

HOUSE No. 3387

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to public benefits..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 1. This act shall be known and may be cited as the "Massachusetts Security and
2 Immigration Compliance Act."

3 SECTION 2. The General Laws, as appearing in the 2006 Official Edition, are hereby
4 amended by inserting after chapter 117A the following new chapter:--

5 Chapter 117B

6 Restrictions on Public Benefits

7 Section 1. Definitions.

8 As used in this chapter the following terms shall have the following meanings unless the
9 context clearly requires otherwise:-

10 "Emergency Medical Condition," the same meaning as provided in section 1396b (v) (3)
11 of Title 42 of the United States Code.

12 “Federal Public Benefits,” the same meaning as provided in section 1611 of Title 8 of the
13 United States Code.

14 “State Public Benefits,” the same meaning as provided in section 1621 of Title 8 of the
15 United States Code.

16 Section 2. (a) Except as otherwise provided in subsection (3) of this section or where
17 exempted by federal law, on and after January 1, 2010, each agency or political subdivision of
18 the commonwealth shall verify the lawful presence in the United States of every natural person
19 eighteen years of age or older who applies for state public benefits or for federal public benefits
20 which are for the benefit of the applicant.

21 (b) This section shall be enforced without regard to race, religion, gender, ethnicity, or
22 national origin.

23 (c) Verification of lawful presences in the United States shall not be required:

24 For any purpose for which lawful presence in the United States is not required by law,
25 ordinance, or rule;

26 For obtaining health care items and services that are necessary for the treatment of an
27 emergency medical condition of the person involved and are not related to an organ transplant
28 procedure;

29 For short-term, non-cash, in-kind emergency disaster relief;

30 For public health assistance for immunization with respect to diseases and for testing and
31 treatment of symptoms of communicable diseases;

32 For programs, services, or assistance, such as soup kitchens, crisis counseling and
33 intervention, and short-term shelter specified by Federal laws or regulations that:

34 Deliver in-kind services at the community level, including services through public or
35 private nonprofit agencies;

36 Do not condition the provision of assistance, the amount of assistance provided, or the
37 cost of assistance provided on the individual recipient's income or resources; and

38 Are necessary for the protection of life or safety or;

39 For parental care.

40 (d) An agency or a political subdivision shall verify the lawful presence in the United
41 States of each applicant eighteen years of age or older for federal public benefits or state public
42 benefits by requiring the applicant to:

43 (1) Produce:

44 A valid Massachusetts driver license or a Massachusetts identification card, issued
45 pursuant to section 8 of chapter 90 of the General Laws, and 540 Code of Massachusetts
46 Regulation (CMR) 2.06 (3) (b);

47 A United States military card or military dependent's identification card; or

48 A United States Coast Guard Merchant Mariner card; or

49 A Native American tribal document.

50 (2) If such documentation as required in subparagraph (1) of subsection (d) of this
51 section cannot be lawfully produced, execute a notarized affidavit stating:

52 That he or she is a United States citizen or legal permanent resident; or

53 That he or she is otherwise lawfully present in the United States pursuant to federal law.

54 (e) Notwithstanding the requirements of subparagraph (1) of subsection (d) of this
55 section, the Commissioner of the Department of Revenue may issue emergency rule, to be
56 effective until July 1, 2008, providing for additional forms of identification or a waiver process
57 to ensure that an individual seeking benefits pursuant to this section proves lawful presence in
58 the United States. This subsection and all emergency rules authorized hereunder shall cease to
59 be effective as of July 1, 2008.

60 (f) A person who knowingly makes a false, fictitious, or fraudulent statement or
61 representation in an affidavit executed pursuant to subsection (4) of this section shall pay a fine
62 of not less than \$1,000 and not more than \$5,000, or shall be sentenced to serve not less than 6
63 months nor more than 1 year in the House of Corrections. Each time that a person receives a
64 public benefit based upon such a statement or representation they make shall constitute a
65 separate violation of this section.

66 (g) (1) For an applicant who has executed an affidavit stating that he or she is an alien
67 lawfully present in the United States, verification of lawful presence for federal public benefits
68 or state or local public benefits shall be made through the Federal Systematic Alien Verification
69 for Entitlement program, referred to in this section as the “SAVE program”, operated by the
70 United States Department of Homeland Security. Until such verification of lawful presence is
71 made, the affidavit may be presumed to be proof of lawful presence for purposes of this section.

72 (2) The secretary of each executive office of the commonwealth shall promulgate
73 regulations to ensure that each agency or political subdivision has access to the SAVE program
74 by way of the executive office under which it is organized. Each executive office shall be
75 responsible for the verification through the SAVE program of all its sub agencies. Each
76 executive office shall enter into a memorandum of understanding or any other requirement
77 pursuant to the SAFE program in order to streamline the verification process. Each executive
78 office shall keep account of all applications submitted through its subdivisions and transfer back
79 to its subdivisions any costs on an annual basis.

80 (h) Agencies or political subdivisions of the commonwealth may adopt variations of the
81 requirements of paragraph (b) of subsection (4) of this section to improve efficiency or reduce
82 delay in the verification process or to provide for adjudication of unique individuals
83 circumstances in which the verification procedures in the section would impose unusual hardship
84 on a legal resident of the commonwealth; provided, that the variations shall be no less stringent
85 than the requirements of this section, including provisions to timely execute notarized affidavits.

86 (i) It shall be unlawful for an agency or political subdivision of the commonwealth to
87 provide a federal public benefit or state or local public benefit in violation of this section. Each
88 agency or department that administers a program that provides state or local public benefits shall
89 provide an annual report with respect to its compliance with this section to the auditor and to the
90 House and Senate chairs of the joint committee on state administration and regulatory oversight.

91 (j) Errors and significant delays by the SAVE program shall be reported to the United
92 States Department of Homeland Security which monitors the SAVE program and its verification
93 application errors and significant delays and report yearly on such errors and delays, to ensure

94 that the application of the SAVE program is not wrongfully denying benefits to legal residents of
95 the State.

96 SECTION 3. If any provision of this act or the application thereof to any person or
97 circumstance is held by any court to be unconstitutional or otherwise invalid, such invalidity
98 shall not affect other provisions or applications of this act that can be given effect without the
99 invalid provision or application, and to this end the provisions of the section are declared to be
100 severable.

101