

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

AMENDMENTS TO HOUSE AMENDMENTS, IN SENATE, JUNE 29, 2012

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

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

10 (iv) Any Federal public benefit under section 401(c)
11 of the Personal Responsibility and Work Opportunity
12 Reconciliation Act of 1996 (Public Law 104-193, 8 U.S.C.
13 § 1611(c)).

14 (v) Nutrition programs enumerated in section
15 742(b)(2) of the Personal Responsibility and Work
16 Opportunity Reconciliation Act of 1996 (Public Law
17 104-193, 8 U.S.C. § 1615(b)(2)).

18 (vi) Programs providing assistance in the form of
19 food or food vouchers, including, but not limited to, the
20 Special Supplemental Nutrition Program for Women, Infants
21 and Children.

22 (vii) Protective services provided under the act of
23 November 6, 1987 (P.L.381, No.79), known as the Older
24 Adults Protective Services Act, and the act of October 7,
25 2010 (P.L.484, No.70), known as the Adult Protective
26 Services Act.

27 (viii) Services provided to a victim of a severe
28 form of trafficking in persons as defined under 22 U.S.C.
29 § 7105(b)(1)(C) (relating to protection and assistance
30 for victims of trafficking).

1 (ix) Unemployment benefits for an alien who has
2 obtained employment authorization from the Department of
3 Homeland Security.

4 ~~"Unauthorized alien." An alien who is not eligible for any~~ ←
5 ~~state or local public benefits under section 411(a) of the~~
6 ~~Personal Responsibility and Work Opportunity Reconciliation Act~~
7 ~~of 1996 (Public Law 104-193, 8 U.S.C. § 1621(a)).~~

8 ~~Section 3. Identification and eligibility.~~

9 ~~(a) Requirements. A person who applies directly to an~~
10 ~~agency for public benefits shall provide proof of identification~~
11 ~~and proof of eligibility in accordance with this section.~~

12 ~~(b) Proof of identification.~~

13 ~~(1) Except as provided in paragraph (2), a person under~~
14 ~~subsection (a) must provide, in person, by mail or by~~
15 ~~electronic means, one of the following forms of~~
16 ~~identification to the agency:~~

17 ~~(i) A valid driver's license or identification card~~
18 ~~issued by the Department of Transportation.~~

19 ~~(ii) A valid identification card issued by any other~~
20 ~~agency of the Commonwealth.~~

21 ~~(iii) A valid identification card issued by the~~
22 ~~United States Government, a state government or the~~
23 ~~Canadian Government.~~

24 ~~(iv) A valid United States passport.~~

25 ~~(v) A document from an agency of the United States~~
26 ~~or a state National Guard establishing that the person is~~
27 ~~a current member of or a veteran of the United States~~
28 ~~Armed Forces or National Guard.~~

29 ~~(vi) A form of identification as listed in United~~
30 ~~States Attorney General's Order Number 2129-97 Interim~~

~~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 order.~~

~~(2) If the person does not possess a form of identification listed in paragraph (1), the person must provide, in person, by mail or by electronic means, an affidavit stating that the person does not possess a form of identification listed in paragraph (1).~~

~~(c) Proof of eligibility. To demonstrate eligibility, a person under subsection (a) must provide in person, by mail or by electronic means one of the following to the agency:~~

~~(1) An affidavit stating that the person is a United States citizen.~~

~~(2) An affidavit stating that the person is eligible for State or local benefits under section 411(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104 193, 8 U.S.C. § 1621(a)).~~

~~(d) Recordkeeping of affidavits. The agency shall maintain the affidavits required under subsections (b) and (c) in accordance with the applicable records retention schedule.~~

SECTION 3. IDENTIFICATION REQUIRED. ←

(A) GENERAL RULE.--A PERSON WHO APPLIES DIRECTLY TO AN AGENCY FOR PUBLIC BENEFITS SHALL:

(1) 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;

1 (II) A VALID IDENTIFICATION CARD ISSUED BY ANY OTHER
2 AGENCY OF THE COMMONWEALTH;

3 (III) A VALID IDENTIFICATION CARD ISSUED BY THE
4 UNITED STATES GOVERNMENT, A STATE GOVERNMENT OR THE
5 CANADIAN GOVERNMENT;

6 (IV) A VALID UNITED STATES PASSPORT;

7 (V) A DOCUMENT FROM AN AGENCY OF THE UNITED STATES
8 OR A STATE NATIONAL GUARD ESTABLISHING THAT THE PERSON IS
9 A CURRENT MEMBER OF OR A VETERAN OF THE UNITED STATES
10 ARMED FORCES OR NATIONAL GUARD;

11 (VI) A FORM OF IDENTIFICATION AS LISTED IN UNITED
12 STATES ATTORNEY GENERAL'S ORDER NUMBER 2129-97 INTERIM
13 GUIDANCE ON VERIFICATION OF CITIZENSHIP, QUALIFIED ALIEN
14 STATUS AND ELIGIBILITY UNDER TITLE IV OF THE PERSONAL
15 RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF
16 1996, AS ISSUED BY THE DEPARTMENT OF JUSTICE AT 62 FED.
17 REG. 61,344 (NOV. 17, 1997) OR A SUBSEQUENT VERSION OF
18 THAT ATTORNEY GENERAL'S DOCUMENT.

19 (2) EXECUTE AN AFFIDAVIT STATING THAT THE PERSON IS A
20 UNITED STATES CITIZEN OR LEGAL PERMANENT RESIDENT OR IS
21 OTHERWISE LAWFULLY PRESENT IN THE UNITED STATES UNDER FEDERAL
22 LAW. THE AFFIDAVIT SHALL BE PROVIDED, IN PERSON, BY MAIL OR
23 BY ELECTRONIC MEANS, TO THE AGENCY.

24 (B) RECORDKEEPING OF AFFIDAVIT.--THE AGENCY SHALL MAINTAIN
25 THE AFFIDAVIT REQUIRED UNDER SUBSECTION (A) (2) IN ACCORDANCE
26 WITH THE APPLICABLE RECORDS RETENTION SCHEDULE.

27 ~~(e)~~ (C) Exceptions.--Subsection (a) shall not apply to: 

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

29 (2) A person currently receiving Supplemental Security
30 Income or Social Security disability income.

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

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

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

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

15 Section 4. Verification through SAVE program.

16 (a) General rule.--An agency that administers public
17 benefits shall verify, through the Systematic Alien Verification
18 of Entitlement (SAVE) program operated by the Department of
19 Homeland Security or a successor program designated by the
20 Department of Homeland Security, that each noncitizen applicant
21 who has executed an affidavit under section ~~3(e)~~ 3(A) is an ←
22 alien legally present in the United States.

23 (b) Presumption of lawful presence by affidavit.--Until such
24 verification of lawful presence is made, the affidavit executed
25 under section ~~3(e)~~ 3(A) may be presumed to be proof of lawful ←
26 presence for purposes of this act.

27 ~~Section 5. Issuance of access devices to persons who are not~~ ←
28 ~~lawfully present in the United States prohibited.~~

29 ~~An agency may not issue an access device to a person who is~~
30 ~~not lawfully present in the United States as determined by~~

1 ~~Federal immigration officials.~~

2 ~~Section 6. Possession or use of access device by persons who~~
3 ~~are not lawfully present in the United States.~~

4 ~~(a) Offense defined. A person commits an offense if the~~
5 ~~person is not lawfully present in the United States as~~
6 ~~determined by Federal immigration officials and possesses or~~
7 ~~uses an access device.~~

8 ~~(b) Separate offenses. Each time a person possesses or uses~~
9 ~~an access device in violation of subsection (a) constitutes a~~
10 ~~separate offense under this section.~~

11 ~~(c) Grading. A person who violates subsection (a) commits a~~
12 ~~felony of the third degree.~~

13 SECTION 5. UNLAWFUL POSSESSION OF ACCESS DEVICE. ←

14 (A) OFFENSE DEFINED.--A PERSON COMMITS AN OFFENSE IF THE
15 PERSON:

16 (1) POSSESSES AN ACCESS DEVICE WHILE NOT BEING AN
17 AUTHORIZED USER;

18 (2) HAS PROCURED THROUGH FRAUD OR MISREPRESENTATION AN
19 ACCESS DEVICE; OR

20 (3) POSSESSES A COUNTERFEIT ACCESS DEVICE.

21 (B) GRADING.--

22 (1) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (3), A
23 PERSON WHO VIOLATES SUBSECTION (A) (1) COMMITS A MISDEMEANOR
24 OF THE SECOND DEGREE.

25 (2) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (4), A
26 PERSON WHO VIOLATES SUBSECTION (A) (2) OR (3) COMMITS A
27 MISDEMEANOR OF THE FIRST DEGREE.

28 (3) A PERSON WHO VIOLATES SUBSECTION (A) (1) COMMITS A
29 MISDEMEANOR OF THE FIRST DEGREE IF THE PERSON IS NOT LAWFULLY
30 PRESENT IN THE UNITED STATES AS DETERMINED BY FEDERAL

1 IMMIGRATION OFFICIALS.

2 (4) A PERSON WHO VIOLATES SUBSECTION (A) (2) OR (3)
3 COMMITS A FELONY OF THE THIRD DEGREE IF THE PERSON IS NOT
4 LAWFULLY PRESENT IN THE UNITED STATES AS DETERMINED BY
5 FEDERAL IMMIGRATION OFFICIALS.

6 Section 7 6. False statements. ←

7 A person who knowingly and willfully makes a false,
8 fictitious or fraudulent statement of representation in an
9 affidavit executed under section 3 may be subject to prosecution
10 under 18 Pa.C.S. § 4904 (relating to unsworn falsification to
11 authorities).

12 Section 8 7. Nondiscrimination. ←

13 This act shall be enforced without regard to race, religion,
14 gender, ethnicity or national origin.

15 Section 9 8. Systematic Alien Verification for Entitlements ←
16 (SAVE) program.

17 (a) Reporting.--If an agency encounters errors and
18 significant delays when using the Systematic Alien Verification
19 for Entitlements (SAVE) program under section 4 the agency shall
20 report the errors and delays to the United States Department of
21 Homeland Security and to the Attorney General.

22 (b) Monitoring.--The Attorney General shall monitor the
23 Systematic Alien Verification for Entitlements (SAVE) program
24 and its verification application for errors and significant
25 delays and report yearly on the errors and significant delays to
26 ensure that the application of the Systematic Alien Verification
27 for Entitlements (SAVE) program is not wrongfully denying
28 benefits to legal residents of this Commonwealth.

29 ~~Section 10. Notification to the Governor's Office of~~ ←
30 ~~Administration and posting on PennWATCH.~~

1 ~~(a) General rule. An agency, upon determining that public~~
2 ~~money has been expended on or public benefits provided to an~~
3 ~~unauthorized alien shall prepare an invoice listing the cost of~~
4 ~~the expenditures or benefits. The agency shall transmit the~~
5 ~~invoice along with any identifying information concerning the~~
6 ~~unauthorized alien to the Governor's Office of Administration~~
7 ~~for inclusion in the publicly accessible Internet website known~~
8 ~~as PennWATCH.~~

9 ~~(b) Access. The Governor's Office of Administration shall~~
10 ~~provide access to the invoices pursuant to the act of February~~
11 ~~14, 2008 (P.L.6, No.3), known as the Right to Know Law.~~

12 ~~(c) Definitions. As used in this section the term "public~~
13 ~~money" includes the cost of arrest, prosecution, incarceration~~
14 ~~or detainment of an unauthorized alien and any related expenses.~~
15 Section 11 9. Applicability. ←

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

20 (b) Federal funding and law.--This act shall not apply to
21 applications for public benefits and renewal of public benefits
22 filed directly with an agency if compliance with this act would
23 lead to loss of Federal funding or be in conflict with any
24 Federal law.

25 Section 20 10. Effective date. ←

26 This act shall take effect in 120 days.