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HOUSE BILL NO. 1798

Offered January 12, 2005

Prefiled January 5, 2005

A *BILL to amend the Code of Virginia by adding sections numbered 32.1-325.03 and 63.2-503.1, relating to the eligibility of aliens for state and local public benefits.*

 Patron—Albo

 Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 32.1-325.03 and 63.2-503.1 as follows:

§ 32.1-325.03. Nonqualified aliens ineligible for certain state and local public benefits.

The determination of eligibility for public benefits as provided in this title shall be subject to the provisions of § 63.2-503.1, as applicable.

§ 63.2-503.1. Nonqualified aliens ineligible for state and local public benefits; exceptions.

A. Notwithstanding any other provision of law, and except as provided in subsection B, an alien who is not (i) a qualified alien, as defined in 8 U.S.C. § 1641 et seq.; (ii) a nonimmigrant under the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.); or (iii) an alien who is paroled into the United States under § 212(d)(5) of such Act (8 U.S.C. § 1182(d)(5)) for less than one year, is not eligible for any state or local public benefits, as defined in subsection C.

B. Subsection A shall not apply with respect to the following state or local public benefits:

1. Assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. § 1396b(v)(3), of the alien involved and are not related to an organ transplant procedure;

2. Short-term, noncash, in-kind disaster relief;

3. Public health assistance for immunizations and for testing and treatment of symptoms of communicable diseases, whether or not such symptoms are caused by a communicable disease;

4. Programs, services, or assistance, such as soup kitchens, crisis counseling and interventions, and short-term shelter, specified by the United States Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate federal agencies and departments that (i) deliver in-kind services at the community level; (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.

C. Except as provided in subsection D, for the purposes of this section the term "state or local public benefit" means (i) any grant, contract, loan, professional license, or commercial license provided by an agency of state or local government or appropriated funds of the state or local government; and (ii) any retirement, welfare, health, disability, public assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of state or local government or appropriated by funds of state or local government.

D. "State or local public benefit" shall not apply to (i) any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or a citizen of a freely associated state, if § 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658, or a successor provision, is in effect; (ii) benefits to an alien who, as a work-authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.), qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the United States Secretary of State, after consultation with the United States Attorney General; or (iii) the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States. Further, state or local public benefit shall not include any federal public benefit under 8 U.S.C. § 1611(c).

E. At the time of application for any service set forth in subsection A, the applicant shall provide affirmative proof that the applicant is legally present in the United States. Such affirmative proof shall be as set forth in the Form 141 Primary Document published by the Virginia Department of Motor Vehicles for obtaining driver's licenses.

Applicants who cannot provide sufficient proof of legal residency at the time of application must sign an affidavit under oath attesting that they are legally present in the United States in order to receive

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59 temporary benefits as provided in this section. The affidavit shall be on or consistent with a form
60 prepared by the Board, which shall be subject to and include an explanation of the provisions of
61 § 63.2-502 relating to penalties for knowingly providing false information on a public document. Once
62 an applicant has satisfied the sworn affidavit requirement, the applicant shall be eligible to receive
63 temporary benefits for 90 days or until such time that it is determined that the applicant is not legally
64 present in the United States, whichever is earlier.