CHAPTER 29

Verification of Lawful Presence in the United States

**SECTION 8‑29‑10.** Applicants for public benefits; verification of lawful presence; affidavit by applicant; penalty for false affidavit; local ordinances affecting enforcement.

 (A) Except as provided in subsection (C) of this section or where exempted by federal law, on or after July 1, 2008, every agency or political subdivision of this State shall verify the lawful presence in the United States of any alien eighteen years of age or older who has applied for state or local public benefits, as defined in 8 USC Section 1621, or for federal public benefits, as defined in 8 USC Section 1611, that are administered by an agency or a political subdivision of this State.

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

 (C) Verification of lawful presence pursuant to the provisions of this article is not required for:

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

 (2) assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in the Social Security Act (42 USC 1396, et seq.) of the person involved and are not related to an organ transplant procedure;

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

 (4) 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) programs, services, or assistance including soup kitchens, crisis counseling and intervention, and short‑term shelter specified by the United States Attorney General, in the United States Attorney General’s sole discretion 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 individual recipient’s income or resources; and

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

 (6) prenatal care;

 (7) postsecondary education, whereby the Department of Education 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 USC Section 1611, 1621, or 1623;

 (8) benefits, programs, services, or any other assistance provided to victims of domestic violence, irrespective of their immigration status, under the Violence Against Women Act of 2000, Public Law Number 106‑386, or the Illegal Immigration Reform and Immigrant Responsibility Act, Public Law Number 104‑208; or

 (9) benefits and refunds lawfully due from the South Carolina Retirement Systems pursuant to Title 9 of the South Carolina Code of Laws to members of the Retirement Systems and their beneficiaries.

 (D) Verification of lawful presence in the United States by the agency or political subdivision required to make such verification must occur as follows:

 (1) the applicant must execute an affidavit that he is a United States citizen or legal permanent resident eighteen years of age or older; or

 (2) the applicant must execute an affidavit that he or she is a qualified alien or nonimmigrant under the Federal Immigration and Nationality Act, Public Law 82‑414, eighteen years of age or older, and lawfully present in the United States.

 (E) For an applicant who has executed an affidavit that he or she is an alien lawfully present in the United States, eligibility for benefits shall be made through the Systematic Alien Verification of Entitlement (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 the eligibility verification is made, the affidavit shall be presumed to be proof of lawful presence for the purposes of this article.

 (F) A person who knowingly and wilfully makes a false, fictitious, or fraudulent statement or representation in an affidavit executed pursuant to this section, or who aids or abets a person in knowingly and willfully making a false, fictitious, or fraudulent statement or representation in an affidavit executed pursuant to this section, or who solicits or conspires to make a false, fictitious, or fraudulent statement or representation in an affidavit executed pursuant to this section shall be guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both. In addition, a person convicted pursuant to this section must disgorge any benefit received or make restitution, or both, to the agency or political subdivision of this State that administered the benefit or entitlement program. It is a separate violation of this section each time a person receives a public benefit based on such a statement or representation. A conviction and fine charged pursuant to this section shall not preempt or preclude additional appropriate civil or criminal charges or penalties. A person who suffers an ascertainable loss of money or property, real or personal, as a result of the actions of anyone convicted of a violation of this subsection may bring an action, individually, or in a representative capacity, to recover actual damages. If the court finds that a violation has been established, the court shall award three times the actual damages sustained and may provide such other relief as it considers necessary and proper. Upon a finding by the court of a violation, the court shall award to the person bringing the action under this section reasonable attorney’s fees and costs.

 (G) Persons convicted of a violation of this section are jointly and severally liable for a loss suffered by a person or an agency or political subdivision of the State.

 (H) If an affidavit constitutes a false claim of U.S. citizenship under 18 USC Section 911, a complaint must be filed by the agency or political subdivision with the United States Attorney for the District of South Carolina.

 (I) It is unlawful for an agency or a political subdivision of this State to provide any state, local, or federal benefit, as defined in 8 USC Section 1621 or 8 USC Section 1611, in violation of this section.

 (J) All errors and significant delays by SAVE or its successor program must be reported to the United States Department of Homeland Security and to the Secretary of State which will monitor the state’s participation in the SAVE program and its verification of application errors and significant delays and report yearly on such errors and significant delays to ensure that the application of SAVE is not wrongfully denying benefits to legal residents of South Carolina.

 (K) An agency or a political subdivision of this State that provides a state, local, or federal benefit, as defined in 8 USC 1621 or 8 USC Section 1611, must require a person currently under the age of eighteen who received the benefit to comply with the provisions of this article upon reaching the age of eighteen. If the recipient is unwilling or unable to comply, receipt of all benefits must cease immediately upon the recipient’s eighteenth birthday.

 (L) A local government may not enact any ordinance or policy that limits or prohibits a law enforcement officer, local official, or local government employee from seeking to enforce the provisions of this article.

HISTORY: 2008 Act No. 280, Section 5, eff June 4, 2008.

LAW REVIEW AND JOURNAL COMMENTARIES

Preemption and United States v. South Carolina: Undermining our nation’s border and the Constitution’s border between State and Federal sovereignty. Honorable George E. “Chip” Campsen, III, 65 S.C. L. Rev. 901 (Summer 2014).

Attorney General’s Opinions

A court will most likely find an individual who has been granted Deferred Action for Childhood Arrival status should be denied a professional or occupational license in South Carolina. S.C. Op.Atty.Gen. (March 3, 2014) 2014 WL 1398592.