

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 403

FINAL READING

Introduced by Karpisek, 32; Gloor, 35; at the request of the Governor.

Read first time January 16, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to government; to amend sections 77-27,187,  
2 77-5701, 77-5801, and 77-5901, Revised Statutes  
3 Cumulative Supplement, 2008; to require verification  
4 of lawful presence for purposes of public benefits;  
5 to require verification of work eligibility status for  
6 purposes of public employment, employment under public  
7 contracts, and certain tax incentives; to provide duties  
8 for the Department of Labor; to harmonize provisions; to  
9 provide an operative date; to provide severability; and  
10 to repeal the original sections.

11 Be it enacted by the people of the State of Nebraska,

1           Section 1. (1) Notwithstanding any other provisions of  
2 law, unless exempted from verification under section 3 of this  
3 act or pursuant to federal law, no state agency or political  
4 subdivision of the State of Nebraska shall provide public benefits  
5 to a person not lawfully present in the United States.

6           (2) Except as provided in section 3 of this act or if  
7 exempted by federal law, every agency or political subdivision of  
8 the State of Nebraska shall verify the lawful presence in the  
9 United States of any person who has applied for public benefits  
10 administered by an agency or a political subdivision of the State  
11 of Nebraska. This section shall be enforced without regard to race,  
12 religion, gender, ethnicity, or national origin.

13           (3) On and after the operative date of this act, no  
14 employee of a state agency or political subdivision of the State  
15 of Nebraska shall be authorized to participate in any retirement  
16 system, including, but not limited to, the systems provided for  
17 in the County Employees Retirement Act, the Judges Retirement Act,  
18 the Nebraska State Patrol Retirement Act, the School Employees  
19 Retirement Act, and the State Employees Retirement Act, unless the  
20 employee (a) is a United States citizen or (b) is a qualified alien  
21 under the federal Immigration and Nationality Act, 8 U.S.C. 1101  
22 et seq., as such act existed on January 1, 2009, and is lawfully  
23 present in the United States.

24           Sec. 2. For purposes of sections 1 to 6 of this act,  
25 public benefits means any grant, contract, loan, professional

1 license, commercial license, welfare benefit, health payment  
2 or financial assistance benefit, disability benefit, public or  
3 assisted housing benefit, postsecondary education benefit involving  
4 direct payment of financial assistance, food assistance benefit, or  
5 unemployment benefit or any other similar benefit provided by or  
6 for which payments or assistance are provided to an individual, a  
7 household, or a family eligibility unit by an agency of the United  
8 States, the State of Nebraska, or a political subdivision of the  
9 State of Nebraska.

10           Sec. 3. Verification of lawful presence in the United  
11 States pursuant to section 1 of this act is not required for:

12           (1) Any purpose for which lawful presence in the United  
13 States is not restricted by law, ordinance, or regulation;

14           (2) Assistance for health care services and products,  
15 not related to an organ transplant procedure, that are necessary  
16 for the treatment of an emergency medical condition, including  
17 emergency labor and delivery, manifesting itself by acute symptoms  
18 of sufficient severity, including severe pain, such that the  
19 absence of immediate medical attention could reasonably be expected  
20 to result in (a) placing the patient's health in serious jeopardy,  
21 (b) serious impairment to bodily functions, or (c) serious  
22 dysfunction of any bodily organ or part;

23           (3) Short-term, noncash, in-kind emergency disaster  
24 relief;

25           (4) Public health assistance for immunizations with

1 respect to diseases and for testing and treatment of symptoms  
2 of communicable diseases, whether or not such symptoms are caused  
3 by a communicable disease; or

4 (5) Programs, services, or assistance necessary for the  
5 protection of life or safety, such as soup kitchens, crisis  
6 counseling and intervention, and short-term shelter, which (a)  
7 deliver in-kind services at the community level, including those  
8 which deliver such services through public or private, nonprofit  
9 agencies and (b) do not condition the provision of assistance, the  
10 amount of assistance provided, or the cost of assistance provided  
11 on the income or resources of the recipient.

12 Sec. 4. Verification of lawful presence in the United  
13 States pursuant to section 1 of this act requires that the  
14 applicant for public benefits attest in a format prescribed by the  
15 Department of Administrative Services that:

16 (1) He or she is a United States citizen; or

17 (2) He or she is a qualified alien under the federal  
18 Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act  
19 existed on January 1, 2009, and is lawfully present in the United  
20 States.

21 A state agency or political subdivision of the State  
22 of Nebraska may adopt and promulgate rules and regulations or  
23 procedures for the electronic filing of the attestation required  
24 under this section if such attestation is substantially similar to  
25 the format prescribed by the Department of Administrative Services.

1           Sec. 5. For any applicant who has executed a document  
2 described in subdivision (2) of section 4 of this act, eligibility  
3 for public benefits shall be verified through the Systematic Alien  
4 Verification for Entitlements Program operated by the United States  
5 Department of Homeland Security or an equivalent program designated  
6 by the United States Department of Homeland Security. Until such  
7 verification of eligibility is made, such attestation may be  
8 presumed to be proof of lawful presence for purposes of sections  
9 1 to 6 of this act unless such verification is required before  
10 providing the public benefit under another provision of state or  
11 federal law.

12           Sec. 6. Each state agency which administers any program  
13 of public benefits shall provide an annual report not later than  
14 January 31 for the prior year to the Governor and the Clerk of the  
15 Legislature with respect to compliance with sections 1 to 6 of this  
16 act. The report shall include, but not be limited to, the total  
17 number of applicants for benefits and the number of applicants  
18 rejected pursuant to such sections.

19           Sec. 7. (1) For purposes of this section:

20           (a) Federal immigration verification system means the  
21 electronic verification of the work authorization program of  
22 the Illegal Immigration Reform and Immigrant Responsibility Act  
23 of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or  
24 an equivalent federal program designated by the United States  
25 Department of Homeland Security or other federal agency authorized

1 to verify the work eligibility status of a newly hired employee  
2 pursuant to the Immigration Reform and Control Act of 1986;

3 (b) Public contractor means any contractor or his or her  
4 subcontractor who is awarded a contract by a public employer for  
5 the physical performance of services within the State of Nebraska;  
6 and

7 (c) Public employer means any agency or political  
8 subdivision of the State of Nebraska.

9 (2) Every public employer and public contractor shall  
10 register with and use a federal immigration verification system to  
11 determine the work eligibility status of new employees physically  
12 performing services within the State of Nebraska. Every contract  
13 between a public employer and public contractor shall contain  
14 a provision requiring the public contractor to use a federal  
15 immigration verification system to determine the work eligibility  
16 status of new employees physically performing services within the  
17 State of Nebraska.

18 (3) For two years after the operative date of this  
19 act, the Department of Labor shall make available to all  
20 private employers information regarding the federal immigration  
21 verification system and encouraging the use of the federal  
22 immigration verification system. The department shall report to the  
23 Legislature no later than December 1, 2011, on the use of a federal  
24 immigration verification system by Nebraska employers.

25 (4) This section does not apply to contracts awarded by a

1 public employer prior to the operative date of this act.

2           Sec. 8. Section 77-27,187, Revised Statutes Cumulative  
3 Supplement, 2008, is amended to read:

4           77-27,187 Sections 77-27,187 to 77-27,195 and section 9  
5 of this act shall be known and may be cited as the Nebraska  
6 Advantage Rural Development Act.

7           Sec. 9. (1) The Tax Commissioner shall not approve  
8 or grant to any person any tax incentive under the Nebraska  
9 Advantage Rural Development Act unless the taxpayer provides  
10 evidence satisfactory to the Tax Commissioner that the taxpayer  
11 electronically verified the work eligibility status of all newly  
12 hired employees employed in Nebraska.

13           (2) For purposes of calculating any tax incentive  
14 available under the act, the Tax Commissioner shall exclude hours  
15 worked and compensation paid to an employee that is not eligible to  
16 work in Nebraska as verified under subsection (1) of this section.

17           (3) This section does not apply to any application filed  
18 under the act prior to the operative date of this act.

19           Sec. 10. Section 77-5701, Revised Statutes Cumulative  
20 Supplement, 2008, is amended to read:

21           77-5701 Sections 77-5701 to 77-5735 and section 11 of  
22 this act shall be known and may be cited as the Nebraska Advantage  
23 Act.

24           Sec. 11. (1) The Tax Commissioner shall not approve or  
25 grant to any person any tax incentive under the Nebraska Advantage

1 Act unless the taxpayer provides evidence satisfactory to the  
2 Tax Commissioner that the taxpayer electronically verified the  
3 work eligibility status of all newly hired employees employed in  
4 Nebraska.

5 (2) For purposes of calculating any tax incentive under  
6 the act, the Tax Commissioner shall exclude hours worked and  
7 compensation paid to an employee that is not eligible to work in  
8 Nebraska as verified under subsection (1) of this section.

9 (3) This section does not apply to any application filed  
10 under the Nebraska Advantage Act prior to the operative date of  
11 this act.

12 Sec. 12. Section 77-5801, Revised Statutes Cumulative  
13 Supplement, 2008, is amended to read:

14 77-5801 Sections 77-5801 to 77-5807 and section 13 of  
15 this act shall be known and may be cited as the Nebraska Advantage  
16 Research and Development Act.

17 Sec. 13. The Tax Commissioner shall not approve or  
18 grant to any person any tax incentive under the Nebraska  
19 Advantage Research and Development Act unless the taxpayer provides  
20 evidence satisfactory to the Tax Commissioner that the taxpayer  
21 electronically verified the work eligibility status of all newly  
22 hired employees employed in Nebraska. This section does not apply  
23 to any credit claimed in a tax year beginning or deemed to begin  
24 before January 1, 2009, under the Internal Revenue Code of 1986,  
25 as amended.



1           Sec. 14. Section 77-5901, Revised Statutes Cumulative  
2 Supplement, 2008, is amended to read:

3           77-5901 Sections 77-5901 to 77-5907 and section 15 of  
4 this act shall be known and may be cited as the Nebraska Advantage  
5 Microenterprise Tax Credit Act.

6           Sec. 15. (1) The Tax Commissioner shall not approve  
7 or grant to any person any tax incentive under the Nebraska  
8 Advantage Microenterprise Tax Credit Act unless the taxpayer  
9 provides evidence satisfactory to the Tax Commissioner that the  
10 taxpayer electronically verified the work eligibility status of all  
11 newly hired employees employed in Nebraska.

12           (2) For purposes of calculating any tax incentive  
13 available under the act, the Tax Commissioner shall exclude the  
14 hours worked and compensation paid to an employee that is not  
15 eligible to work in Nebraska as verified under subsection (1) of  
16 this section.

17           (3) This section does not apply to any application filed  
18 under the act prior to the operative date of this act.

19           Sec. 16. This act becomes operative on October 1, 2009.

20           Sec. 17. If any section in this act or any part of any  
21 section is declared invalid or unconstitutional, the declaration  
22 shall not affect the validity or constitutionality of the remaining  
23 portions.

24           Sec. 18. Original sections 77-27,187, 77-5701, 77-5801,  
25 and 77-5901, Revised Statutes Cumulative Supplement, 2008, are

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1 repealed.