

CHAPTER 13

GOVERNMENT - STATE

HOUSE BILL 06S-1023

BY REPRESENTATIVE(S) Romanoff, Benefield, Borodkin, Buescher, Carroll M., Cerbo, Coleman, Curry, Gallegos, Green, Hodge, Jahn, Kerr A., Larson, Lindstrom, Marshall, McFadyen, Merrifield, Paccione, Pommer, Ragsdale, Riesberg, Solano, Soper, Todd, Vigil, and Butcher;
also SENATOR(S) Fitz-Gerald.

AN ACT

CONCERNING THE IMMEDIATE IMPLEMENTATION OF RESTRICTIONS ON PUBLIC BENEFITS AS DEFINED IN ARTICLE 8 OF THE UNITED STATES CODE FOR PERSONS EIGHTEEN YEARS OF AGE OR OLDER EFFECTIVE AUGUST 1, 2006.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 76.5
Restrictions on Public Benefits

24-76.5-101. Legislative declaration. IT IS THE PUBLIC POLICY OF THE STATE OF COLORADO THAT ALL PERSONS EIGHTEEN YEARS OF AGE OR OLDER SHALL PROVIDE PROOF THAT THEY ARE LAWFULLY PRESENT IN THE UNITED STATES PRIOR TO RECEIPT OF CERTAIN PUBLIC BENEFITS.

24-76.5-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "EMERGENCY MEDICAL CONDITION" SHALL HAVE THE SAME MEANING AS PROVIDED IN 42 U.S.C. SEC. 1396b (v) (3).

(2) "FEDERAL PUBLIC BENEFITS" SHALL HAVE THE SAME MEANING AS PROVIDED IN 8 U.S.C. SEC. 1611.

(3) "STATE OR LOCAL PUBLIC BENEFITS" SHALL HAVE THE SAME MEANING AS

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

PROVIDED IN 8 U.S.C. SEC. 1621.

24-76.5-103. Verification of lawful presence - exceptions - reporting.

(1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS SECTION OR WHERE EXEMPTED BY FEDERAL LAW, ON AND AFTER AUGUST 1, 2006, EACH AGENCY OR POLITICAL SUBDIVISION OF THE STATE SHALL VERIFY THE LAWFUL PRESENCE IN THE UNITED STATES OF EACH NATURAL PERSON EIGHTEEN YEARS OF AGE OR OLDER WHO APPLIES FOR STATE OR LOCAL PUBLIC BENEFITS OR FOR FEDERAL PUBLIC BENEFITS FOR THE APPLICANT.

(2) THIS SECTION SHALL BE ENFORCED WITHOUT REGARD TO RACE, RELIGION, GENDER, ETHNICITY, OR NATIONAL ORIGIN.

(3) VERIFICATION OF LAWFUL PRESENCE IN THE UNITED STATES SHALL NOT BE REQUIRED:

(a) FOR ANY PURPOSE FOR WHICH LAWFUL PRESENCE IN THE UNITED STATES IS NOT REQUIRED BY LAW, ORDINANCE, OR RULE;

(b) FOR OBTAINING HEALTH CARE ITEMS AND SERVICES THAT ARE NECESSARY FOR THE TREATMENT OF AN EMERGENCY MEDICAL CONDITION OF THE PERSON INVOLVED AND ARE NOT RELATED TO AN ORGAN TRANSPLANT PROCEDURE;

(c) FOR SHORT-TERM, NONCASH, IN-KIND EMERGENCY DISASTER RELIEF;

(d) 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;

(e) FOR PROGRAMS, SERVICES, OR ASSISTANCE, SUCH AS SOUP KITCHENS, CRISIS COUNSELING AND INTERVENTION, AND SHORT-TERM SHELTER SPECIFIED BY FEDERAL LAW OR REGULATION THAT:

(I) DELIVER IN-KIND SERVICES AT THE COMMUNITY LEVEL, INCLUDING SERVICES THROUGH PUBLIC OR PRIVATE NONPROFIT AGENCIES;

(II) 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

(III) ARE NECESSARY FOR THE PROTECTION OF LIFE OR SAFETY; OR

(f) FOR PRENATAL CARE.

(4) AN AGENCY OR A POLITICAL SUBDIVISION SHALL VERIFY THE LAWFUL PRESENCE IN THE UNITED STATES OF EACH APPLICANT EIGHTEEN YEARS OF AGE OR OLDER FOR FEDERAL PUBLIC BENEFITS OR STATE OR LOCAL PUBLIC BENEFITS BY REQUIRING THE APPLICANT TO:

(a) PRODUCE:

(I) A VALID COLORADO DRIVER'S LICENSE OR A COLORADO IDENTIFICATION CARD, ISSUED PURSUANT TO ARTICLE 2 OF TITLE 42, C.R.S.; OR

(II) A UNITED STATES MILITARY CARD OR A MILITARY DEPENDENT'S IDENTIFICATION CARD; OR

(III) A UNITED STATES COAST GUARD MERCHANT MARINER CARD; OR

(IV) A NATIVE AMERICAN TRIBAL DOCUMENT; AND

(b) EXECUTE AN AFFIDAVIT STATING:

(I) THAT HE OR SHE IS A UNITED STATES CITIZEN OR LEGAL PERMANENT RESIDENT; OR

(II) THAT HE OR SHE IS OTHERWISE LAWFULLY PRESENT IN THE UNITED STATES PURSUANT TO FEDERAL LAW.

(5) (a) NOTWITHSTANDING THE REQUIREMENTS OF PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE MAY ISSUE EMERGENCY RULES, TO BE EFFECTIVE UNTIL MARCH 1, 2007, PROVIDING FOR ADDITIONAL FORMS OF IDENTIFICATION OR A WAIVER PROCESS TO ENSURE THAT AN INDIVIDUAL SEEKING BENEFITS PURSUANT TO THIS SECTION PROVES LAWFUL PRESENCE IN THE UNITED STATES. THE RULES ARE NECESSARY TO ENSURE THAT CERTAIN INDIVIDUALS LAWFULLY PRESENT IN THE UNITED STATES RECEIVE AUTHORIZED BENEFITS, INCLUDING BUT NOT LIMITED TO HOMELESS STATE CITIZENS.

(b) THIS SUBSECTION (5) AND ALL EMERGENCY RULES AUTHORIZED UNDER THIS SUBSECTION (5) ARE REPEALED, EFFECTIVE MARCH 1, 2007.

(6) A PERSON WHO KNOWINGLY MAKES A FALSE, FICTITIOUS, OR FRAUDULENT STATEMENT OR REPRESENTATION IN AN AFFIDAVIT EXECUTED PURSUANT TO SUBSECTION (4) OF THIS SECTION SHALL BE GUILTY OF A VIOLATION OF SECTION 18-8-503, C.R.S. IT SHALL CONSTITUTE A SEPARATE VIOLATION OF SECTION 18-8-503, C.R.S., EACH TIME THAT A PERSON RECEIVES A PUBLIC BENEFIT BASED UPON SUCH A STATEMENT OR REPRESENTATION.

(7) FOR AN APPLICANT WHO HAS EXECUTED AN AFFIDAVIT STATING THAT HE OR SHE IS AN ALIEN LAWFULLY PRESENT IN THE UNITED STATES, VERIFICATION OF LAWFUL PRESENCE FOR FEDERAL PUBLIC BENEFITS OR STATE OR LOCAL PUBLIC BENEFITS SHALL BE MADE THROUGH THE FEDERAL SYSTEMATIC ALIEN VERIFICATION OF ENTITLEMENT PROGRAM, REFERRED TO IN THIS SECTION AS THE "SAVE PROGRAM", OPERATED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY OR A SUCCESSOR PROGRAM DESIGNATED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY. UNTIL SUCH VERIFICATION OF LAWFUL PRESENCE IS MADE, THE AFFIDAVIT MAY BE PRESUMED TO BE PROOF OF LAWFUL PRESENCE FOR PURPOSES OF THIS SECTION.

(8) AGENCIES OR POLITICAL SUBDIVISIONS OF THIS STATE MAY ADOPT VARIATIONS OF THE REQUIREMENTS OF PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION TO IMPROVE EFFICIENCY OR REDUCE DELAY IN THE VERIFICATION PROCESS OR TO

PROVIDE FOR ADJUDICATION OF UNIQUE INDIVIDUAL CIRCUMSTANCES IN WHICH THE VERIFICATION PROCEDURES IN THIS SECTION WOULD IMPOSE UNUSUAL HARDSHIP ON A LEGAL RESIDENT OF THE STATE; EXCEPT THAT THE VARIATIONS SHALL BE NO LESS STRINGENT THAN THE REQUIREMENTS OF THIS SECTION.

(9) IT SHALL BE UNLAWFUL FOR AN AGENCY OR A POLITICAL SUBDIVISION OF THIS STATE TO PROVIDE A FEDERAL PUBLIC BENEFIT OR A STATE OR LOCAL PUBLIC BENEFIT IN VIOLATION OF THIS SECTION. EACH STATE AGENCY OR DEPARTMENT THAT ADMINISTERS A PROGRAM THAT PROVIDES STATE OR LOCAL PUBLIC BENEFITS SHALL PROVIDE AN ANNUAL REPORT WITH RESPECT TO ITS COMPLIANCE WITH THIS SECTION TO THE STATE, VETERANS, AND MILITARY AFFAIRS COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES.

(10) ERRORS AND SIGNIFICANT DELAYS BY THE SAVE PROGRAM SHALL BE REPORTED TO THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY AND TO THE SECRETARY OF STATE, BOTH OF WHICH MONITOR THE SAVE PROGRAM AND ITS VERIFICATION APPLICATION ERRORS AND SIGNIFICANT DELAYS AND REPORT YEARLY ON SUCH ERRORS AND DELAYS, TO ENSURE THAT THE APPLICATION OF THE SAVE PROGRAM IS NOT WRONGFULLY DENYING BENEFITS TO LEGAL RESIDENTS OF THE STATE.

(11) IF ANY PROVISION OF THIS SECTION OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, SUCH INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THE SECTION THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE DECLARED TO BE SEVERABLE.

SECTION 2. The general assembly anticipates that there may be a need for supplemental appropriations to comply with the provisions of this act that cannot be accommodated within existing resources.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: July 31, 2006