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HOUSE BILL NO. 1798

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on February 26, 2004)

(Patron Prior to Substitute—Delegate Albo)

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 certain aliens for state and local public benefits.

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. Legal presence required for certain state and local public benefits; exceptions; definitions; proof of legal presence.

A. In addition to meeting the existing eligibility requirements of the benefits applied for, no person who is not a United States Citizen or legally present in the United States shall receive medical services under this chapter, except for the following:

1. Medicaid benefits for those residing in long-term institutional facilities or participating in home and community based waivers on June 30, 1997, who were eligible for full Medicaid benefits shall continue to be eligible for Medicaid benefits at state expense if federal financial participation is not available;

2. Medicaid benefits for those who because of alien requirements pursuant to federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) (i) are under the age of 19 years and (ii) would be eligible for full Medicaid benefits if the alien requirements prior to the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 were still in effect. However, such person upon reaching the age of 19 years shall comply with the provisions of this section; and

3. State or local public benefits that are mandated by Federal Law pursuant to 8 U.S.C. §1621.

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

§ 63.2-503.1. Legal presence required for public assistance; exceptions; proof of legal presence.

A. In addition to meeting the existing eligibility requirements of the benefits applied for, no person who is not a United States Citizen or legally present in the United States shall receive state or local public assistance pursuant to this subtitle, except for state or local public assistance that is mandated by Federal Law pursuant to 8 U.S.C. §1621.

B. In addition to providing proof of other eligibility requirements, at the time of application for any state or local public benefit, an applicant who is 19 years of age or older shall provide affirmative proof that he is a U.S. citizen or is legally present in the United States. Such affirmative proof shall consist of documentary evidence as required pursuant to § 46.2-328.1 or a social security number as verified by the Social Security Administration. An applicant who is under the age of 19 years shall not be required to provide such affirmative proof; however, such person upon reaching the age of 19 years shall comply with the provisions of this section.

An applicant who cannot provide proof that he is a citizen or legally present at the time of application shall sign an affidavit under oath attesting that he is a U.S. citizen or legally present in the United States in order to receive temporary benefits as provided in this section. The affidavit shall be on or consistent with forms prepared by the Commissioner, and shall be subject to and include an explanation of the provisions of § 63.2-502 relating to penalties for knowingly providing false information on a public document. The agency shall report in writing to the appropriate attorney for the Commonwealth those who are determined to have falsely attested to lawful presence.

Once an applicant has provided the sworn affidavit required by this subsection, he shall be eligible to receive temporary benefits for either:

1. Ninety days or until such time that it is determined that he is not legally present in the United States, whichever is earlier, or

2. Indefinitely if the applicant provides a copy of a completed application for a birth certificate that has been filed and is pending and being actively pursued in accordance with § 32.1-259 or 32.1-260 or any substantially similar law of another state, the District of Columbia, or United States territory or commonwealth. Such extension shall terminate upon the applicant's receipt of a birth certificate or a determination that a birth certificate does not exist because the applicant is not a United States citizen.

C. The provisions of subsection B shall not apply to persons applying for benefits exempted by subsection A of this section and subsection A of § 32.1-325.03.

2. That the provisions of this act shall become effective on January 1, 2006.

60 3. That affected agencies of the Commonwealth shall cooperate with agencies of local government
61 to develop a system to facilitate verification of legal presence in furtherance of the provisions of
62 this act, including but not limited to the "Systematic Alien Verification Entitlements Program"
63 operated by the Department of Homeland Security, which enables federal, state, and local
64 government agencies to obtain immigration status information they need in order to determine an
65 applicant/recipient's eligibility for public benefits.