

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 355 Session of 2011

INTRODUCED BY READSHAW, CLYMER, KORTZ, GEIST, BARRAR, DAY,
GABLER, GIBBONS, GROVE, HARHAI, HUTCHINSON, KAUFFMAN, KULA,
MAHONEY, METCALFE, MILLARD, MOUL, PETRARCA, SWANGER, TALLMAN
AND VULAKOVICH, FEBRUARY 1, 2011

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, FEBRUARY 1, 2011

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled
2 "An act providing for and reorganizing the conduct of the
3 executive and administrative work of the Commonwealth by the
4 Executive Department thereof and the administrative
5 departments, boards, commissions, and officers thereof,
6 including the boards of trustees of State Normal Schools, or
7 Teachers Colleges; abolishing, creating, reorganizing or
8 authorizing the reorganization of certain administrative
9 departments, boards, and commissions; defining the powers and
10 duties of the Governor and other executive and administrative
11 officers, and of the several administrative departments,
12 boards, commissions, and officers; fixing the salaries of the
13 Governor, Lieutenant Governor, and certain other executive
14 and administrative officers; providing for the appointment of
15 certain administrative officers, and of all deputies and
16 other assistants and employes in certain departments, boards,
17 and commissions; and prescribing the manner in which the
18 number and compensation of the deputies and all other
19 assistants and employes of certain departments, boards and
20 commissions shall be determined," providing for immigration
21 matters; and imposing penalties and duties on the Department
22 of Labor and Industry, Pennsylvania State Police, Secretary
23 of State and Attorney General.

24 The General Assembly of the Commonwealth of Pennsylvania
25 hereby enacts as follows:

26 Section 1. The act of April 9, 1929 (P.L.177, No.175), known
27 as The Administrative Code of 1929, is amended by adding an

1 article to read:

2 ARTICLE XXVIII-D

3 IMMIGRATION MATTERS

4 Section 2801-D. Short title.

5 This article shall be known and may be cited as the Taxpayer
6 and Citizen Protection Act of 2009.

7 Section 2802-D. Legislative findings and declarations.

8 The General Assembly finds and declares as follows:

9 (1) Illegal immigration is causing economic hardship and
10 lawlessness in this Commonwealth and illegal immigration is
11 encouraged by public agencies within this Commonwealth that
12 provide public benefits without verifying immigration status.

13 (2) Illegal immigrants have been harbored, sheltered and
14 encouraged to reside in this Commonwealth through the
15 issuance of identification cards that are issued without
16 verifying immigration status.

17 (3) These practices impede and obstruct the enforcement
18 of Federal immigration law, undermine the security of our
19 borders and impermissibly restrict the privileges and
20 immunities of the citizens of this Commonwealth.

21 (4) It is, therefore, a compelling public interest of
22 the Commonwealth to discourage illegal immigration by
23 requiring all agencies within this Commonwealth to fully
24 cooperate with Federal immigration authorities in the
25 enforcement of Federal immigration laws.

26 (5) The Commonwealth also finds that other measures are
27 necessary to ensure the integrity of various governmental
28 programs and services.

29 Section 2803-D. Prohibitions.

30 (a) Transportation.--It shall be unlawful for any person to

1 transport, move or attempt to transport within the United States
2 any alien knowing or in reckless disregard of the fact that the
3 alien has come to, entered or remained in the United States in
4 violation of law, in furtherance of the illegal presence of the
5 alien in the United States.

6 (b) Concealment.--It shall be unlawful for any person to
7 conceal, harbor or shelter from detection an alien in any place,
8 including any building or means of transportation, knowing or in
9 reckless disregard of the fact that the alien has come to,
10 entered or remained in the United States in violation of law.

11 (c) Penalty.--Any person violating the provisions of
12 subsection (a) or (b) commits a misdemeanor of the third degree.
13 Section 2804-D. Identification papers.

14 (a) Creation.--The following entities may create, publish or
15 otherwise manufacture an identification document, identification
16 card or identification certificate and may possess an engraved
17 plate or other device for the printing of identification,
18 provided that the name of the issuing entity shall be clearly
19 printed upon the face of the identification:

20 (1) Federal, State and local government agencies for
21 purposes authorized or required by law or any legitimate
22 purpose consistent with the duties of an agency, including,
23 but not limited to, voter identification cards, driver's
24 licenses, nondriver identification cards, passports, birth
25 certificates and Social Security cards.

26 (2) Any public school, State or private educational
27 institution to identify the bearer as an administrator,
28 faculty member, student or employee.

29 (b) Issuance.--All identification papers provided for in
30 subsection (a) (1) or (2) shall be issued only to United States

1 citizens, legal permanent resident aliens or holders of valid
2 unexpired nonimmigrant visas.

3 (c) Exceptions.--The provisions of subsection (b) shall not
4 apply when an applicant presents, in person, valid documentary
5 evidence of one of the following:

6 (1) A valid, unexpired immigrant or nonimmigrant visa
7 status for admission into the United States.

8 (2) A pending or approved application for asylum in the
9 United States.

10 (3) An admission into the United States in refugee
11 status.

12 (4) A pending or approved application for temporary
13 protected status in the United States.

14 (5) An approved deferred action status.

15 (6) A pending application for adjustment of status to
16 legal permanent resident status or conditional resident
17 status.

18 Upon approval, the applicant may be issued an identification
19 document provided for in subsection (a)(1) or (2).

20 (d) Duration of validity.--The identification papers shall
21 be valid only during the period of time of the authorized stay
22 of the applicant in the United States or, if there is no
23 definite end to the period of authorized stay, for a period of
24 one year.

25 (e) Marking and expiration.--Any identification document
26 issued pursuant to this section shall clearly indicate that it
27 is temporary and shall state the date that the identification
28 document expires.

29 (f) Renewal.--The identification document may be renewed
30 only upon presentation of valid documentary evidence that the

1 status by which the applicant qualified for the identification
2 document has been extended by the United States Immigration and
3 Naturalization Service or the Bureau of Citizenship and
4 Immigration Services of the United States Department of Homeland
5 Security.

6 (g) Presumption.--A driver's license for which an
7 application has been made for renewal, duplication or reissuance
8 shall be presumed to have been issued in accordance with the
9 provisions of subsection (c), provided that, at the time the
10 application is made, the driver's license has not expired or
11 been canceled, suspended or revoked. The requirements of
12 subsection (c) shall apply, however, to a renewal, duplication
13 or reissuance if the Pennsylvania State Police are notified by a
14 Federal, State or local agency that the individual seeking the
15 renewal, duplication or reissuance is neither a citizen of the
16 United States nor legally in the United States.
17 Section 2805-D. Determination of citizenship status.

18 (a) Arrest.--When a person charged with a felony or with
19 driving under the influence under 75 Pa.C.S. § 3802 (relating to
20 driving under influence of alcohol or controlled substance) is
21 confined for any period, a reasonable effort shall be made to
22 determine the citizenship status of the person confined.

23 (b) Verification.--If the prisoner is a foreign national,
24 the keeper of the jail or other officer shall make a reasonable
25 effort to verify that the prisoner has been lawfully admitted to
26 the United States and, if lawfully admitted, that the lawful
27 status has not expired. If verification of lawful status cannot
28 be made from documents in the possession of the prisoner,
29 verification shall be made within 48 hours through a query to
30 the Law Enforcement Support Center of the United States

Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If the prisoner is determined not to be lawfully admitted to the United States, the keeper of the jail or other officer shall notify the United States Department of Homeland Security.

(c) Flight risk.--For the purpose of determining the grant of or issuance of bond, a person whose citizenship status has been verified pursuant to subsection (b) to be a foreign national who has not been lawfully admitted to the United States shall be deemed to be a risk of flight.

Section 2806-D. Basic pilot program.

(a) Registration of public employers.--Every public employer shall register and participate in the basic pilot program to verify the work authorization status of all new employees.

(b) Contracting for services.--

(1) No public employer shall enter into a contract for the physical performance of services within this Commonwealth unless the contractor registers and participates in the basic pilot program to verify the work authorization status of all new employees.

(2) No contractor or subcontractor who enters a contract with a public employer shall enter into a contract or subcontract in connection with the physical performance of services within this Commonwealth unless the contractor or subcontractor registers and participates in the basic pilot program to verify information of all new employees.

(3) The discharge of any United States citizen or permanent resident alien employee by an employer of this Commonwealth, who, on the date of the discharge employed an

1 unauthorized alien, shall be an unfair method of competition
2 and an unfair or deceptive act or practice in or affecting
3 trade and commerce in this Commonwealth within the meaning of
4 section 3 of the act of December 17, 1968 (P.L.1224, No.387),
5 known as the Unfair Trade Practices and Consumer Protection
6 Law. The discharged employee shall have a private cause of
7 action for the unfair method of competition and an unfair or
8 deceptive act or practice in or affecting trade and commerce.

9 (c) Enforcement.--The provisions of this section shall be
10 enforced without regard to race or national origin.

11 (d) Department of Labor and Industry.--The Department of
12 Labor and Industry shall prescribe forms and promulgate rules
13 and regulations deemed necessary in order to administer and
14 effectuate the provisions of this section and publish the rules
15 and regulations on the Department of Labor and Industry's public
16 website.

17 (e) Definitions.--The following words and phrases when used
18 in this section shall have the meanings given to them in this
19 subsection unless the context clearly indicates otherwise:

20 "Basic pilot program." The electronic verification of work
21 authorization program of the Illegal Immigration Reform and
22 Immigrant Responsibility Act of 1996 (Public Law 104-208, 110
23 Stat. 3009-655) and operated by the United States Department of
24 Homeland Security or any equivalent Federal work authorization
25 program operated by the United States Department of Homeland
26 Security or any other designated Federal agency authorized to
27 verify the work authorization status of newly hired employees
28 under the Immigration Reform and Control Act of 1986 (Public Law
29 99-603, 100 Stat. 3359).

30 "Public employer." Every department, agency or

instrumentality of the Commonwealth or a political subdivision
of the Commonwealth.

"Subcontractor." A subcontractor, contract employee or
staffing agency.

Section 2807-D. Verification of lawful presence.

(a) General rule.--Except as provided in subsection (c) or
where exempted by Federal law, every Commonwealth agency or
political subdivision of the Commonwealth shall verify the
lawful presence in the United States of any natural person 14
years of age or older who has applied for State or local public
benefits as defined in 8 U.S.C. § 1621 (relating to aliens who
are not qualified aliens or nonimmigrants ineligible for State
and local public benefits) or for Federal public benefits, as
defined in 8 U.S.C. § 1611 (relating to aliens who are not
qualified aliens ineligible for Federal public benefits)
administered by a Commonwealth agency or a political subdivision
of this Commonwealth.

(b) Discrimination prohibited.--The provisions of this
section shall be enforced without regard to race, religion,
gender, ethnicity or national origin.

(c) Exceptions.--Verification of lawful presence under the
provisions of this section shall not be required:

(1) for any purpose for which lawful presence in the
United States is not restricted by law, ordinance or
regulation;

(2) for assistance for health care items and services
that are necessary for the treatment of an emergency medical
condition, as defined in 42 U.S.C. § 1396b(v)(3) (relating to
payment to states), of the alien involved and are not related
to an organ transplant procedure;

1 (3) for short-term, noncash, in-kind emergency disaster
2 relief;

3 (4) for programs, services or assistance for soup
4 kitchens, crisis counseling and intervention and short-term
5 shelter specified by the United States Attorney General, in
6 the sole and unreviewable discretion of the United States
7 Attorney General after consultation with appropriate Federal
8 agencies and departments, which:

9 (i) deliver in-kind services at the community level,
10 including through public or private nonprofit agencies;

11 (ii) do not condition the provision of assistance,
12 the amount of assistance provided or the cost of
13 assistance provided on the income or resources of the
14 individual recipient; and

15 (iii) are necessary for the protection of life or
16 safety;

17 (5) for public health assistance for immunizations with
18 respect to diseases and for testing and treatment of symptoms
19 of communicable diseases whether or not the symptoms are
20 caused by a communicable disease; or

21 (6) for prenatal care.

22 (d) Affidavit.--Verification of lawful presence in the
23 United States by the agency or political subdivision required to
24 make the verification shall require that the applicant execute
25 an affidavit under penalty of perjury that applicant is:

26 (1) a United States citizen; or

27 (2) a qualified alien under the Immigration and
28 Nationality Act (66 Stat. 163, 8 U.S.C. § 1101 et seq.) and
29 is lawfully present in the United States.

30 (e) Eligibility verification.--For any applicant who has

1 executed the affidavit described in subsection (d) (2),
2 eligibility for benefits shall be made through the Systematic
3 Alien Verification of Entitlement Program operated by the United
4 States Department of Homeland Security or a successor program
5 designated by the United States Department of Homeland Security.
6 Until the eligibility verification is made, the affidavit may be
7 presumed to be proof of lawful presence for the purposes of this
8 section.

9 (f) False statements.--Any person who knowingly and
10 willfully makes a false, fictitious or fraudulent statement of
11 representation in an affidavit executed under subsection (d)
12 shall be subject to criminal penalties applicable in this
13 Commonwealth for fraudulently obtaining public assistance
14 program benefits. If the affidavit constitutes a false claim of
15 United States citizenship under 18 U.S.C. § 911 (relating to
16 citizen of the United States), a complaint shall be filed by the
17 agency requiring the affidavit with the United States Attorney
18 for the Middle District of Pennsylvania.

19 (g) Adoption of variations.--Commonwealth agencies or
20 political subdivisions of this Commonwealth may adopt variations
21 to the requirements of this section which demonstrably improve
22 the efficiency or reduce delay in the verification process or
23 which provide for adjudication of unique individual
24 circumstances where the verification procedures in this section
25 would impose undue hardship on a legal resident of this
26 Commonwealth.

27 (h) Prohibition.--It shall be unlawful for a Commonwealth
28 agency or a political subdivision of the Commonwealth to provide
29 any Federal, State or local benefit, as defined in 8 U.S.C. §
30 1611 or § 1621, in violation of the provisions of this section.

1 (i) Annual report.--Each Commonwealth agency or department
2 which administers a program of State or local public benefits
3 shall provide an annual report to the Secretary of State with
4 respect to its compliance with this section. Errors shall be
5 reported to the United States Department of Homeland Security by
6 the Secretary of State. The Secretary of State shall monitor the
7 Systematic Alien Verification of Entitlement Program and its
8 verification application errors and significant delays and shall
9 provide an annual public report on the errors and significant
10 delays and make recommendations to ensure that the application
11 of the Systematic Alien Verification of Entitlement Program is
12 not erroneously denying benefits to legal residents of this
13 Commonwealth.

14 Section 2808-D. Employers.

15 (a) Withholding requirement.--The employer shall be required
16 to withhold 6% of the amount of compensation paid to an
17 individual, which compensation is required to be reported on
18 Form 1099 and with respect to which the individual has failed to
19 provide a valid Social Security number issued by the United
20 States Social Security Administration.

21 (b) Tax liability.--Any employer who fails to comply with
22 the withholding requirements of this section shall be liable for
23 the taxes required to have been withheld unless the employer is
24 exempt from the Federal withholding requirement with respect to
25 the individual pursuant to a properly filed Internal Revenue
26 Service Form 8233 or its equivalent and has provided a copy of
27 the form to the Department of Revenue.

28 Section 2809-D. Memorandum of Understanding.

29 (a) Attorney General.--The Attorney General is authorized
30 and directed to negotiate the terms of a Memorandum of

Understanding between the Commonwealth and the United States Department of Justice or the United States Department of Homeland Security concerning the enforcement of Federal immigration and custom laws, detention and removals, and investigations in this Commonwealth.

(b) Signatories.--The Memorandum of Understanding negotiated pursuant to subsection (a) shall be signed on behalf of the Commonwealth by the Governor and the Attorney General or as otherwise required by the appropriate Federal agency.

(c) Local governments.--No local government, whether acting through its governing body or by an initiative, referendum or any other process, shall enact any ordinance or policy that limits or prohibits a law enforcement officer, local official or local government employee from communicating or cooperating with Federal officials with regard to the immigration status of any person within this Commonwealth.

(d) Commonwealth entities.--Notwithstanding any other provision of law, no government entity or official within this Commonwealth may prohibit or in any way restrict a government entity or official from sending to or receiving from the United States Department of Homeland Security information regarding the citizenship or immigration status, lawful or unlawful, of an individual.

(e) Persons or agencies.--Notwithstanding any other provision of law, no person or agency may prohibit or in any way restrict a public employee from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) sending the information to or requesting or receiving the information from the United States Department

1 of Homeland Security;

2 (2) maintaining the information; or

3 (3) exchanging the information with any other Federal,
4 State or local government entity.

5 (f) Writ of mandamus.--The provisions of this section shall
6 allow any natural or legal person lawfully domiciled in this
7 Commonwealth to file for a writ of mandamus to compel any
8 noncooperating State or local governmental agency to comply with
9 the reporting laws.

10 Section 2. This act shall take effect in 60 days.