

SENATE BILL 1822

By Herron

AN ACT to amend Tennessee Code Annotated, Title 4; Title 12; Title 38; Title 39; Title 40; Title 67 and Title 71, to enact the "Tennessee Immigration Compliance Act".

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

SECTION 1. This act shall be known and may be cited as the "Tennessee Immigration Compliance Act."

SECTION 2. All requirements of this act concerning immigration or the classification of immigration status shall be construed in conformity with federal immigration law.

SECTION 3. Tennessee Code Annotated, Title 40, Chapter 7, Part 1, is amended by inserting the following as a new, appropriately designated section:

§ 40-7-1__.

(a) If a person is charged with any felony, or with driving under the influence pursuant to § 55-10-401, and is confined for any period of time in a county jail, a municipal jail, a jail operated by a metropolitan form of government, or any other local or municipal correctional facility, then a reasonable effort shall be made by the sheriff, jailer, or other designated officer to determine the citizenship status of the person so confined, including but not limited to, reviewing documents in the possession of such person.

(b) If the sheriff, jailer, or other designated officer cannot determine through reasonable effort that the confined person is a citizen of the United States or has been lawfully admitted to the United States and if lawfully admitted, that such lawful status has not expired, then verification shall be made within forty-eight (48) hours through a query to the Law Enforcement Support Center (LESC) of the United States department of

homeland security or such other office or agency designated for that purpose by the United States department of homeland security. If it is determined that the confined person is not lawfully present in the United States, pursuant to the federal Immigration and Naturalization Act, compiled in 8 U.S.C. § 1101 et seq., then the sheriff, jailer, or such other designated officer shall notify the United States department of homeland security.

(c) Nothing in this section shall be construed to deny a person bond or to deny release from confinement when such person is otherwise eligible for release.

SECTION 4. Tennessee Code Annotated, Section 67-4-2006, is amended by deleting the language "(a) – (e)" in subsection (f) and by substituting instead the language "(a) – (f)" and is further amended by redesignating subsection (f) as subsection (g).

SECTION 5. Tennessee Code Annotated, Section 67-4-2006, is amended by inserting the following as a new subsection (f):

(f)

(1) As used in this subsection (f), unless the context otherwise requires:

(A) "Labor services" means the physical performance of services in this state;

(B) "Lawful resident alien" means a person who is entitled to lawful residence in the United States pursuant to the federal Immigration and Naturalization Act; and

(C) "Lawful resident verification information" means the documentation that is required by the United States department of homeland security when completing the employment eligibility verification form commonly referred to as the federal "Form I-9".

(2) On and after January 1, 2010, for the purpose of calculating net earning or net loss, no taxpayer may deduct or receive a credit for remuneration provided to any individual for labor services in an amount equal to or exceeding six hundred dollars (\$600) per annum unless such individual is a lawful resident alien for whom that taxpayer has maintained documentation indicating either that:

(A) The individual supplied the taxpayer with lawful resident verification information; or

(B) The taxpayer verified the immigrant status of the individual prior to employment by using the federal electronic work authorization verification service provided by the United States department of homeland security pursuant to the federal Basic Pilot Program Extension and Expansion Act of 2003, P.L. 108-156.

(3) This subsection (f) shall apply whether or not an Internal Revenue Service Form 1099 is issued in conjunction with the wages or remuneration and regardless of the individual's status as an employee, contractor, subcontractor or otherwise.

(4) This subsection (f) shall not apply with respect to any individual hired by the taxpayer prior to January 1, 2010.

(5) This subsection (f) shall not apply to any taxpayer where the individual being paid is not directly compensated or employed by said taxpayer.

(6) The commissioner is authorized to prescribe forms and promulgate rules deemed necessary in order to administer and effectuate this subsection (f)

SECTION 6. Tennessee Code Annotated, Title 4, is amended by inserting Sections 7 through 9 below as a new, appropriately designated chapter.

SECTION 7. It is the public policy of this state and the purpose of this chapter that all persons eighteen (18) years of age or older shall provide proof that they are lawfully present in the United States prior to the receipt of certain public benefits.

SECTION 8. As used in this chapter, unless the context otherwise requires:

(1) "Emergency medical condition" has the same meaning as provided in 42 U.S.C. § 1396b(v)(3);

(2) "Federal public benefits" has the same meaning as provided in 8 U.S.C. § 1611; and

(3) "State or local public benefits" has the same meaning as provided in 8 U.S.C. § 1621.

SECTION 9.

(a) Except as provided in subsection (c) or where exempted by federal law, on or after July 1, 2010, every agency or political subdivision of this state shall verify the lawful presence in the United States of any natural person eighteen (18) years of age or older who has applied for state or local public benefits or for federal public benefits that are provided by or administered by an agency or political subdivision of this state.

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

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

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

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

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

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

(5) For programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter care, so long as such programs, services or assistance:

(A) Deliver noncash, 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 individual recipient's income or resources; and

(C) Are necessary for the protection of life or safety;

(6) For prenatal care; or

(7) For postsecondary education, whereby the Tennessee higher education commission shall set forth, or cause to be set forth, policies regarding postsecondary benefits that comply with all federal law including but not limited to public benefits as described in 8 U.S.C. § 1611, § 1621, or § 1623.

(d) An agency or a political subdivision shall verify the lawful presence in the United States of each applicant eighteen (18) years of age or older for federal public benefits or state or local public benefits by requiring the applicant to execute an affidavit stating that the applicant is a United States citizen or legal permanent resident or that the applicant is otherwise lawfully present in the United States pursuant to federal law.

(e) For any applicant who has executed an affidavit that such applicant is an alien lawfully present in the United States, eligibility for benefits shall be made through

the Systematic Alien Verification for Entitlements (SAVE) program operated by the United States department of homeland security, or the federal electronic work authorization verification service provided by the United States department of homeland security pursuant to the federal Basic Pilot Program Extension and Expansion Act of 2003, P.L. 108-156, or such other successor immigration status verification program as may be designated by the United States department of 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.

(f) Any person who knowingly makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to subsection (d) commits the offense of aggravated perjury as defined in § 39-16-703. It shall constitute a separate violation of § 39-16-703 each time that a person receives a public benefit based upon such a statement or representation.

(g) Agencies or political subdivisions of this state may adopt variations to the requirements of this section to improve 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 Tennessee.

(h) It is unlawful for any agency or a political subdivision of this state to provide a federal benefit or a state or local public benefit in violation of this section. Each state agency or department that administers any program that provides state or local public benefits shall provide an annual report with respect to its compliance with this section to the governor and to the speakers of the senate and house of representatives by no later than February 1 of each year.

(i) Any and all errors and significant delays in using any verification program pursuant to subsection (e) shall be reported to the United States department of homeland security and to the Tennessee secretary of state. The secretary of state shall monitor the use of verification programs, compile and analyze information submitted concerning verification application errors and significant delays, and report to the governor and to the speakers of the senate and house of representatives by no later than February 1 of each year regarding the frequency of such errors and delays and whether such errors and delays are preventing the receipt of benefits by legal residents of Tennessee.

SECTION 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 11. Subsections (h) and (i) of Section 9 shall take effect July 1, 2010, the public welfare requiring it. All other sections of this act shall take effect July 1, 2009, the public welfare requiring it.