

By: Zedler

H.B. No. 2260

A BILL TO BE ENTITLED

AN ACT

relating to verifying the eligibility of applicants for federal, state, and local public benefits; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 10, Government Code, is amended by adding Subtitle H to read as follows:

SUBTITLE H. PROVISION OF PUBLIC BENEFITS BY STATE AND LOCAL GOVERNMENTS

CHAPTER 2351. VERIFICATION OF ELIGIBILITY FOR PUBLIC BENEFITS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2351.001. DEFINITIONS. In this chapter:

(1) "Federal public benefit" has the meaning assigned by 8 U.S.C. Section 1611.

(2) "Governmental entity" means an agency of this state or of a political subdivision of this state.

(3) "Public benefit" means a federal, state, or local public benefit.

(4) "State or local public benefit" has the meaning assigned by 8 U.S.C. Section 1621.

Sec. 2351.002. CONFLICTS WITH OTHER LAW. To the extent of a conflict between this chapter and federal law, including the federal Deficit Reduction Act of 2005 (Pub. L. No. 109-171), the federal law prevails.

[Sections 2351.003-2351.050 reserved for expansion]

1 SUBCHAPTER B. VERIFICATION OF APPLICANTS' LEGAL PRESENCE AND

2 ELIGIBILITY FOR PUBLIC BENEFITS

3 Sec. 2351.051. COMPLIANCE WITH SUBCHAPTER REQUIRED BEFORE  
4 PROVIDING PUBLIC BENEFITS. A governmental entity may not provide a  
5 public benefit to an individual until the governmental entity  
6 complies with this subchapter.

7 Sec. 2351.052. VERIFICATION OF LAWFUL PRESENCE OF APPLICANT  
8 FOR PUBLIC BENEFITS REQUIRED. (a) Except as provided by Section  
9 2351.053 or federal law, a governmental entity that administers a  
10 public benefit shall verify that an applicant for the public  
11 benefit who is 14 years of age or older is lawfully present in the  
12 United States.

13 (b) The governmental entity shall implement Subsection (a)  
14 without regard to the applicant's race, religion, gender,  
15 ethnicity, or national origin.

16 (c) As verification of the applicant's lawful presence in  
17 the United States, the applicant shall execute an affidavit before  
18 a notary swearing that the applicant is:

19 (1) a United States citizen or other United States  
20 national; or

21 (2) a qualified alien, as defined by 8 U.S.C. Section  
22 1641, and is lawfully present in the United States.

23 (d) The governmental entity shall provide free notary  
24 public services to an applicant for a public benefit for purposes of  
25 this section.

26 Sec. 2351.053. EXEMPTION FROM REQUIREMENT TO VERIFY LAWFUL  
27 PRESENCE OF CERTAIN APPLICANTS. A governmental entity is not

1 required under Section 2351.052 to verify the lawful presence in  
2 the United States of an applicant if the applicant is applying for  
3 any of the following public benefits:

4 (1) a health care item or service that:

5 (A) is necessary to treat an emergency medical  
6 condition, as defined by 42 U.S.C. Section 1396b(v)(3), of the  
7 applicant; and

8 (B) is not related to an organ transplant  
9 procedure;

10 (2) short-term, noncash, in-kind emergency disaster  
11 relief;

12 (3) public health assistance for immunizations or for  
13 testing and treatment of a symptom of a communicable disease,  
14 regardless of whether the symptom is caused by a communicable  
15 disease;

16 (4) a program, service, or other assistance, including  
17 crisis counseling and intervention, short-term shelter, and  
18 assistance provided through a soup kitchen, that:

19 (A) is specified by the United States attorney  
20 general in the attorney general's sole and unreviewable discretion  
21 after consultation with appropriate federal agencies;

22 (B) delivers in-kind assistance at the community  
23 level, including through a public or private nonprofit agency;

24 (C) does not condition the provision of  
25 assistance, the amount of assistance provided, or the cost of the  
26 assistance provided on the recipient's income or resources; and

27 (D) is necessary for the protection of life or

1 safety; or

2 (5) any other public benefit for which lawful presence  
3 in the United States is not required by:

4 (A) a federal or state law or regulation; or

5 (B) a local order or ordinance.

6 Sec. 2351.054. VERIFICATION OF ELIGIBILITY OF CERTAIN  
7 APPLICANTS FOR PUBLIC BENEFITS REQUIRED. (a) A governmental  
8 entity shall verify the eligibility of an applicant for a public  
9 benefit who executes an affidavit under Section 2351.052 for that  
10 public benefit using:

11 (1) the Systematic Alien Verification for  
12 Entitlements (SAVE) program operated by the United States  
13 Department of Homeland Security; or

14 (2) an equivalent program designated by that  
15 department.

16 (b) A governmental entity shall presume that an applicant  
17 for a public benefit who executes an affidavit under Section  
18 2351.052 is lawfully present in the United States for purposes of  
19 this subchapter until the governmental entity verifies the  
20 applicant's eligibility in the manner required by Subsection (a).

21 Sec. 2351.055. ALTERNATE PROCEDURES FOR EFFICIENCY OR TO  
22 REDUCE HARDSHIP AUTHORIZED. A governmental entity may adopt rules  
23 that provide procedures that vary from the requirements of this  
24 subchapter if the governmental entity's procedures:

25 (1) demonstrably improve efficiency or reduce delay in  
26 verifying that an applicant is eligible for a public benefit, as  
27 compared to the requirements of this subchapter; or

1           (2) apply only for an applicant who is a legal resident  
2 of this state and with respect to whom the governmental entity  
3 determines that the requirements of this subchapter would impose an  
4 unusual hardship because of the applicant's circumstances.

5           [Sections 2351.056-2351.100 reserved for expansion]

6                   SUBCHAPTER C. REPORTING REQUIREMENTS

7           Sec. 2351.101. REPORTING OF ERRORS AND DELAYS. (a) A  
8 governmental entity shall monitor the occurrence of errors made,  
9 and any significant delays caused, by the eligibility verification  
10 program used under Section 2351.054.

11           (b) Not later than December 1 of each year, the governmental  
12 entity shall submit a report to the United States Department of  
13 Homeland Security regarding the occurrence during the previous year  
14 of errors and delays described by Subsection (a). The report must  
15 include:

16                   (1) a determination of whether the eligibility  
17 verification program is wrongfully denying public benefits to  
18 individuals who are lawfully present in the United States; and

19                   (2) recommendations for ensuring that the errors and  
20 delays do not continue to occur.

21           (c) The governmental entity shall make the report submitted  
22 under Subsection (b) available to the public.

23           Sec. 2351.102. ANNUAL COMPLIANCE REPORT. Not later than  
24 December 1 of each year, each governmental entity that administers  
25 a state or local public benefit shall submit to the governor,  
26 lieutenant governor, and the speaker of the house of  
27 representatives a report regarding the governmental entity's

1 compliance with this chapter.

2 [Sections 2351.103-2351.150 reserved for expansion]

3 SUBCHAPTER D. ENFORCEMENT

4 Sec. 2351.151. CRIMINAL PENALTY FOR FRAUDULENT AFFIDAVIT.

5 (a) An individual commits an offense if the individual knowingly  
6 makes a false or otherwise fraudulent statement in an affidavit  
7 executed under Section 2351.052.

8 (b) An offense under this section is a state jail felony.

9 (c) If conduct that constitutes an offense under this  
10 section also constitutes an offense under any other law, the actor  
11 may be prosecuted under this section or the other law.

12 Sec. 2351.152. REPORTING OF FEDERAL CRIMINAL CONDUCT. If  
13 an applicant for a public benefit submits to a governmental entity  
14 an affidavit executed under Section 2351.052 containing a statement  
15 that constitutes a false and wilful representation of United States  
16 citizenship under 18 U.S.C. Section 911, the governmental entity  
17 shall report that conduct to the United States attorney for the  
18 district in which the affidavit was submitted.

19 SECTION 2. Subtitle H, Title 10, Government Code, as added  
20 by this Act, applies to an application for a federal, state, or  
21 local public benefit that is pending or filed on or after the  
22 effective date of this Act.

23 SECTION 3. If before implementing any provision of this Act  
24 a state agency determines that a waiver or authorization from a  
25 federal agency is necessary for implementation of that provision,  
26 the agency affected by the provision shall request the waiver or  
27 authorization and may delay implementing that provision until the

1 waiver or authorization is granted.

2 SECTION 4. This Act takes effect September 1, 2011.