
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2820 Session of
2006

INTRODUCED BY CREIGHTON, METCALFE, BALDWIN, SAYLOR, CALTAGIRONE,
R. STEVENSON AND GOODMAN, JUNE 21, 2006

REFERRED TO COMMITTEE ON INTERGOVERNMENTAL AFFAIRS,
JUNE 21, 2006

AN ACT

1 Providing for registration in the Federal work authorization
2 program, for a memorandum of understanding between the
3 Commonwealth and the United States Department of Justice or
4 Department of Homeland Security, for determination of
5 nationality, for registration of immigration assistance, for
6 public benefits and for a penalty.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Security and
11 Immigration Compliance Act.

12 Section 2. Definitions.

13 The following words and phrases when used in this act shall
14 have the meanings given to them in this section unless the
15 context clearly indicates otherwise:

16 "Department." The Department of Labor and Industry of the
17 Commonwealth.

18 "Federal work authorization program." Any of the electronic
19 verification of work authorization programs operated by the

1 United States Department of Homeland Security or any equivalent
2 Federal work authorization program operated by the United States
3 Department of Homeland Security to verify information of newly
4 hired employees under the Immigration Reform and Control Act of
5 1986 (Public Law 99-603, 8 U.S.C. § 1324a).

6 "Public employer." Every department, agency or
7 instrumentality of the Commonwealth or one of its political
8 subdivisions.

9 "Subcontractor." The term includes a subcontractor, contract
10 employee, staffing agency or any contractor regardless of its
11 tier.

12 Section 3. Federal work authorization program.

13 (a) Participation.--On or after July 1, 2007, every public
14 employer shall register and participate in the Federal work
15 authorization program to verify information of all new
16 employees.

17 (b) Contracts.--The following shall apply:

18 (1) No public employer shall enter into a contract for
19 the physical performance of services within this Commonwealth
20 unless the contractor registers and participates in the
21 Federal work authorization program to verify information of
22 all new employees.

23 (2) No contractor or subcontractor who enters into a
24 contract with a public employer shall enter into the contract
25 or subcontract in connection with the physical performance of
26 services within this Commonwealth unless the contractor or
27 subcontractor registers and participates in the Federal work
28 authorization program to verify information of all new
29 employees.

30 (3) Paragraphs (1) and (2) shall apply as follows:

1 (i) On or after July 1, 2007, with respect to public
2 employers, contractors or subcontractors of 500 or more
3 employees.

4 (ii) On or after July 1, 2008, with respect to
5 public employers, contractors or subcontractors of 100 or
6 more employees.

7 (iii) On or after July 1, 2009, with respect to all
8 public employers, contractors or subcontractors.

9 (c) Regulations.--

10 (1) Except as provided in paragraph (2), the department
11 shall prescribe forms and promulgate rules and regulations
12 necessary to carry out the provisions of this section.

13 (2) The Department of Transportation shall prescribe
14 forms and promulgate rules and regulations necessary to carry
15 out this section for any contract or agreement relating to
16 public transportation.

17 Section 4. Law enforcement.

18 (a) Memorandum of understanding.--The Pennsylvania State
19 Police is authorized and directed to negotiate the terms of a
20 memorandum of understanding between the Commonwealth and the
21 United States Department of Justice or Department of Homeland
22 Security concerning the enforcement of Federal immigration and
23 customs laws, detention and removals and investigations in this
24 Commonwealth.

25 (b) Signatures.--The memorandum of understanding shall be
26 signed on behalf of the Commonwealth by the Commissioner of the
27 Pennsylvania State Police and the Governor or as otherwise
28 required by the appropriate Federal agency.

29 (c) Training.--The Pennsylvania State Police shall designate
30 appropriate law enforcement officers to be trained pursuant to

1 the memorandum of understanding. The training shall be funded
2 pursuant to the Department of Homeland Security Appropriations
3 Act, 2006 (Public Law 1009-90, 119 Stat. 2064) or any subsequent
4 source of Federal funding. The provisions of this subsection
5 shall take effect upon the provision of the funding.

6 (d) Enforcement.--A law enforcement officer certified as
7 trained in accordance with the memorandum of understanding shall
8 be authorized to enforce Federal immigration and customs laws
9 while performing within the scope of the officer's authorized
10 duties.

11 Section 5. Determination of nationality.

12 (a) Determination.--When a person charged with a felony or
13 with driving under the influence of alcohol or a controlled
14 substance is confined for any period in the jail of a county or
15 a municipality, a reasonable effort shall be made to determine
16 the nationality of the person confined.

17 (b) Verification.--If the prisoner is a foreign national,
18 the keeper of the jail or other officer shall make a reasonable
19 effort to verify that the prisoner has been lawfully admitted to
20 the United States and if lawfully admitted, that the prisoner's
21 lawful status has not expired. If verification of lawful status
22 can not be made from documents in the possession of the
23 prisoner, verification shall be made within 48 hours through a
24 query to the Law Enforcement Support Center of the United States
25 Department of Homeland Security or other office or agency
26 designated for that purpose by the United States Department of
27 Homeland Security. If the prisoner is determined not to be
28 lawfully admitted to the United States, the keeper of the jail
29 or other officer shall notify the United States Department of
30 Homeland Security.

1 (c) Release.--Nothing in this section shall be construed to
2 deny a person bond or from being released from confinement when
3 the person is otherwise eligible for release.

4 (d) Guidelines.--The Department of Corrections shall
5 promulgate regulations concerning guidelines and procedures to
6 be used to comply with the provisions of this section.

7 Section 6. Registration of immigration assistance.

8 (a) Purpose and intent.--The purpose and intent of this
9 section is to establish and enforce standards of ethics in the
10 profession of immigration assistance by private individuals who
11 are not licensed attorneys.

12 (b) Services limited.--Any person who provides or offers to
13 provide immigration assistance service may perform only the
14 following services:

15 (1) Completing a government agency form, requested by
16 the customer and appropriate to the customer's needs only if
17 the completion of that form does not involve a legal judgment
18 for that particular matter.

19 (2) Transcribing responses to a government agency form
20 which is related to an immigration matter but not advising a
21 customer as to his or her answers on those forms.

22 (3) Translating information on forms to a customer and
23 translating the customer's answers to questions posed on
24 those forms.

25 (4) Securing for the customer supporting documents
26 currently in existence, such as birth and marriage
27 certificates, which may be needed to be submitted with
28 government agency forms.

29 (5) Translating documents from a foreign language into
30 English.

1 (6) Notarizing signatures on government agency forms, if
2 the person performing the service is a notary public
3 commissioned in this Commonwealth and is lawfully present in
4 the United States.

5 (7) Making referrals, without fee, to attorneys who
6 could undertake legal representation for a person in an
7 immigration matter.

8 (8) Preparing or arranging for the preparation of
9 photographs and fingerprints.

10 (9) Arranging for the performance of medical testing,
11 including X-rays and AIDS tests, and the obtaining of reports
12 of the test results.

13 (10) Conducting English language and civics courses.

14 (11) Performing other services that the Secretary of
15 State determines by rule may be appropriately performed by
16 persons under this section.

17 (c) Exemption.--The following persons shall be exempt from
18 this section:

19 (1) An attorney licensed to practice law in this
20 Commonwealth or an attorney licensed to practice law in any
21 other state or territory of the United States or in any
22 foreign country when acting with the approval of a judge
23 having lawful jurisdiction over the matter.

24 (2) A legal intern, clerk, paralegal or person in a
25 similar position employed by and under the direct supervision
26 of a licensed attorney meeting the requirements of paragraph
27 (1) and rendering immigration assistance service in the
28 course of employment.

29 (3) A not-for-profit organization recognized by the
30 Board of Immigration Appeals under 8 CFR 292.2(a) (relating

1 to organizations qualified for recognition; requests for
2 recognition; withdrawal of recognition; accreditation of
3 representatives; roster) and employees of those organizations
4 accredited under 8 CFR 292.2(d).

5 (4) An organization employing or desiring to employ an
6 alien or nonimmigrant alien, if the organization, its
7 employees or its agents provide advice or assistance in
8 immigration matters to alien or nonimmigrant alien employees
9 or potential employees without compensation from the
10 individuals to whom the advice or assistance is provided.

11 (d) Business regulation.--Nothing in this section shall be
12 construed to regulate any business to the extent that the
13 regulation is prohibited or preempted by Federal law.

14 (e) Signs.--Any person who provides or offers immigration
15 assistance service shall post signs at the person's place of
16 business setting forth information in English and in every other
17 language in which the person provides or offers to provide
18 immigration assistance service. Each language shall be on a
19 separate sign. Signs shall be posted in a location where the
20 signs will be visible to customers. Each sign shall be at least
21 12 inches by 17 inches and shall contain the following
22 statement:

23 I am not an attorney licensed to practice law and may not
24 give legal advice or accept fees for legal advice.

25 (f) Advertisement.--Every person engaged in immigration
26 assistance service who is not an attorney and who advertises
27 immigration assistance service in a language other than English,
28 whether by radio, television, signs, pamphlets, newspapers or
29 other written communication, with the exception of a single desk
30 plaque, shall include in the document, advertisement,

1 stationery, letterhead, business card or other comparable
2 written material the following notice in English and the
3 language in which the written communication appears. This notice
4 shall be of a conspicuous size, if in writing, and shall state,
5 unless the advertisement is by radio or television, in which
6 case the statement may be modified but must include
7 substantially the same message:

8 I am not an attorney licensed to practice law and may not
9 give legal advice or accept fees for legal advice.

10 (g) Implication.--A person who provides or offers
11 immigration assistance service shall not, in any document,
12 advertisement, stationery, letterhead, business card or other
13 comparable written material, literally translate from English
14 into another language terms or titles, including, notary,
15 attorney, lawyer or any other term that implies the person is an
16 attorney.

17 (h) Prohibition.--No person engaged in providing immigration
18 services may do any of the following:

19 (1) Accept payment in exchange for providing legal
20 advice or any other assistance that requires legal analysis,
21 legal judgment or interpretation of the law.

22 (2) Refuse to return documents supplied by, prepared on
23 behalf of or paid for by the customer upon the request of the
24 customer. The documents must be returned upon request even if
25 there is a fee dispute between the immigration assistant and
26 the customer.

27 (3) Represent or advertise, in connection with the
28 provision assistance in immigration matters, other titles or
29 credentials, including "notary public" or "immigration
30 consultant," that could cause a customer to believe that the

1 person possesses special professional skills or is authorized
2 to provide advice on an immigration matter. A certified
3 notary public may use the term "notary public" if the use is
4 accompanied by the statement that the person is not an
5 attorney. The term "notary public" may not be translated to
6 another language.

7 (4) Provide legal advice, recommend a specific course of
8 legal action or provide any other assistance that requires
9 legal analysis, legal judgment or interpretation of the law.

10 (5) Make any misrepresentation or false statement,
11 directly or indirectly, to influence, persuade or induce
12 patronage.

13 (i) Penalty.--A person who violates a provision of this
14 section may, in addition to any other fines or penalties that
15 may be imposed by law, be fined an amount of up to \$1,000 per
16 violation.

17 (j) Regulations.--The Department of State shall promulgate
18 regulations necessary to carry out the provisions of this
19 section.

20 (k) Definitions.--The following words and phrases when used
21 in this section shall have the meanings given to them in this
22 subsection unless the context clearly indicates otherwise:

23 "Compensation." Money, property, services, promise of
24 payment or anything else of value.

25 "Employed by." The term means that a person is on the
26 payroll of the employer and the employer deducts from the
27 employee's paycheck Social Security and withholding taxes or
28 that a person receives compensation from the employer on a
29 commission basis or as an independent contractor.

30 "Immigration assistance service." Any information or action

1 provided or offered to customers or prospective customers
2 related to immigration matters, excluding legal advice,
3 recommending a specific course of legal action or providing any
4 other assistance that requires legal analysis, legal judgment or
5 interpretation of the law.

6 "Immigration matter." Any proceeding, filing or action
7 affecting the nonimmigrant, immigrant or citizenship status of
8 any person that arises under any of the following:

9 (1) Immigration and naturalization law, executive order
10 or presidential proclamation of the United States or any
11 foreign country.

12 (2) Action of the United States Department of Labor, the
13 United States Department of State, the United States
14 Department of Homeland Security or the United States
15 Department of Justice.

16 Section 7. Public benefits.

17 (a) Verification.--Except as provided in subsection (c) or
18 where exempted by Federal law, on or after July 1, 2007, every
19 agency or political subdivision of this Commonwealth shall
20 verify the lawful presence in the United States of any natural
21 person 18 years of age or older who has applied for State or
22 local public benefits as defined in section 411 of the Personal
23 Responsibility and Work Opportunity Reconciliation Act of 1996
24 (Public Law 104-193, 110 Stat. 2105) or for Federal public
25 benefits as defined in section 401 of the Personal
26 Responsibility and Work Opportunity Reconciliation Act of 1996
27 that is administered by an agency or a political subdivision of
28 this Commonwealth.

29 (b) Nondiscrimination.--This section shall be enforced
30 without regard to race, religion, gender, ethnicity or national

1 origin.

2 (c) Exceptions.--Verification of lawful presence under this
3 section shall not be required for any of the following:

4 (1) A purpose for which lawful presence in the United
5 States is not required by law, ordinance or regulation.

6 (2) Assistance for health care items and services that
7 are necessary for the treatment of an emergency medical
8 condition, as defined in section 1903 of the Social Security
9 Act (49 Stat. 620, 42 U.S.C. § 1396b), of the alien involved
10 and are not related to an organ transplant procedure.

11 (3) Short-term, noncash, in-kind emergency disaster
12 relief.

13 (4) Public health assistance for immunizations with
14 respect to immunizable diseases and for testing and treatment
15 of symptoms of communicable diseases whether or not the
16 symptoms are caused by a communicable disease.

17 (5) Programs, services, or assistance such as soup
18 kitchens, crisis counseling and intervention, and short-term
19 shelter specified by the United States Attorney General, in
20 the United States Attorney General's sole and unreviewable
21 discretion after consultation with appropriate Federal
22 agencies and departments, which meet all of the following:

23 (i) Deliver in-kind services at the community level,
24 including through public or private nonprofit agencies.

25 (ii) Do not condition the provision of assistance,
26 the amount of assistance provided or the cost of
27 assistance provided on the individual recipient's income
28 or resources.

29 (iii) Are necessary for the protection of life or
30 safety.

1 (6) Prenatal care.

2 (7) The Department of Education shall promulgate
3 regulations regarding postsecondary benefits that comply with
4 all Federal law, including public benefits as described in
5 sections 401 and 411 of the Personal Responsibility and Work
6 Opportunity Reconciliation Act of 1996 or section 505 of the
7 Illegal Immigration Reform and Immigrant Responsibility Act
8 of 1996 (Public Law 104-208, 110 Stat. 3009-672).

9 (d) Procedure.--Verification of lawful presence in the
10 United States by an agency or political subdivision of this
11 Commonwealth required to make the verification may be
12 accomplished as follows:

13 (1) the applicant must execute an affidavit that he or
14 she is a United States citizen or legal permanent resident 18
15 years of age or older; or

16 (2) the applicant must execute an affidavit that he or
17 she is a qualified alien or nonimmigrant under the
18 Immigration and Nationality Act (66 Stat. 163, 8 U.S.C. §
19 1101 et seq.), is 18 years of age or older and is lawfully
20 present in the United States.

21 (e) Benefit eligibility.--If an applicant has executed an
22 affidavit that the applicant is an alien lawfully present in the
23 United States, eligibility for benefits shall be made through
24 the Systematic Alien Verification of Entitlement program
25 operated by the United States Department of Homeland Security.
26 Until the eligibility verification is made, the affidavit may be
27 presumed to be proof of lawful presence for the purposes of this
28 section.

29 (f) False statements.--

30 (1) Except as provided in paragraph (2), a person who

1 knowingly and willfully makes a false, fictitious or
2 fraudulent statement of representation in an affidavit
3 executed under subsection (d) may be subject to prosecution
4 under 18 Pa.C.S. § 4904 (relating to unsworn falsification to
5 authorities).

6 (2) An applicant for Federal benefits as defined in
7 section 401 of the Personal Responsibility and Work
8 Opportunity Reconciliation Act of 1996 or State or local
9 benefits as defined in section 411 of the Personal
10 Responsibility and Work Opportunity Reconciliation Act of
11 1996 shall not be guilty of a crime for executing an
12 affidavit attesting to lawful presence in the United States
13 that contains a false statement if the affidavit is not
14 required by this section.

15 (g) Variations.--Agencies or political subdivisions of this
16 Commonwealth may adopt variations to the requirements of this
17 section to improve efficiency or reduce delay in the
18 verification process or to provide for adjudication of unique
19 individual circumstances where the verification procedures in
20 this section would impose unusual hardship on a legal resident
21 of this Commonwealth.

22 (h) Violation.--It shall be unlawful for any agency or a
23 political subdivision of this Commonwealth to provide any
24 Federal, State or local benefit, as defined in section 401 or
25 411 of the Personal Responsibility and Work Opportunity
26 Reconciliation Act of 1996, in violation of this section. A
27 State agency or department which administers any program of
28 State or local public benefits shall provide an annual report
29 with respect to its compliance with this section.

30 (i) Report.--All errors and significant delays by the

1 Systematic Alien Verification of Entitlement program shall be
2 reported to the United States Department of Homeland Security
3 and to the Department of State which will monitor the Systematic
4 Alien Verification of Entitlement program and its verification
5 application errors and significant delays and report yearly on
6 the errors and significant delays to ensure that the application
7 of the Systematic Alien Verification of Entitlement program is
8 not wrongfully denying benefits to legal residents of this
9 Commonwealth.

10 Section 20. Effective date.

11 This act shall take effect in 60 days.