

Requiring Proof of Lawful Presence to Receive Public Benefits

This Act requires each state agency or political subdivision to verify the lawful presence in the United States of each person 18 years of age or older who applies for public benefits, as defined in federal law, for the applicant. It excludes specified public benefits. The legislation specifies the manner of verification, including requiring a specified form of identification, an affidavit, and verification through a federal program. It specifies criminal penalties for falsifying a required affidavit. It also authorizes variations of the affidavit requirement. It prohibits state agencies or political subdivisions from providing benefits in violation of the Act and establishes reporting requirements.

Submitted as:

Colorado

Chapter 13, Laws of 2006

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act Requiring Proof of Lawful
2 Presence to Receive Public Benefits.”

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4 Section 2. [*Legislative Declaration.*] It is the public policy of this state that all people
5 eighteen years of age or older shall provide proof that they are lawfully present in the United
6 States prior to receipt of certain public benefits.

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8 Section 3. [*Definitions.*] As used in this Act, unless the context otherwise requires:

9 (1) “emergency medical condition” shall have the same meaning as provided in 42 U.S.C.
10 Sec. 1396b (V) (3).

11 (2) “federal public benefits” shall have the same meaning as provided in 8 U.S.C. Sec.
12 1611.

13 (3) “state or local public benefits” shall have the same meaning as provided in 8 U.S.C.
14 Sec. 1621.

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16 Section 4. [*Verification of Lawful Presence - Exceptions - Reporting.*]

17 (1) Except as otherwise provided in [subsection (3)] of this section or where exempted by
18 federal law, on and after [insert date], each agency or political subdivision of the state shall verify
19 the lawful presence in the United States of each natural person [eighteen years of age] or older
20 who applies for state or local public benefits or for federal public benefits for the applicant.

21 (2) This section shall be enforced without regard to race, religion, gender, ethnicity, or
22 national origin.

23 (3) Verification of lawful presence in the United States shall not be required:

24 (a) for any purpose for which lawful presence in the United States is not required
25 by law, ordinance, or rule;

26 (b) for obtaining health care items and services that are necessary for the treatment
27 of an emergency medical condition of the person involved and are not related to an organ
28 transplant procedure;

29 (c) for short-term, noncash, in-kind emergency disaster relief;

30 (d) for public health assistance for immunizations with respect to immunizable
31 diseases and for testing and treatment of symptoms of communicable diseases whether or not
32 such symptoms are caused by a communicable disease;

33 (e) for programs, services, or assistance, such as soup kitchens, crisis counseling
34 and intervention, and short-term shelter specified by federal law or regulation that:

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

37 (ii) do not condition the provision of assistance, the amount of assistance
38 provided, or the cost of assistance provided on the individual recipient's income or resources; and

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

40 (f) for prenatal care.

41 (4) An agency or a political subdivision shall verify the lawful presence in the United
42 States of each applicant [eighteen years of age] or older for federal public benefits or state or local
43 public benefits by requiring the applicant to:

44 (a) produce:

45 (i) a valid [insert state] driver's license or a [insert state] identification card,
46 issued pursuant to [insert citation]; or

47 (ii) a United States Military Card or a Military Dependent's Identification
48 Card; or

49 (iii) a United States Coast Guard Merchant Mariner Card; or

50 (iv) a Native American tribal document; and

51 (b) execute an affidavit stating:

52 (i) that he or she is a United States citizen or legal permanent resident; or

53 (ii) that he or she is otherwise lawfully present in the United States
54 pursuant to Federal law.

55 (5) (a) Notwithstanding the requirements of [paragraph (a) of subsection (4)] of this
56 section, the [executive director of the department of revenue] may issue emergency rules, to be
57 effective until [insert date], providing for additional forms of identification or a waiver process to
58 ensure that an individual seeking benefits pursuant to this section proves lawful presence in the
59 United States. The rules are necessary to ensure that certain people lawfully present in the United
60 States receive authorized benefits, including but not limited to homeless state citizens.

61 (b) This [subsection (5)] and all emergency rules authorized under this [subsection
62 (5)] are repealed, effective [insert date].

63 (6) A person who knowingly makes a false, fictitious, or fraudulent statement or
64 representation in an affidavit executed pursuant to [subsection (4)] of this section shall be guilty
65 of a violation of [insert citation]. It shall constitute a separate violation of [insert citation] each
66 time that a person receives a public benefit based upon such a statement or representation.

67 (7) For an applicant who has executed an affidavit stating that he or she is an alien
68 lawfully present in the United States, verification of lawful presence for federal public benefits or
69 state or local public benefits shall be made through the federal Systematic Alien Verification of
70 Entitlement Program, referred to in this section as the "Save Program," operated by the United
71 States Department of Homeland Security or a successor program designated by the United States
72 Department of Homeland Security. Until such verification of lawful presence is made, the
73 affidavit may be presumed to be proof of lawful presence for purposes of this section.

74 (8) Agencies or political subdivisions of this state may adopt variations of the
75 requirements of [paragraph (b) of subsection (4)] of this section to improve efficiency or reduce

76 delay in the verification process or to provide for adjudication of unique individual circumstances
77 in which the verification procedures in this section would impose unusual hardship on a legal
78 resident of the state; except that the variations shall be no less stringent than the requirements of
79 this section.

80 (9) It shall be unlawful for an agency or a political subdivision of this state to provide a
81 federal public benefit or a state or local public benefit in violation of this section. Each state
82 agency or department that administers a program that provides state or local public benefits shall
83 provide an annual report with respect to its compliance with this section to the [veterans, and
84 military affairs committees of the senate and house of representatives], or any successor
85 committees.

86 (10) Errors and significant delays by the Save Program shall be reported to the United
87 States Department of Homeland Security and to the Secretary of State, both of which monitor the
88 Save Program and its verification application errors and significant delays and report yearly on
89 such errors and delays, to ensure that the application of the Save Program is not wrongfully
90 denying benefits to legal residents of the state.

91 (11) If any provision of this section or the application thereof to any person or
92 circumstance is held invalid, such invalidity shall not affect other provisions or applications of the
93 section that can be given effect without the invalid provision or application, and to this end the
94 provisions of this section are declared to be severable.

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96 Section 5. [*Severability*.] [Insert severability clause.]

97

98 Section 6. [*Repealer*.] [Insert repealer clause.]

99

100 Section 7. [*Effective Date*.] [Insert effective date.]