

LEGISLATIVE BILL 403

Approved by the Governor April 8, 2009

Introduced by Karpisek, 32; Gloor, 35; at the request of the Governor.

FOR AN ACT relating to government; to amend sections 77-27,187, 77-5701, 77-5801, and 77-5901, Revised Statutes Cumulative Supplement, 2008; to require verification of lawful presence for purposes of public benefits; to require verification of work eligibility status for purposes of public employment, employment under public contracts, and certain tax incentives; to provide duties for the Department of Labor; to harmonize provisions; to provide an operative date; to provide severability; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. (1) Notwithstanding any other provisions of law, unless exempted from verification under section 3 of this act or pursuant to federal law, no state agency or political subdivision of the State of Nebraska shall provide public benefits to a person not lawfully present in the United States.

(2) Except as provided in section 3 of this act or if exempted by federal law, every agency or political subdivision of the State of Nebraska shall verify the lawful presence in the United States of any person who has applied for public benefits administered by an agency or a political subdivision of the State of Nebraska. This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(3) On and after the operative date of this act, no employee of a state agency or political subdivision of the State of Nebraska shall be authorized to participate in any retirement system, including, but not limited to, the systems provided for in the County Employees Retirement Act, the Judges Retirement Act, the Nebraska State Patrol Retirement Act, the School Employees Retirement Act, and the State Employees Retirement Act, unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

Sec. 2. For purposes of sections 1 to 6 of this act, public benefits means any grant, contract, loan, professional license, commercial license, welfare benefit, health payment or financial assistance benefit, disability benefit, public or assisted housing benefit, postsecondary education benefit involving direct payment of financial assistance, food assistance benefit, or unemployment benefit or any other similar benefit provided by or for which payments or assistance are provided to an individual, a household, or a family eligibility unit by an agency of the United States, the State of Nebraska, or a political subdivision of the State of Nebraska.

Sec. 3. Verification of lawful presence in the United States pursuant to section 1 of this act is not required for:

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

(2) Assistance for health care services and products, not related to an organ transplant procedure, that are necessary for the treatment of an emergency medical condition, including emergency labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in (a) placing the patient's health in serious jeopardy, (b) serious impairment to bodily functions, or (c) serious dysfunction of any bodily organ or part;

(3) Short-term, noncash, in-kind emergency disaster relief;

(4) Public health assistance for immunizations with respect to diseases and for testing and treatment of symptoms of communicable diseases, whether or not such symptoms are caused by a communicable disease; or

(5) Programs, services, or assistance necessary for the protection of life or safety, such as soup kitchens, crisis counseling and intervention, and short-term shelter, which (a) deliver in-kind services at the community level, including those which deliver such services through public or private, nonprofit agencies and (b) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income or resources of the recipient.

Sec. 4. Verification of lawful presence in the United States pursuant to section 1 of this act requires that the applicant for public benefits attest in a format prescribed by the Department of Administrative Services that:

(1) He or she is a United States citizen; or

(2) He or she is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

A state agency or political subdivision of the State of Nebraska may adopt and promulgate rules and regulations or procedures for the electronic filing of the attestation required under this section if such attestation is substantially similar to the format prescribed by the Department of Administrative Services.

Sec. 5. For any applicant who has executed a document described in subdivision (2) of section 4 of this act, eligibility for public benefits shall be verified through the Systematic Alien Verification for Entitlements Program operated by the United States Department of Homeland Security or an equivalent program designated by the United States Department of Homeland Security. Until such verification of eligibility is made, such attestation may be presumed to be proof of lawful presence for purposes of sections 1 to 6 of this act unless such verification is required before providing the public benefit under another provision of state or federal law.

Sec. 6. Each state agency which administers any program of public benefits shall provide an annual report not later than January 31 for the prior year to the Governor and the Clerk of the Legislature with respect to compliance with sections 1 to 6 of this act. The report shall include, but not be limited to, the total number of applicants for benefits and the number of applicants rejected pursuant to such sections.

Sec. 7. (1) For purposes of this section:

(a) Federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986;

(b) Public contractor means any contractor or his or her subcontractor who is awarded a contract by a public employer for the physical performance of services within the State of Nebraska; and

(c) Public employer means any agency or political subdivision of the State of Nebraska.

(2) Every public employer and public contractor shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. Every contract between a public employer and public contractor shall contain a provision requiring the public contractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

(3) For two years after the operative date of this act, the Department of Labor shall make available to all private employers information regarding the federal immigration verification system and encouraging the use of the federal immigration verification system. The department shall report to the Legislature no later than December 1, 2011, on the use of a federal immigration verification system by Nebraska employers.

(4) This section does not apply to contracts awarded by a public employer prior to the operative date of this act.

Sec. 8. Section 77-27,187, Revised Statutes Cumulative Supplement, 2008, is amended to read:

77-27,187 Sections 77-27,187 to 77-27,195 and section 9 of this act shall be known and may be cited as the Nebraska Advantage Rural Development Act.

Sec. 9. (1) The Tax Commissioner shall not approve or grant to any person any tax incentive under the Nebraska Advantage Rural Development Act unless the taxpayer provides evidence satisfactory to the Tax Commissioner that the taxpayer electronically verified the work eligibility status of all newly hired employees employed in Nebraska.

(2) For purposes of calculating any tax incentive available under the act, the Tax Commissioner shall exclude hours worked and compensation paid to an employee that is not eligible to work in Nebraska as verified under subsection (1) of this section.

(3) This section does not apply to any application filed under the act prior to the operative date of this act.

Sec. 10. Section 77-5701, Revised Statutes Cumulative Supplement, 2008, is amended to read:

77-5701 Sections 77-5701 to 77-5735 and section 11 of this act shall be known and may be cited as the Nebraska Advantage Act.

Sec. 11. (1) The Tax Commissioner shall not approve or grant to any person any tax incentive under the Nebraska Advantage Act unless the taxpayer provides evidence satisfactory to the Tax Commissioner that the taxpayer electronically verified the work eligibility status of all newly hired employees employed in Nebraska.

(2) For purposes of calculating any tax incentive under the act, the Tax Commissioner shall exclude hours worked and compensation paid to an employee that is not eligible to work in Nebraska as verified under subsection (1) of this section.

(3) This section does not apply to any application filed under the Nebraska Advantage Act prior to the operative date of this act.

Sec. 12. Section 77-5801, Revised Statutes Cumulative Supplement, 2008, is amended to read:

77-5801 Sections 77-5801 to 77-5807 and section 13 of this act shall be known and may be cited as the Nebraska Advantage Research and Development Act.

Sec. 13. The Tax Commissioner shall not approve or grant to any person any tax incentive under the Nebraska Advantage Research and Development Act unless the taxpayer provides evidence satisfactory to the Tax Commissioner that the taxpayer electronically verified the work eligibility status of all newly hired employees employed in Nebraska. This section does not apply to any credit claimed in a tax year beginning or deemed to begin before January 1, 2009, under the Internal Revenue Code of 1986, as amended.

Sec. 14. Section 77-5901, Revised Statutes Cumulative Supplement, 2008, is amended to read:

77-5901 Sections 77-5901 to 77-5907 and section 15 of this act shall be known and may be cited as the Nebraska Advantage Microenterprise Tax Credit Act.

Sec. 15. (1) The Tax Commissioner shall not approve or grant to any person any tax incentive under the Nebraska Advantage Microenterprise Tax Credit Act unless the taxpayer provides evidence satisfactory to the Tax Commissioner that the taxpayer electronically verified the work eligibility status of all newly hired employees employed in Nebraska.

(2) For purposes of calculating any tax incentive available under the act, the Tax Commissioner shall exclude the hours worked and compensation paid to an employee that is not eligible to work in Nebraska as verified under subsection (1) of this section.

(3) This section does not apply to any application filed under the act prior to the operative date of this act.

Sec. 16. This act becomes operative on October 1, 2009.

Sec. 17. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 18. Original sections 77-27,187, 77-5701, 77-5801, and 77-5901, Revised Statutes Cumulative Supplement, 2008, are repealed.