

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 9

Session of 2011

INTRODUCED BY SCARNATI, CORMAN, BROWNE, WAUGH, ROBBINS, GORDNER, ERICKSON, YAW, ARGALL, FOLMER, ORIE, VOGEL, BAKER, ALLOWAY, D. WHITE, PIPPY, BRUBAKER, RAFFERTY, EICHELBERGER, VANCE, MENSCH, McILHINNEY, PICCOLA, KASUNIC, SOLOBAY, BOSCOLA AND WOZNIAK, JANUARY 19, 2011

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, DECEMBER 6, 2011

AN ACT

1 Requiring identification of lawful presence in the United States
2 as a prerequisite to the receipt of public benefits; ←
3 PROHIBITING ISSUANCE OF ACCESS DEVICES TO CERTAIN PERSONS;
4 AND PROVIDING FOR THE OFFENSE OF POSSESSION OF ACCESS DEVICE
5 BY CERTAIN PERSONS.

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

8 Section 1. Short title.

9 This act shall be known and may be cited as the Proof of
10 Citizenship for Receipt of Public Benefits Act.

11 Section 2. Definitions.

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

15 "ACCESS DEVICE." THE PENNSYLVANIA ACCESS CARD OR ELECTRONIC ←
16 BENEFIT TRANSFER CARD.

17 "Affidavit." An unsworn statement that is made subject to

1 the penalties of 18 Pa.C.S. § 4904 (relating to unsworn
2 falsification to authorities).

3 "Agency." An agency as defined under 2 Pa.C.S. § 101
4 (relating to definitions).

5 "Person." An individual.

6 "Public benefits."

7 (1) Any of the following:

8 (i) A grant, contract or loan provided by an agency
9 of the Commonwealth or local government.

10 (ii) Any welfare, health, disability, public or
11 assisted housing, postsecondary education, food
12 assistance, unemployment benefit or any other similar
13 benefit for which payments or assistance are provided to
14 an individual, household or family eligibility unit by an
15 agency of the Commonwealth or local government.

16 (2) The term does not include any of the following:

17 (i) Benefits listed under section 411(b) of the
18 Personal Responsibility and Work Opportunity
19 Reconciliation Act of 1996 (Public Law 104-193, 8 U.S.C.
20 § 1621(b)).

21 (ii) A contract, ~~professional license or commercial~~ ←
22 ~~license~~ for a nonimmigrant whose visa for entry is
23 related to such employment in the United States or to a
24 citizen of a freely associated state, if section 141 of
25 the applicable compact of free association approved under
26 the Compact of Free Association Act of 1985 (Public Law
27 99-239, 99 Stat. 1770) or the Joint Resolution to approve
28 the "Compact of Free Association" between the United
29 States and the Government of Palau, and for other
30 purposes (Public Law 99-658, 100 Stat. 3672) or a

1 successor provision, is in effect.

2 (iii) Benefits for an alien who as a work-authorized
3 nonimmigrant or as an alien lawfully admitted for
4 permanent residence under the Immigration and Nationality
5 Act (66 Stat. 163, 8 U.S.C. § 1101 et seq.) qualified for
6 such benefits and for whom the United States under
7 reciprocal treaty agreements is required to pay benefits,
8 as determined by the Secretary of State, after
9 consultation with the Attorney General of the United
10 States.

11 ~~(iv) A professional license or a renewed~~ ←
12 ~~professional license issued to a foreign national not~~
13 ~~physically present in the United States.~~

14 ~~(v)~~ (IV) Any Federal public benefit under section ←
15 401(c) of the Personal Responsibility and Work
16 Opportunity Reconciliation Act of 1996 (Public Law
17 104-193, 8 U.S.C. § 1611(c)).

18 ~~(vi)~~ (V) Nutrition programs enumerated in section ←
19 742(b) (2) of the Personal Responsibility and Work
20 Opportunity Reconciliation Act of 1996 (Public Law
21 104-193, 8 U.S.C. § 1615(b) (2)).

22 ~~(vii)~~ (VI) Programs providing assistance in the form ←
23 of food or food vouchers, including, but not limited to,
24 the Special Supplemental Nutrition Program for Women,
25 Infants and Children.

26 ~~(viii)~~ (VII) Protective services provided under the ←
27 act of November 6, 1987 (P.L.381, No.79), known as the
28 Older Adults Protective Services Act, and the act of
29 October 7, 2010 (P.L.484, No.70), known as the Adult
30 Protective Services Act.

~~Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as issued by the Department of Justice at 62 Fed. Reg. 61,344 (Nov. 17, 1997) or a subsequent version of that Attorney General's document.~~

~~(2) Execute an affidavit stating that the person is a United States citizen or legal permanent resident or is otherwise lawfully present in the United States under Federal law. The affidavit shall be provided, in person, by mail or by electronic means, to the agency.~~

~~(b) Recordkeeping of affidavit. The agency shall maintain the affidavit required under subsection (a) (2) in accordance with the applicable records retention schedule.~~

SECTION 3. IDENTIFICATION AND ELIGIBILITY. 

(A) REQUIREMENTS.--A PERSON WHO APPLIES DIRECTLY TO AN AGENCY FOR PUBLIC BENEFITS SHALL PROVIDE PROOF OF IDENTIFICATION AND PROOF OF ELIGIBILITY IN ACCORDANCE WITH THIS SECTION.

(B) PROOF OF IDENTIFICATION.--

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2), A PERSON UNDER SUBSECTION (A) MUST PROVIDE, IN PERSON, BY MAIL OR BY ELECTRONIC MEANS, ONE OF THE FOLLOWING FORMS OF IDENTIFICATION TO THE AGENCY:

(I) A VALID DRIVER'S LICENSE OR IDENTIFICATION CARD ISSUED BY THE DEPARTMENT OF TRANSPORTATION.

(II) A VALID IDENTIFICATION CARD ISSUED BY ANY OTHER AGENCY OF THE COMMONWEALTH.

(III) A VALID IDENTIFICATION CARD ISSUED BY THE UNITED STATES GOVERNMENT, A STATE GOVERNMENT OR THE CANADIAN GOVERNMENT.

1 (IV) A VALID UNITED STATES PASSPORT.

2 (V) A DOCUMENT FROM AN AGENCY OF THE UNITED STATES
3 OR A STATE NATIONAL GUARD ESTABLISHING THAT THE PERSON IS
4 A CURRENT MEMBER OF OR A VETERAN OF THE UNITED STATES
5 ARMED FORCES OR NATIONAL GUARD.

6 (VI) A FORM OF IDENTIFICATION AS LISTED IN UNITED
7 STATES ATTORNEY GENERAL'S ORDER NUMBER 2129-97 INTERIM
8 GUIDANCE ON VERIFICATION OF CITIZENSHIP, QUALIFIED ALIEN
9 STATUS AND ELIGIBILITY UNDER TITLE IV OF THE PERSONAL
10 RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF
11 1996, AS ISSUED BY THE DEPARTMENT OF JUSTICE AT 62 FED.
12 REG. 61,344 (NOV. 17, 1997) OR A SUBSEQUENT VERSION OF
13 THAT ATTORNEY GENERAL'S ORDER.

14 (2) IF THE PERSON DOES NOT POSSESS A FORM OF
15 IDENTIFICATION LISTED IN PARAGRAPH (1), THE PERSON MUST
16 PROVIDE, IN PERSON, BY MAIL OR BY ELECTRONIC MEANS, AN
17 AFFIDAVIT STATING THAT THE PERSON DOES NOT POSSESS A FORM OF
18 IDENTIFICATION LISTED IN PARAGRAPH (1).

19 (C) PROOF OF ELIGIBILITY.--TO DEMONSTRATE ELIGIBILITY, A
20 PERSON UNDER SUBSECTION (A) MUST PROVIDE IN PERSON, BY MAIL OR
21 BY ELECTRONIC MEANS ONE OF THE FOLLOWING TO THE AGENCY:

22 (1) AN AFFIDAVIT STATING THAT THE PERSON IS A UNITED
23 STATES CITIZEN.

24 (2) AN AFFIDAVIT STATING THAT THE PERSON IS ELIGIBLE FOR
25 STATE OR LOCAL BENEFITS UNDER SECTION 411(A) OF THE PERSONAL
26 RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF
27 1996 (PUBLIC LAW 104-193, 8 U.S.C. § 1621(A)).

28 (D) RECORDKEEPING OF AFFIDAVITS.--THE AGENCY SHALL MAINTAIN
29 THE AFFIDAVITS REQUIRED UNDER SUBSECTIONS (B) AND (C) IN
30 ACCORDANCE WITH THE APPLICABLE RECORDS RETENTION SCHEDULE.

1 ~~(e)~~ (E) Exceptions.--Subsection (a) shall not apply to: ←

2 (1) A person under 18 years of age.

3 (2) A person currently receiving Supplemental Security
4 Income or Social Security disability income.

5 (3) A person entitled to or enrolled in Medicare Part A
6 or Part B, or both.

7 (4) A person applying for public benefits on behalf of a
8 person under 18 years of age.

9 (5) A person whose citizenship has been verified
10 pursuant to section 1902(ee) of the Social Security Act (49
11 Stat. 620, 42 U.S.C. § 1396a(ee)).

12 (6) A person who declares by affidavit that, because of
13 domestic violence, she does not currently possess any of the
14 identification documents listed in subsection (a)(1). The
15 domestic violence shall be verified using state standards
16 developed under section 402(a)(7) of the Personal
17 Responsibility and Work Opportunity Reconciliation Act of
18 1996 (Public Law 104-193, 42 U.S.C. § 602(a)(7)).

19 Section 4. Verification through SAVE program.

20 (a) General rule.--An agency that administers public
21 benefits shall verify, through the Systematic Alien Verification
22 of Entitlement (SAVE) program operated by the Department of
23 Homeland Security or a successor program designated by the
24 Department of Homeland Security, that each noncitizen applicant
25 who has executed an affidavit UNDER SECTION 3(C) is an alien ←
26 legally present in the United States.

27 (b) Presumption of lawful presence by affidavit.--Until such
28 verification of lawful presence is made, the affidavit EXECUTED ←
29 UNDER SECTION 3(C) may be presumed to be proof of lawful
30 presence for purposes of this act.

1 ~~Section 5. Penalties.~~ ←

2 ~~A person who directly applies to an agency for public~~
3 ~~benefits in violation of section 3 commits an offense under 18-~~
4 ~~Pa.C.S. § 4904 (relating to unsworn falsification to~~
5 ~~authorities).~~

6 SECTION 5. ISSUANCE OF ACCESS DEVICES TO PERSONS WHO ARE NOT ←
7 LAWFULLY PRESENT IN THE UNITED STATES PROHIBITED.

8 AN AGENCY MAY NOT ISSUE AN ACCESS DEVICE TO A PERSON WHO IS
9 NOT LAWFULLY PRESENT IN THE UNITED STATES AS DETERMINED BY
10 FEDERAL IMMIGRATION OFFICIALS.

11 SECTION 6. POSSESSION OR USE OF ACCESS DEVICE BY PERSONS WHO
12 ARE NOT LAWFULLY PRESENT IN THE UNITED STATES.

13 (A) OFFENSE DEFINED.--A PERSON COMMITS AN OFFENSE IF THE
14 PERSON IS NOT LAWFULLY PRESENT IN THE UNITED STATES AS
15 DETERMINED BY FEDERAL IMMIGRATION OFFICIALS AND POSSESSES OR
16 USES AN ACCESS DEVICE.

17 (B) SEPARATE OFFENSES.--EACH TIME A PERSON POSSESSES OR USES
18 AN ACCESS DEVICE IN VIOLATION OF SUBSECTION (A) CONSTITUTES A
19 SEPARATE OFFENSE UNDER THIS SECTION.

20 (C) GRADING.--A PERSON WHO VIOLATES SUBSECTION (A) COMMITS A
21 FELONY OF THE THIRD DEGREE.

22 SECTION 7. FALSE STATEMENTS.

23 A PERSON WHO KNOWINGLY AND WILLFULLY MAKES A FALSE,
24 FICTITIOUS OR FRAUDULENT STATEMENT OF REPRESENTATION IN AN
25 AFFIDAVIT EXECUTED UNDER SECTION 3 MAY BE SUBJECT TO PROSECUTION
26 UNDER 18 PA.C.S. § 4904 (RELATING TO UNSWORN FALSIFICATION TO
27 AUTHORITIES).

28 SECTION 8. NONDISCRIMINATION.

29 THIS ACT SHALL BE ENFORCED WITHOUT REGARD TO RACE, RELIGION,
30 GENDER, ETHNICITY OR NATIONAL ORIGIN.

1 SECTION 9. SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS

2 (SAVE) PROGRAM.

3 (A) REPORTING.--IF AN AGENCY ENCOUNTERS ERRORS AND
4 SIGNIFICANT DELAYS WHEN USING THE SYSTEMATIC ALIEN VERIFICATION
5 FOR ENTITLEMENTS (SAVE) PROGRAM UNDER SECTION 4 THE AGENCY SHALL
6 REPORT THE ERRORS AND DELAYS TO THE UNITED STATES DEPARTMENT OF
7 HOMELAND SECURITY AND TO THE ATTORNEY GENERAL.


8 (B) MONITORING.--THE ATTORNEY GENERAL SHALL MONITOR THE
9 SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE) PROGRAM
10 AND ITS VERIFICATION APPLICATION FOR ERRORS AND SIGNIFICANT
11 DELAYS AND REPORT YEARLY ON THE ERRORS AND SIGNIFICANT DELAYS TO
12 ENSURE THAT THE APPLICATION OF THE SYSTEMATIC ALIEN VERIFICATION
13 FOR ENTITLEMENTS (SAVE) PROGRAM IS NOT WRONGFULLY DENYING
14 BENEFITS TO LEGAL RESIDENTS OF THIS COMMONWEALTH.

15 SECTION 10. NOTIFICATION TO THE GOVERNOR'S OFFICE OF
16 ADMINISTRATION AND POSTING ON PENNWATCH.

17 (A) GENERAL RULE.--AN AGENCY, UPON DETERMINING THAT PUBLIC
18 MONEY HAS BEEN EXPENDED ON OR PUBLIC BENEFITS PROVIDED TO AN
19 UNAUTHORIZED ALIEN SHALL PREPARE AN INVOICE LISTING THE COST OF
20 THE EXPENDITURES OR BENEFITS. THE AGENCY SHALL TRANSMIT THE
21 INVOICE ALONG WITH ANY IDENTIFYING INFORMATION CONCERNING THE
22 UNAUTHORIZED ALIEN TO THE GOVERNOR'S OFFICE OF ADMINISTRATION
23 FOR INCLUSION IN THE PUBLICLY ACCESSIBLE INTERNET WEBSITE KNOWN
24 AS PENNWATCH.

25 (B) ACCESS.--THE GOVERNOR'S OFFICE OF ADMINISTRATION SHALL
26 PROVIDE ACCESS TO THE INVOICES PURSUANT TO THE ACT OF FEBRUARY
27 14, 2008 (P.L.6, NO.3), KNOWN AS THE RIGHT-TO-KNOW LAW.

28 (C) DEFINITIONS.--AS USED IN THIS SECTION THE TERM "PUBLIC
29 MONEY" INCLUDES THE COST OF ARREST, PROSECUTION, INCARCERATION
30 OR DETAINMENT OF AN UNAUTHORIZED ALIEN AND ANY RELATED EXPENSES.

1 Section 6 11. Applicability. 

2 (a) General rule.--Except as otherwise provided in
3 subsection (b), this act shall apply to applications for public
4 benefits and renewal of public benefits filed directly with an
5 agency after the effective date of this section.

6 (b) Federal funding and law.--This act shall not apply to
7 applications for public benefits and renewal of public benefits
8 filed directly with an agency if compliance with this act would
9 lead to loss of Federal funding or be in conflict with any
10 Federal law.

11 Section 7 20. Effective date. 

12 This act shall take effect in 120 days.