



SPONSOR: Sen. Booth & Sen. Ennis & Rep. Hudson
Sens. Bonini, Bunting, Simpson; Reps. Atkins, Lee,
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DELAWARE STATE SENATE
146th GENERAL ASSEMBLY

SENATE BILL NO. 15

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO CERTAIN EMPLOYMENT AND
PUBLIC BENEFITS ELIGIBILITY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Part I, Title 29, Delaware Code by inserting a new Chapter therein as follows:

“Chapter 6A. Status Verification

§601A. Definitions

As used in this Chapter:

(1) 'Status Verification System' means an electronic system operated by the federal government, through which a public or private employer located in the State of Delaware or of a political subdivision therein may make an inquiry, by exercise of authority delegated pursuant to applicable federal law, to verify or re-verify the employment authorization status of any individual to whom an offer of employment in Delaware has been made. The Status Verification System shall be deemed to include:

a. the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, Division C, Section 403(a); 8 U.S.C., Section 1324a, and operated by the United States Department of Homeland Security, known as the E-Verify Program;

b. any equivalent federal program designated by the United States Department of Homeland Security or any other federal agency authorized to verify the work eligibility status of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986(IRCA), D.L. 99-603.

(2) 'Public employer' means every department, agency, or instrumentality of the state or a political subdivision of the state;

(3) 'Subcontractor' means a subcontractor, contract employee, staffing agency, or any contractor regardless of its tier; and

§602A. Status Verification System Usage For Employment

(a) By July 1, 2012 every public employer shall register with and utilize a Status Verification System to verify the federal employment authorization status of all new employees.

(b)(1) On and after July 1, 2012, no public employer shall enter into a contract for the physical performance of services within this state unless the contractor registers and participates in the Status Verification System to verify the work eligibility status of all new employees.

(2) On and after July 1, 2012, no contractor or subcontractor shall enter into a contract with a public employer for the physical performance of services within this state unless the contractor or subcontractor registers and participates in the Status Verification System to verify the information of all new employees.

§603A. Verification Of Eligibility For Public Benefits.

(a) Except as provided in subsection (c) of this section or where exempted by federal law, as of July 1, 2012 every agency and political subdivision of this state shall verify the lawful presence in the United States of any natural person fourteen (14) years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C., Section 1621, or for federal public benefits, as defined in 8 U.S.C., Section 1611, that is administered by an agency or a political subdivision of this state.

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

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

(1) 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., Section 1396b(v)(3), of the person involved, provided it is not related to an organ transplant procedure;

(2) For short-term, noncash, in-kind emergency disaster relief;

(3) For 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

(4) For programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United States Secretary of Homeland Security, in the sole and unreviewable discretion of the United States Secretary of Homeland Security after consultation with appropriate federal agencies and departments which:

- a. deliver in-kind services at the community level, including through public or private nonprofit agencies,
- b. do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income, resources or residency of the individual recipient, and
- c. are necessary for the protection of life or safety.

(d) Verification of lawful presence in the United States by the agency or political subdivision required to make such verification shall require that the applicant execute an affidavit under penalty of perjury that:

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

(2) He or she is a qualified alien as defined in 8 U.S.C. 1641.

(e) The agency or political subdivision providing the state or local public benefits shall provide notarization service for such affidavit at no cost to the applicant.

(f) For any applicant who has executed the affidavit described in paragraph (2) of subsection (d) of this section, eligibility for benefits shall be verified through the Systematic Alien Verification for Entitlements (SAVE) Program operated by the United States Department of Homeland Security or an equivalent program designated by the United States Department Homeland Security. Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence for the purposes of this section.

(g) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to subsection (d) of this section shall be subject to criminal penalties applicable in this state for fraudulently obtaining public assistance program benefits. If the affidavit constitutes a false claim of U.S. citizenship under 18 U.S.C., Section 911, a complaint shall be filed by the agency or political subdivision requiring the affidavit with the United States Attorney's Office.

(h) Agencies or political subdivisions of this state may adopt by regulation or ordinance variations to the requirements of the provisions of this section which demonstrably improve the efficiency or reduce delay in the verification process, or to provide for adjudication of unique individual circumstances where the verification procedures in this section would impose unusual hardship on a legal resident of Delaware.

(i) It shall be unlawful for any agency or a political subdivision of this state to provide any state, local, or federal benefit, as defined in 8 U.S.C., Section 1621, or 8 U.S.C., Section 1611, in violation of the provisions of this section.

(j) Each agency or political subdivision which administers a program of federal, state or local public benefits shall provide an annual report to the State Department of Justice with respect to its compliance with the provisions of this section, including the incidence of fraud, abuse, applications for benefits made by non-qualified aliens, and the incidence of application verification errors and significant delays. The Attorney General shall submit an annual public report on public benefits provided to qualified aliens to the General Assembly. The report may include recommendations to ensure that the application of the Systematic Alien Verification of Entitlements (SAVE) program is not erroneously denying benefits to legal residents of Delaware.”.

SYNOPSIS

As of July 1, 2012, this Act requires the State and its political subdivisions to verify employment authorization status for all new hires; requires public employers to only contract for physical performance of services within this State with contractors and subcontractors who verify employment authorization status; and requires, except for enumerated exceptions, that all state agencies and political subdivisions verify the lawful presence of those 14 years of age and older who apply for public benefits.

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