a general federal prohibition on state laws that provide public benefits to undocumented persons.

**EXECUTIVE SUMMARY**

Small businesses are an essential part of the California economy and of communities across the state. They provide vital services where people live, support entrepreneurship and innovation in the marketplace, and offer culturally-relevant goods and services to communities through California. Many of the state's small businesses are immigrant-owned. While many immigrant business owners have some form of immigration status, others do not. The California Small Business Procurement and Contract Act was enacted to aid and assist the state's small businesses and facilitate their participation in contracts and services provided to the state through preferences, special consideration, and other benefits. Federal law prohibits state laws from providing individuals without lawful immigration status public benefits, unless a state enacts a law after August 22, 1996 that affirmatively provides for eligibility for the public benefit for undocumented individuals. In order to ensure that undocumented small business owners can benefit from the preferences and other benefits of the Small Business Procurement and Contract Act (Act), this bill specifies in the Act that the Act is a state law that provides assistance and services to undocumented persons pursuant to the exemption in federal law. AB 2543 is sponsored by the Central Valley Immigrant Integration Collaborative and is supported by the California Immigrant Policy Center and the Latino Community Foundation. The Committee has received no timely opposition. It passed out of the Senate Governmental Organization Committee on a vote of 10 to 5.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and specifies that certain immigrants shall not be eligible for any state or local public benefit, except as provided.
  - a) Defines “state or local public benefit” to mean the following:
    - i. any grant, contract, loan, professional license, or commercial license provided by an agency or state or local government or by appropriated funds of a State or local government; and
    - ii. any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.
  - b) Provides specified state or local public benefits that are exempt from the prohibition in (1). (8 U.S.C. § 1621.)
- 2) Specifies that a state may provide that undocumented immigrants who are not lawfully present in the United States are eligible for a state or local public benefit for which the individual would otherwise be ineligible under this Act only through the enactment of a state law after August 22, 1996, that affirmatively provides for that eligibility. (8 U.S.C. § 1621(d).)
- 3) Requires, under the Small Business Procurement and Contract Act (Act), state agencies to take certain actions, including providing preferences to and special consideration for small businesses, in order to facilitate the participation of small businesses and microbusinesses in the provision of goods, information technology, and services to the state, and in the construction of state facilities. (Gov. Code § 14835 et seq.)
- 4) Defines a “small business” to mean an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with its affiliates, has 100 or fewer employees, and average annual gross receipts of \$10,000,000 or less over the previous three years, or is a manufacturer with 100 or fewer employees and less than \$15,000,000 average annual gross receipts, as specified. (Gov. Code § 14837(d).)
- 5) Defines a “microbusiness” as a small business which, together with affiliates, has average annual gross receipts of \$5 million, as may be adjusted to reflect changes in

the California Consumer Price Index, or less over the previous three years, or is a manufacturer with 25 or fewer employees. (Gov. Code § 14837(d)(2).)

- 6) Requires DGS and other state agencies that enter into contracts concerning the provisions of goods, information technology, services, and construction of state facilities, to establish goals for the extent of participation of small businesses, including microbusinesses, for those contracts, with a minimum goal of 25 percent procurement. (Gov. Code § 14838(a).)
- 7) Gives the Department of General Services (DGS) sole responsibility for certifying and determining the eligibility of small businesses and microbusinesses under the Act. (Gov. Code § 14839.1.)
- 8) Establishes the Disabled Veteran Business Enterprise (DVBE) Program within DGS and tasks the program with establishing a uniform process for state contracting that would provide a DVBE participation incentives to eligible bidders. (Gov. Code § 14839.)
- 9) Establishes a process by which DGS may certify a small business or DVBE for eligibility for the benefits and preferences provided by the Act, which includes a requirement that an applicant submit a written declaration, under penalty of perjury, that information submitted to DGS is true and correct, as specified. (Gov. Code § 14840.)
- 10) Requires each state agency that significantly regulates or impacts small businesses to designate at least one person to serve as a small business liaison for the agency. The small business liaison is responsible for, among other things, receiving and responding to complaints received by the agency from small businesses and assisting in ensuring that the procurement and contracting processes of the entity are administered in order to meet or exceed the goal of 25% small business participation. (Gov. Code § 14846.)

This bill specifies that the Legislature finds and declares that the Small Business Procurement and Contract Act is a state law that provides assistance and services for undocumented persons within the meaning of Subdivision (d) of Section 1621 of Title 8 of the United States Code.

## COMMENTS

### 1. Author's statement

According to the author:

Despite their importance to local communities and their economic contribution to the state, many small businesses are unable to access the benefits of the small business certification program. These businesses offer the same services, products and benefits as other certified businesses. However, their owners may not have proof of lawful status in this country, even when the federal government has issued them an Employer Identification Number. This prevents them from accessing the benefits of small business certification, restricting their ability to expand and continue to help the state's economy grow.

### 2. Immigrant-owned small businesses are vital parts of California's communities

Small businesses are an essential part of the California economy and of communities across the state. They provide vital services where people live, support entrepreneurship and innovation in the marketplace, and offer culturally-relevant goods and services to communities through California. Studies have found that minority-owned small businesses, which account for 46 percent of all of the state's small businesses, support 10.9 percent of all jobs in the state, generate 3.5 percent of the state's economic output, and contribute \$192.8 billion in economic output a year.<sup>1</sup>

Many of the state's small businesses are immigrant-owned. In fact, 42% of new companies in the state are founded by immigrants.<sup>2</sup> While many immigrant business owners have some form of immigration status, others do not. It is estimated that there are 892,400 undocumented entrepreneurs across the nation, and many more undocumented Californians are becoming business owners every day.<sup>3</sup> Many undocumented immigrants start businesses in part because starting a business does not require work authorization from the federal government or a social security number, two things that undocumented immigrants cannot obtain due to their lack of

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<sup>1</sup> California Office of the Small Business Advocate, *The State of Diverse Businesses in California* (Jun. 2023), Executive Summary, available at <https://business.ca.gov/californias-minority-owned-small-businesses-contribute-192-8-billion-in-economic-output-and-support-over-2-5-million-jobs-annually-new-report-shows/>.

<sup>2</sup> David Wagner, "Immigrant entrepreneurs continue to shape California's economy," *Cal Matters* (Jun. 19, 2019), available at <https://calmatters.org/california-divide/2019/06/immigrant-entrepreneurs-california-economy/>.

<sup>3</sup> *New Americans in California*, American Immigration Council (2022), available at <https://map.americanimmigrationcouncil.org/locations/california/#>; Cindy Carcamo, "Shut out of DACA, and traditional jobs, young immigrants start businesses to get ahead," *Los Angeles Times* (Sept. 15, 2022), available at <https://www.latimes.com/california/story/2022-09-15/10-years-ago-this-immigrant-didnt-qualify-for-daca-protection-now-hes-an-entrepreneur>.

immigration status.<sup>4</sup> Thus, access to resources and support for starting a business is a powerful tool for the state's undocumented community members who wish to start a business, and promoting undocumented immigrant-owned businesses is essential for the state and its economy.

### 3. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996

In 1996, President Bill Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). (Pub. L. 104-193, 104th Cong. 1996.) PRWORA substantially reformed the welfare system, including how immigrants may qualify for public benefits. It limited many immigrants' eligibility for public benefits to those who were considered a qualified immigrant, which included only those of certain immigration statuses. For Federal means-tested public benefits, PRWORA limited such benefits to qualified immigrants who had resided in the United States for at least five years.

In addition, PRWORA put into place the provisions relevant to this bill. Those provisions make any immigrant who is not a qualified immigrant under the statute, a nonimmigrant under immigration law, or an immigrant who has been temporarily paroled into the United States for urgent humanitarian reasons or significant public benefit, ineligible for state or local public benefits, with specified exceptions. (8 U.S.C. § 1621.) PRWORA provided that a state or local public benefit for the purposes of its prohibition includes: any grant, contract, loan, professional license, or commercial license; any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit. (8 U.S.C. § 1621(c).) However, PWRORA included an important caveat to its prohibition: a state may provide that an immigrant without lawful status in the United States is eligible for a State or local public benefit through enactment of a state law that affirmatively provides for such eligibility. (8 U.S.C. § 1621(d).)

### 4. California's Small Business Procurement and Contract Act

The California Small Business Procurement and Contract Act (the Act) was enacted to aid and assist the state's small businesses and facilitate their participation in contracts and services provided to the state. (Gov. Code § 14835 et seq.) The Act requires state agencies and the Director of DGS to facilitate the participation in and procurement of state contracts for goods, services, information technology, and construction by small businesses, with the minimum goal of having 25% of agencies' contracts be procured by small businesses. (Gov. Code § 14838.) The Act directs agencies to provide a small business preference in the award of contracts, give special consideration to small businesses and microbusinesses with regard to required qualifications, award contracts to small businesses and microbusinesses whenever feasible, and make continuous

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<sup>4</sup> *Id.*

efforts to expand the pool of small businesses and microbusinesses that participate in the agency's contracts. (Gov. Code § 14838.) The Act also provides a number of benefits and preferences for small businesses in projects for construction or improvement of the state's infrastructure. (Gov. Code § 14838.1.)

Under the Act, a small business is defined as one that is independently owned and operated, not dominant in a field of operation, located in California, owned by individuals domiciled in California, and meet certain requirements related to the number of employees it has and its annual gross receipts. (Gov. Code § 14837(d).) DGS is responsible for certifying small businesses that qualify to be considered by agencies for the preferences and benefits under the Act. (Gov. Code § 14839.1.)

5. AB 2584 ensures that businesses owned by individuals without immigration status may access the preferences and benefits of the Small Business Procurement and Contract Act

AB 2584 clarifies that the Small Business Procurement and Contract Act is the exception to the PRWORA's prohibition on a states providing public benefits to undocumented individuals. As the exception to PRWORA requires that any state statute that seeks to be exempt from PRWORA's prohibition explicitly state that it provides eligibility for undocumented individuals, AB 2584 adds language to the Act specifying just that.

There has been some litigation around PRWORA and other state laws that provide benefits to undocumented individuals. In *Martinez v. Regents of University of California*, out-of-state students of the University of California challenged California's law providing undocumented individuals with in-state tuition when they have attended California high schools and met other requirements. (*Martinez v. Regents of University of California*, (2010) 50 Cal. 4th 1277.) The California Supreme Court determined that the law complied with PRWORA's exception because it was enacted after PRWORA, and stated in numerous provisions that it applies to persons without lawful immigration status. (*Id.*, 1294.) In another case, *In Re Garcia*, the California Supreme Court found that an undocumented applicant for admission to the State Bar as a licensed attorney was not precluded from being admitted because Business and Professions Code Section 6064 explicitly allowed undocumented individuals to be admitted to the State Bar. (*In re Garcia*, (2014) 58 Cal. 4th 440.) While the power to regulate immigration is exclusively a federal power, any question of preemption raised by AB 2584 can be easily dispensed with because PRWORA's exemption expressly permits AB 2584's provisions. (*Martinez*, 50 Cal. at 1298.)

6. Arguments in support

According to the Central Valley Immigrant Integration Collaborative, which is the sponsor of AB 2543:

AB 2543 is a necessary reform that has the potential to benefit thousands of immigrants in the Central Valley and the State of California, opening doors for the expansion of their businesses and enabling them to strengthen and diversify the regional and state economies.

Despite their importance to local communities and their economic contribution to the state, many small businesses are unable to access the benefits of the small business certification program. These immigrant-owned businesses offer the same services, products and benefits as other certified businesses. However, they are not able to obtain small business certification due to the citizenship or immigration status of their owners, even when the federal government has issued them an Employer Identification Number to engage in business. This prevents them from accessing the benefits of small business certification, restricting their ability to expand and continue to help the state's economy grow.

### **SUPPORT**

Central Valley Immigrant Integration Collaborative (sponsor)  
California Immigrant Policy Center  
Latino Community Foundation

### **OPPOSITION**

None received

### **RELATED LEGISLATION**

#### **Pending Legislation:**

AB 2586 (Alvarez, 2024) prohibits the University of California, the California State University, and California Community Colleges from disqualifying a student from being hired due to their failure to provide proof of federal work authorization, with exceptions. AB 2586 is currently in the Senate Judiciary Committee.

AB 1840 (Arambula, 2024) specifies that an applicant under the California Dream for All Program that provides shared appreciation loans to qualified first-time homebuyers who meets all other requirements for a loan shall not be disqualified solely based on the applicant's immigration status, and specifies that the Program is a state law within the meaning of subsection (d) of Section 1621 of Title 8 of the United States Code. AB 1840 is currently in the Senate Judiciary Committee.

AB 1431 (Zbur, 2023) would have, upon appropriation of the Legislature, established the California Housing Security Program to provide a housing subsidy to eligible persons to reduce housing insecurity. Would have specified that an undocumented

person who meets the eligibility criteria is eligible to receive the subsidy within the meaning of subsection (d) of Section 1621 of Title 8 of the United States Code. AB 1431 died in the Assembly Housing and Community Development Committee.

Prior Legislation:

AB 915 (Chiu, 2021) would have codified a 25% small business goal for state procurement, and proposed a number of actions to enhance the ability and commitment of state agencies to include small businesses, disadvantaged business enterprises and DVBEs in state contracting. AB 915 died in the Senate Appropriations Committee.

AB 82 (Committee on Budget, Ch. 14, Stats. 2020) established, among other things, the Social Entrepreneurs for Economic Development Initiative to support emerging entrepreneurs in targeted populations, regardless of immigration status.

SB 1159 (Lara, Ch. 752, Stats. 2014) prohibited licensing boards under the Department of Consumer Affairs from denying licensure to an applicant based on their citizenship or immigration status.

AB 540 (Firebaugh, Ch. 814, Stats. 2001) provided that a person who has attended a California high school for at least three years, has graduated from a California high school or equivalent, will attend an accredited institution of higher education in California, and has filed an affidavit if they are without lawful immigration status may be eligible for in-state tuition at a California Community College or State University.

**PRIOR VOTES:**

Senate Committee on Governmental Organization (Ayes 10, Noes 5)

Assembly Floor (Ayes 61, Noes 10)

Assembly Appropriations Committee (Ayes 11, Noes 4)

Assembly Jobs, Economic Development, and the Economy Committee (Ayes 7, Noes 0)

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