LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 963

Introduced by Friend, 10; Erdman, 47; Lautenbaugh, 18; Pahls, 31; at the request of the Governor.

Read first time January 15, 2008

Committee: Judiciary

A BILL

FOR AN ACT relating to governmental agencies; to amend section 85-502, Revised Statutes Cumulative Supplement, 2006; to define terms; to require verification of lawful presence in the United States as prescribed; to provide exemptions and procedures; to provide powers and duties; to require a report; to harmonize provisions; and to repeal the original section.

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 federal, state, or local 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 federal, state, or local 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.

Sec. 2. For purposes of sections 1 to 6 of this act, federal, state, or local public benefit means any grant, contract, loan, professional license, commercial license, retirement benefit, welfare benefit, health benefit, disability benefit, public or assisted housing benefit, postsecondary education benefit, 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 or 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 benefits execute an affidavit, on a form prescribed by the Department of Administrative Services, under penalty of perjury, attesting 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, 2008, and is lawfully present in the United States.

Sec. 5. For any applicant who has executed an affidavit described in subdivision (2) of section 4 of this act, eligibility for 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 department. Until such verification of eligibility is made, such affidavit may be presumed to be proof of lawful presence for purposes of sections 1 to 6 of this act.

Sec. 6. Each state agency which administers any program of federal, state, or local 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. Section 85-502, Revised Statutes Cumulative Supplement, 2006, is amended to read:

85-502 Rules and regulations established by the governing board of each state postsecondary educational institution shall require as a minimum that a person is not deemed to have established a residence in this state, for purposes of sections 85-501 to 85-504, unless such person is lawfully present in the United States and:

(1) Such person is of legal age or is an emancipated minor and has established a home in Nebraska where he or she is habitually present for a minimum period of one hundred eighty days, with the bona fide intention of making this state his or her permanent residence, supported by documentary proof;

(2) The parents, parent, or guardian having custody of a minor registering in the educational institution have established a home in Nebraska where such parents, parent, or guardian are or is habitually present with the bona fide intention to make this state their, his, or her permanent residence, supported by documentary proof. If a student has matriculated in any state postsecondary educational institution while his or her parents, parent, or guardian had an established home in this state, and the parents, parent, or guardian ceases to reside in the state, such student shall not thereby lose his or her resident status if such student has the bona fide intention to make this state his or her
permanent residence, supported by documentary proof;

(3) Such student is of legal age and is a dependent for federal income tax purposes of a parent or former guardian who has established a home in Nebraska where he or she is habitually present with the bona fide intention of making this state his or her permanent residence, supported by documentary proof;

(4) Such student is a nonresident of this state prior to marriage and marries a person who has established a home in Nebraska where he or she is habitually present with the bona fide intention of making this state his or her permanent residence, supported by documentary proof;

(5) Except as provided in subdivision (6) of this section, such student, if an alien, has applied to or has a petition pending with the United States Immigration and Naturalization Service to attain lawful status under federal immigration law and has established a home in Nebraska for a period of at least one hundred eighty days where he or she is habitually present with the bona fide intention to make this state his or her permanent residence, supported by documentary proof;

(6) Such student is a staff member or a dependent of a staff member of the University of Nebraska, one of the Nebraska state colleges, or one of the community college areas who joins the staff immediately prior to the beginning of a term from an out-of-state location; or

(7) Such student is on active duty with the armed
services of the United States and has been assigned a permanent
duty station in Nebraska, or is a legal dependent of a person on
active duty with the armed services of the United States assigned a
permanent duty station in Nebraska. 

(a) Such student resided with his or her parent,
guardian, or conservator while attending a public or private high
school in this state and:

(i) Graduated from a public or private high school in
this state or received the equivalent of a high school diploma in
this state;

(ii) Resided in this state for at least three years
before the date the student graduated from the high school or
received the equivalent of a high school diploma;

(iii) Registered as an entering student in a state
postsecondary educational institution not earlier than the 2006
fall semester and

(iv) Provided to the state postsecondary educational
institution an affidavit stating that he or she will file
an application to become a permanent resident at the earliest
opportunity he or she is eligible to do so.

(b) If the parent, guardian or conservator with whom the
student resided ceases to reside in the state, such student shall
not lose his or her resident status under this subdivision if the
student has the bona fide intention to make this state his or her
permanent residence, supported by documentary proof.
Sec. 8. Original section 85-502, Revised Statutes Cumulative Supplement, 2006, is repealed.