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## SENATE BILL NO. 1143

Offered January 12, 2005

Prefiled January 12, 2005

A BILL to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 55.3, consisting of sections numbered 2.2-5514 through 2.2-5518, relating to foreign identification documents; verification required; penalty.

Patron—Hanger

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 in Title 2.2 a chapter numbered 55.3, consisting of sections numbered 2.2-5514 through 2.2-5518, as follows:

## CHAPTER 55.3.

## VERIFICATION OF LEGAL PRESENCE.

§ 2.2-5514. Verification of persons lawfully present.

A. Except where preempted by federal law, every agency, court, and political subdivision of the Commonwealth shall, prior to providing any benefit or service for any purpose for which legal residence or domicile in the Commonwealth is required by law, ordinance, regulation, practice or policy, verify the lawful presence in the United States of the person requesting the benefit or service. As used in this chapter, "person" shall not include any corporation, partnership, association, company, business, trust, joint venture or other legal entity.

B. Verification of legal presence shall not be required for receiving a benefit or service for which legal residence or domicile in Virginia is not a requirement or condition.

§ 2.2-5515. Procedure for verification; administrative complaint.

A. A citizen of the United States or an alien who presents a valid identification document that is included on the published list of documents maintained by the Department of Motor Vehicles as proof of lawful presence in the United States shall be presumed to be lawfully present in the United States.

B. Notwithstanding the provisions of subsection A, a drivers license or identification card issued by any state that has authorized the issuance of such drivers license or identification card to persons who are not lawfully present in the United States shall not be accepted as evidence of lawful presence in the United States.

C. An agency, court, or political subdivision of the Commonwealth shall use the following process for the verification the lawful presence in the United States of any natural person:

1. If the person is (i) an applicant for a state or local benefit as defined in § 8 U.S.C. 1621 or (ii) an applicant for federal public benefit as defined by § 8 U.S.C. 1611 that is administered by an agency, court, or political subdivision of the Commonwealth, through inquiry of the Systematic Alien Verification of Entitlement program operated by the United States Department of Homeland Security, or any successor program as designated by the Department.

2. If the person is an applicant for public employment or seeking a public contract, loan, or grant for services to be performed within the United States, through the submittal by such person of a record of verification of work authorization obtained under an electronic verification program administered by the United States Department of Homeland Security, or any successor program as designated by the Department.

3. If the person is has been arrested for violation of a criminal statute and verification has not been otherwise made pursuant to a valid identification document that is included on the published list of documents maintained by the Department of Motor Vehicles, through inquiry of the Law Enforcement Service Center of the United States Department of Homeland Security.

4. For all other individuals, through the presentation of a valid identification document that is included on the published list of documents maintained by the Department of Motor Vehicles and a signed attestation or oath by such individual that he is a United States citizen. The attestation shall be promptly verified by the agency, court, or political subdivision as to its validity.

D. Any person who believes that an agency or political subdivision has failed to comply with the provisions of this chapter may file a complaint with the agency or political subdivision. The agency or political subdivision shall provide a written response within 60 days of receiving the complaint.

§ 2.2-5516. Regulations.

A. The Department of Motor Vehicles shall promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) to implement and enforce this chapter which shall be

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59 applicable to state agencies and political subdivisions.

60 B. The Supreme Court may establish guidelines to implement and enforce this chapter which shall be  
61 applicable to courts of the Commonwealth.

62 § 2.2-5517. Use of unsecure foreign identification prohibited; false attestation of legal residence;  
63 penalty.

64 A. It shall be unlawful for any person to present or accept a personal identification document issued  
65 by a foreign government as evidence or proof of legal residence or domicile in the Commonwealth,  
66 unless such document is included on the published list of documents maintained by the Department of  
67 Motor Vehicles as proof of lawful presence in the United States.

68 B. It shall be unlawful for any person, other than a citizen of the United States, who does not  
69 possess valid documentation of lawful presence in the United States to attest, with the intent of thereby  
70 obtaining a public benefit or service for which legal residence or domicile is a requirement, that such  
71 person is a legal resident or domiciliary of the Commonwealth.

72 C. Any person who violates the provisions of this section shall be guilty of a Class 2 misdemeanor.

73 § 2.2-5518. Civil remedy.

74 Any person who has been denied a public benefit or service based on a determination that such  
75 person is not lawfully present in the United States may institute a proceeding for injunction or  
76 mandamus against any person or agency that has engaged, is engaged, or is about to engage in any  
77 acts or practices in violation of the provisions of this chapter.

78 In the case of any successful proceeding by an aggrieved party, the person or agency enjoined or  
79 made subject to a writ of mandamus by the court shall be liable for the costs of the action together with  
80 reasonable attorneys' fees as determined by the court.