

**Issue:**

Some South Dakota farmers and ranchers, such as dairy producers, face a shortage of workers. An American Farm Bureau economic analysis concluded that \$5 to \$9 billion in annual production is in jeopardy if the employee shortage cannot be met.

Discussions about reforming the immigration system must assure that our state and nation's agriculture have a legal, stable supply of competent individuals who are willing and able to work.

**Background:**

Implementing a state immigration policy was a controversial issue during the 2011 Legislative Session.

Although no one was able to present documentation about the extent of the illegal immigrant population in South Dakota, one estimate is that perhaps illegal immigrants represent two percent of our population. Proponents of immigration reform argued that illegal immigrants cost the public in areas of education, health care, and law enforcement, as well as taking jobs away from other workers. They said that we need to do something proactively at the state level because federal agencies are not doing their job.

Opponents testified that we should not create a patchwork of fifty different immigration policies, and that efforts to place additional burdens on South Dakota employers was unnecessary and costly. One dairy producer testified that South Dakota's low unemployment rate make it more challenging to find workers, and that we need to find a viable system for identifying a legal workforce.

Employing those who are in the U.S. illegally is a violation of federal law, and consequences for employers can be severe. However, determining the legal status of prospective employees can be difficult, if not impossible, for farm and ranch employers. An employer is strictly limited in what he or she may ask of prospective employees to determine if they are authorized to work. If the employer requests more or different documents than allowed by law, or more than the original documents provided by a prospective employee, then the employer could be subject to a Justice Department investigation or a lawsuit for unlawful discrimination.

When no domestic workers can be found to work on farms and ranchers, agricultural employers may recruit and hire temporary foreign workers under the H-2A seasonal agricultural worker program. But the H-2A program is bureaucratic, expensive, does not cover all parts of agriculture, and does little to encourage grower participation.

Others are promoting the E-Verify program, a voluntary internet-based system employers can use to check the work authorization status of employees. They would like to make it mandatory for all employers to use. However, the current E-Verify program has a high error rate - one report indicated that 54% of unauthorized workers run through the system resulted in an authorization to work, largely attributed to identity fraud.

**AFBF Policy:**

- Farm Bureau supports a worker verification system that improves the current E-Verify to eliminate error rates and protect against identity fraud. Farm Bureau opposes any mandate on employers to use E-Verify in its current form.

- Farm Bureau strongly supports permanent reforms to the H-2A agricultural guest worker program that:
  - Allow employers to pay workers a prevailing, market-based wage;
  - Accommodate the needs of modern agriculture, including year-round operations, whose labor needs have changed since the inception of the program; and
  - Eliminate unnecessary bureaucracy so it is more responsive and timely to employers' and workers' needs, while diminishing its propensity to be a magnet for costly and unnecessary litigation.
- Farm Bureau supports reforms of the current system provided that they are coupled with solutions to agriculture's ongoing labor shortage, provide a safe harbor for employers who act in good faith and are proven to work in the agricultural sector. Mandating E-verify for agricultural employers without providing a solution to the issues of agricultural labor shortages in the U.S. could have significant negative consequences. Farm Bureau does not support making E-Verify mandatory in its current form. Any proposal to broaden the applicability of E-Verify must be accompanied by provisions that help to resolve the labor shortage in agriculture.
- Farm Bureau opposes amnesty but supports providing an opportunity for some of those who have worked in agriculture to adjust to legal status.

**SDFB Policy:**

Does not address immigrant labor issues.

**Questions:**

- 1) A patchwork system of 50 different state laws would be cumbersome, so should SD just wait for the federal government to act, or should we go ahead and pass a state law recognizing that Congress has done nothing about this problem and likely won't in the near future?
- 2) What provisions should state policy contain in reference to agricultural workers?
- 3) Should SD local and state law enforcement officials be empowered to check a worker's legal status and turn violators over to federal officials?