

---

## SENATE COMMITTEE ON HUMAN SERVICES

Senator Hurtado, Chair  
2019 - 2020 Regular

---

<b>Bill No:</b>	AB 826		
<b>Author:</b>	Santiago		
<b>Version:</b>	August 4, 2020	<b>Hearing Date:</b>	August 10, 2020
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Taryn Smith		

**Subject:** Emergency food assistance: undocumented persons

### SUMMARY

This bill requires the California Department of Social Services (CDSS) to provide food assistance, as specified, to all persons in this state, regardless of legal status, who have had their income or physical health, or the income or physical health of a member of their household, negatively affected by COVID-19, upon the appropriation of funds by the Legislature for that purpose. The bill allows such a person to receive \$300 per month, for 6 months, with a limit of 2 adults receiving funds per household, for a total of \$600 per household per month. The bill also requires CDSS to deliver these food benefits through food vouchers or gift cards to retailers distributed through participating nonprofit organizations, as specified.

### ABSTRACT

#### Existing Law:

- 1) Establishes under federal law the Supplemental Nutrition Assistance Program (SNAP) to promote the general welfare and to safeguard the health and wellbeing of the nation's population by raising the levels of nutrition among low-income households. (*7 USC Section 2011 et seq.*)
- 2) Established The Emergency Food Assistance Program (TEFAP) within the Emergency Food Assistance Act to supplement the diets of low-income Americans by providing them with emergency food assistance at no cost. (*7 USC 7501, et seq.*)
- 3) Establishes citizenship requirements for SNAP benefits, including that undocumented immigrants are not eligible for SNAP, as specified. (*7 CFR 273.4*)
- 4) Establishes in California statute the CalFresh program to administer the provision of federal SNAP benefits to families and individuals meeting specified criteria. (*WIC 18900 et seq.*)
- 5) Permits CDSS to administer outreach programs and adopt rules and regulations requiring counties to conduct outreach programs to the extent permitted by federal law and eligible for federal financial participation. (*WIC 18904.2*)

- 6) Requires CDSS to establish a Food Assistance Program to provide assistance for persons who are not eligible for federal SNAP benefits solely due to their immigration status. (*WIC 18930*)

**This Bill:**

- 1) Requires CDSS to, upon the appropriation of funds by the Legislature, provide food assistance to all persons in this state, regardless of legal status, who have had their income or physical health, or the income or physical health of a member of their household, negatively affected by COVID-19. Further requires, to the extent possible, funding prioritize those persons excluded from other forms of food assistance.
- 2) Requires funds provided for food assistance be used only for the purpose of purchasing food and be limited to the types of purchases allowed under the CalFresh program, including the purchase of hot, prepared foods.
- 3) Requires that a person receiving funds for food assistance receive three hundred dollars (\$300) per month, for six months. Further limits the assistance to two adults per household, for a maximum of six hundred dollars (\$600) per household per month.
- 4) Requires CDSS to deliver the benefits through food vouchers or gift cards to retailers distributed through participating nonprofit organizations, including, but not limited to, all of the following:
  - a) Existing Emergency Food Assistance Program (EFAP) providers under contract with the department;
  - b) Members of the California Association of Food Banks;
  - c) Nonprofit organizations that have experience serving communities with persons qualified for the food benefit, including, but not limited to, nonprofit organizations under contract with the department for the Disaster Relief Assistance for Immigrants (DRAI) Project; and
  - d) Nonprofit organizations under contract with the department for CalFresh outreach programs, as specified.
- 5) Defines “retailer” to mean grocery stores and farmers’ markets serving communities with persons qualified for the food benefit. Requires CDSS, in consultation with specified entities, to determine the retailers for each county.
- 6) Requires that, to the extent possible, funds shall maximize local employment and economic development, unless food deserts or other access limitations necessitate otherwise.

**FISCAL IMPACT**

The current version of bill has not been analyzed by a fiscal committee.

## BACKGROUND AND DISCUSSION

### **Purpose of the Bill:**

According to the author, “In the midst of the COVID-19 crisis, millions of Californians are barely keeping their heads above water when it comes to paying rent and buying groceries. Our community of undocumented immigrants have been hit particularly hard by this pandemic. Undocumented workers and their families continue to provide essential services while putting their own lives on the line, yet are ineligible for almost all federal and state social safety nets. California must ensure basic needs are met for all Californians, including undocumented immigrants who have either lost their jobs or have become ill due to COVID-19. This bill will provide desperately needed food assistance, so that people aren’t worrying about where their next meal will come from in the middle of a global pandemic.”

### *COVID-19*

On March 4, 2020, Governor Newsom declared a State of Emergency due to the COVID-19 pandemic. On March 19, 2020, Governor Newsom issued Executive Order #N-33-20 which was intended to reduce exposure to the virus by establishing a statewide stay at home order for non-essential workers and by implementing social distancing when conducting essential business. Similar stay at home orders were put into place all over the country. While the stay at home order has been lifted, less restrictive containment measures that limit exposure to the virus are in place.

The economic repercussions of the stay at home orders and other containment measures were immediate and widespread as applications for public assistance and unemployment benefits spiked. Since March 19, 2020, over 7 million Californians have submitted initial unemployment claims. According to the Legislative Analyst Office: “under normal conditions, about 50,000 California workers file for unemployment insurance each week. Since the beginning of the COVID-19 outbreak in March, an average of 400,000 workers have filed for unemployment benefits each week.” Additionally, monthly CalFresh applications spiked from about 39,000 in March 2019 to 96,000 in March 2020.

The federal government responded to the crashing economy with a Pandemic Unemployment Assistance payment of \$600 per week via the Coronavirus Aid, Relief, and Economic Security (CARES) Act. This payment also helps unemployed persons who are not usually eligible for regular unemployment insurance benefits, such as business owners, self-employed workers, independent contractors, and those with a limited work history who are out of business or have significantly reduced their services as a direct result of the pandemic. These benefits are not available to undocumented immigrants.

In California, Pandemic EBT (P-EBT) was established to help families who have school age children that are eligible for free or reduced price school meals while schools are closed due to the coronavirus pandemic. Under P-EBT, families get up to \$365 per eligible child on their P-

EBT card to use on food and groceries. Access to P-EBT is not contingent on immigration status.

California has also provided one-time state-funded DRAI benefits to undocumented adults who are ineligible for other forms of assistance, including pandemic unemployment benefits provided under the CARES Act, because of their immigration status.

Funds were dispensed to eligible individuals through twelve immigrant-serving nonprofit organizations. An undocumented adult who qualified could receive \$500 in direct assistance, with a maximum of \$1,000 in assistance per household. By design, this assistance was available until the funding was spent or until June 30, 2020, at the latest. Applicants were considered on a first come, first served basis. As of July 1, 2020, over 104,830 applications for DRAI were approved and the all of allocated funds were disbursed.<sup>1</sup>

Eligible individuals were required to provide information that they (1) are an undocumented adult (person over the age of 18); (2) are not eligible for federal COVID-19 related assistance, like the CARES Act tax stimulus payments or pandemic unemployment benefits; and, (3) have experienced a hardship as a result of COVID-19.

This disaster relief assistance is not means-tested and is one-time assistance. The federal government does not list this assistance as a public benefit for a public charge consideration. However, USCIS has not issued specific guidance related to this assistance.

#### *COVID-19 Impact on Undocumented Immigrants*

This bill is intended to create a new food benefit for people, regardless of legal status, who have had their income or physical health, or the income or physical health of a member of their household, negatively affected by COVID-19. The bill further requires, to the extent possible, funding shall prioritize those persons excluded from other forms of food assistance.

The author indicates the intended primary recipient of the benefit would be people who are not eligible for other benefits due to immigration status.

There are over 2 million undocumented immigrants living in California, many of whom are ineligible for state or federal public benefits due to their immigration status. However, data collected by news outlets and public health organizations demonstrate that communities of color, particularly the Latinx community, are disproportionately contracting and impacted by the virus.

The Centers for Disease Control reports that Latinos are hospitalized from the virus at four times the rate of white Americans. Additionally, 25 percent of the deaths from coronavirus have been Latinos, despite the fact that Latinos are only 18 percent of the population. While it is believed a variety of factors contribute to this disproportionate impact, overrepresentation of Latinx community in the essential workforce, which creates more exposure to the virus, is believed to play an important role. Additionally, undocumented immigrants have limited access to health insurance and healthcare. On top of the health disparities, undocumented immigrants are economically impacted because they cannot access benefits such as CalFresh, unemployment

---

<sup>1</sup> <https://www.cdss.ca.gov/Portals/9/Immigration/COVID/DRAI-Allocations-63020.pdf>

insurance and federal CARES Act assistance.

While our state has taken proactive measures to mitigate the consequences of COVID-19 for citizens and noncitizens, many undocumented immigrants are expressly excluded from many safety net programs.

### *Food Assistance Programs*

Food assistance is provided to needy individuals through a variety of federal, state and local programs. California's largest food assistance program is CalFresh, which provides special ATM-like cards to qualified low-income individuals and families. These "EBT" cards are used in grocery stores and farmers markets to purchase authorized food products. California's network of food banks, food pantries and soup kitchens also help to feed millions of people by distributing food in local communities.

By federal law, CalFresh benefits are not available to undocumented immigrants. However, California provides state-funded food benefits through the California Food Assistance Program (CFAP) for qualified non-citizens who are not eligible for federal benefits due to their immigration status. CFAP provides monthly food benefits to legal noncitizens 18 years of age or older who meet all federal SNAP eligibility criteria but have resided in this country for fewer than five years and are therefore not eligible for federal SNAP benefits. Like CalFresh, CFAP benefits are provided via EBT cards and can only be used to purchase food products authorized under CalFresh.

Those in need of food assistance can also get help from food distribution programs. Food banks collect and distribute food to hunger-relief entities, like food pantries or food closets, which in turn distribute the food within their local communities. They distribute bags or boxes of food directly to those in need. Typically, these food distribution programs do not require clients to demonstrate necessity or eligibility, thus undocumented immigrants may receive these services.

The Emergency Food Assistance Program (TEFAP) is a federal food distribution program that supports food banks, food pantries, soup kitchens, and other emergency feeding organizations serving low-income Americans. Federal assistance takes the form of federally purchased commodities—including fruits, vegetables, meats, and grains—and funding for administrative costs. Food aid and funds are distributed to states using a statutory formula that takes into account poverty and unemployment rates. Low-income people who meet federal income guidelines and who resided in the geographical area being served may receive this benefit. For example, a household of three with income of less than \$30,240 could be eligible for TEFAP. In California, TEFAP operates as EFAP. Undocumented immigrants may receive this benefit, if they "self-attest" to the fact that they are low income and live within a designated geographical area.

### *Public Charge*

Creating a new benefit for undocumented immigrants may impact the future status of those who receive the benefit, as the federal government has adopted a "public charge rule" which requires that a person who applies for admission or adjustment of status and is likely at any time to become a public charge, is inadmissible.

On February 24, 2020, the United States Citizenship and Immigration Services (USCIS) implemented the Inadmissibility on Public Charge Grounds final rule nationwide. The final rule defines public charge as an alien who receives or is likely to receive one or more public benefits (as defined in the final rule) for more than 12 months, in total, within any 36-month period (receipt of two benefits in one month counts as two months). A foreign national seeking admission to the United States or seeking to adjust status to that of a lawful permanent resident is inadmissible if the foreign national, "at the time of application for admission or adjustment of status, is likely at any time to become a public charge."<sup>2</sup>

According to USCIS' website: Under the final rule, "likely at any time to become a public charge" means more likely than not at any time in the future to become a public charge (in other words, more likely than not at any time in the future to receive one or more of the public benefits (as defined in the final rule) for more than 12 months, in total, within any 36-month period, such that, for instance, receipt of two benefits in one month counts as two months)."

According to the Senate Judiciary Committee, earlier versions of AB 826, the new food benefit was open-ended in terms of duration recipients could continue to receive the proposed benefit. That raised the possibility that an undocumented individual, by receiving benefits under the bill for more than 12 months in any 36 month period, would have exceeded USCIS' threshold for likelihood to become a public charge. The amendments of July 21, 2020 limit any one person's eligibility for the program to six months. That makes it impossible for anyone to exceed the public charge threshold based on this program alone. It should be noted, however, that if the individual receives other public benefits, either at the same time as the individual received food assistance under the bill or within the same 36-month period, the cumulative total could still cause the person to exceed the public charge threshold.

Thus, while recent amendments substantially reduce potential concerns about the possibility that participation in the proposed program would put people's immigration prospects at risk, the amendments do not foreclose the possibility that participation in the program could, in some circumstances, put a person's immigration prospects at risk.

However, on July 29, 2020, a New York federal judge imposed a temporary ban of the public charge rule on the grounds that the policy prevents minorities from seeking needed health care during the COVID-19 pandemic. This, he stated, puts the public at large at greater risk of infection. While the rule is on hold, participation in this new benefit program could still negatively impact immigration prospects if and when the rule is reinstated.

#### **Related/Prior Legislation:**

*SB 1443 (Rubio, 2020)* would have made all noncitizens, regardless of immigration status, eligible for aid under the Food Assistance Program. This bill is currently in Senate Rules Committee.

### **COMMENTS**

This bill was recently amended to allow the new food benefit to be available to anyone whose income or health was negatively impacted by COVID-19. The bill further requires that, to the

---

<sup>2</sup> 8 U.S.C. Sec. 1182(a)(4)

extent possible, funding prioritize those persons excluded from other forms of food assistance. This is very broad eligibility criteria and could include individuals who do not qualify for other food benefits, such as CalFresh, because their incomes exceed the maximum. The author might consider amending the bill to target low-income persons who are otherwise ineligible for food benefits due to citizenship.

Recent amendments also remove usage of EBT cards to distribute the food benefit and, instead, require the benefit to be distributed through vouchers or gift cards. Per the bill, vouchers and gift cards would be distributed through a network of food banks and other nonprofits. These entities would presumably be responsible for confirming eligibility. It is unclear how distribution of the benefit would be tracked to ensure recipients do not exceed 6 months of benefits, as required by the bill.

The bill requires that the benefit may only be used for purchases authorized under CalFresh. However, it may be difficult or impossible to control how the benefit is spent using vouchers or gift cards, as a system for controlling such purchases outside of EBT may not exist.

The author is seeking to thread the needle between creating benefit that can be launched quickly and with relative ease in order to address the increasing food insecurity within the undocumented immigrant community, and ensuring that the new benefit addresses the need for food within this particularly vulnerable population. While there may be implementation concerns with the bill in print, the policy question at hand is whether the state should create a time-limited food benefit program that would provide a \$300 per month benefit to individuals whose health or economic situation is negatively impacted by COVID-19.

### **PRIOR VOTES**

This bill was gutted and amended on July 2, 2020. The following votes were recorded prior to the amendments to create the food assistance program proposed in the current version of this bill.

Assembly Floor:	78 - 0
Assembly Appropriations Committee:	18 - 0
Assembly Human Services Committee:	8 - 0

### **POSITIONS**

#### **Support:**

Coalition for Humane Immigrant Rights (Co-sponsor)  
 California Association of Food Banks (Co-sponsor)  
 Alameda County Community Food Bank  
 API Forward Movement  
 Asian Americans Advancing Justice - California  
 California Association of Food Banks  
 California Climate & Agriculture Network (CALCAN)  
 California Food Policy Advocates  
 California Immigrant Policy Center

California Labor Federation, AFL-CIO  
California School Employees Association  
California State Association Of Counties  
Carecen  
Center for Law and Social Policy (CLASP)  
Centro Binacional Para El Desarrollo Indígena Oaxaqueno  
Ceres Community Project  
Chief Probation Officers' Of California (Cpoc)  
Clinica Monseñor Oscar A. Romero  
Community Health Councils, INC.  
County Behaviors Health Directors Association Of California  
County Welfare Directors Association Of California (CWDA)  
Farmworker Justice  
Foodshare Ventura County  
Friends of The Earth U.S.  
Having Our Say Coalition  
Latino Coalition for A Healthy California  
Los Angeles Regional Food Bank  
Mexican American Opportunity Foundation  
Mid-city Community Advocacy Network  
National Association of Social Workers, California Chapter  
Nevada County  
Nevada County Behavioral Health Department  
Nevada County Health & Human Services Agency  
Pesticide Action Network North America  
Redwood Empire Food Bank  
Rural County Representatives of California  
Sacramento Food Bank & Family Services  
San Diego Hunger Coalition  
San Francisco-Marin Food Bank  
Second Harvest Food Bank of Orange County  
Second Harvest Food Bank of San Joaquin and Stanislaus Counties  
Second Harvest Food Bank Santa Cruz County  
Share Our Strength  
St. Anthony Foundation  
The Children's Partnership  
The Los Angeles Trust for Children's Health  
Western Center on Law & Poverty, INC.  
YMCA of Metropolitan Los Angeles

**Oppose:**

None received

**-- END --**