

Senate Bill 529

By: Senators Rogers of the 21st, Hamrick of the 30th, Douglas of the 17th, Schaefer of the 50th, Seabaugh of the 28th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 13 of the Official Code of Georgia Annotated, relating to contracts, Title 16
2 of the Official Code of Georgia Annotated, relating to crimes and offenses, Title 34 of the
3 Official Code of Georgia Annotated, relating to labor, Title 35 of the Official Code of
4 Georgia Annotated, relating to law enforcement, and Title 50 of the Official Code of Georgia
5 Annotated, relating to state government, so as to provide for the comprehensive regulation
6 of persons in this state who are not lawfully present in the United States; to provide for a
7 short title; to provide for statutory construction; to provide for procedures and requirements
8 applicable to certain contracts or subcontracts; to prohibit certain retaliation; to provide for
9 enforcement, penalties, and exceptions; to provide for offenses regarding involuntary
10 servitude, trafficking of persons for forced labor or services, and sexual servitude of a minor;
11 to define certain terms; to provide for penalties; to specify conditions under which certain
12 compensation paid by a taxpayer shall be disallowed as a business expense for state income
13 tax purposes; to provide for powers, duties, and authority of the state revenue commissioner;
14 to provide for a definition; to provide for a legislative finding; to provide for exceptions; to
15 provide for certain records; to provide for verification of lawful presence with respect to
16 certain persons accused of crimes; to provide for requirements, procedures, and conditions
17 regarding applications for certain benefits; to provide for exceptions; to provide for the
18 promulgation of regulations; to provide for criminal and other penalties; to provide for
19 related matters; to provide for effective dates; to provide for applicability; to repeal
20 conflicting laws; and for other purposes.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22 **SECTION 1.**

23 This Act shall be known and may be cited as the "Georgia Security and Immigration
24 Compliance Act." All requirements of this Act concerning immigration or the classification
25 of immigration status shall be construed in conformity with federal immigration law.

1 hearing after reasonable notice in the manner provided for under Chapter 13 of Title 50,
2 the 'Georgia Administrative Procedure Act.'

3 (e) With respect to any contract for the performance of services within this state entered
4 into on or after July 1, 2007, any contractor or subcontractor who knowingly violates any
5 provision of this Code section shall be deemed to be in material breach of the applicable
6 contract, subject to termination of the contract and shall be prohibited for a period of one
7 year, commencing on the date of such violation, from entering into any contract with any
8 department, agency, or instrumentality of the state or political subdivision of the state.

9 (f) The penalties specified under subsection (e) of this Code section shall not apply in the
10 case of a contractor or subcontractor who has enrolled in the electronic employment
11 authorization program authorized by the Basic Pilot Program Extension and Expansion Act
12 of 2003 (United States Pub. Law 108-156), or a successor program designated for such
13 purpose by the United States Department of Homeland Security, prior to the
14 commencement of services under a contract or subcontract subject to the requirements of
15 this Code section and who has verified the employment eligibility of all employees hired
16 during the period of performance of such contract or subcontract.

17 (g) The penalties specified under subsection (f) of this Code section shall not apply with
18 respect to a contractor in the event a subcontractor of the contractor hires persons who are
19 not citizens or nationals of the United States or are not noncitizens authorized under federal
20 immigration laws to perform services under the contract and the contractor had no
21 knowledge thereof."

22 SECTION 3.

23 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
24 amended by adding a new Code section immediately following Code Section 16-5-45, to be
25 designated Code Section 16-5-46, to read as follows:

26 "16-5-46.

27 (a) As used in this Code section, the term:

28 (1) 'Blackmail' means a threat to expose any secret tending to subject any person to
29 hatred, contempt, or ridicule.

30 (2) 'Commercial sexual activity' means any sex act on account of which anything of
31 value is given, promised to, or received by any person.

32 (3) 'Financial harm' includes credit extortion, criminal violation of the usury laws, or
33 employment contracts that violate the statute of frauds.

34 (4) 'Forced labor or services' means labor or services that are performed or provided by
35 another person and are obtained or maintained through an actor's:

36 (A) Causing or threatening to cause serious harm to any person;

1 (B) Physical restraining or threatening to physically restrain another person;

2 (C) Abusing or threatening to abuse the law or legal process;

3 (D) Knowingly destroying, concealing, removing, confiscating, or possessing any
4 actual or purported passport or other immigration document, or any other actual or
5 purported government identification document, of another person;

6 (E) Blackmail; or

7 (F) Causing or threatening to cause financial harm to any person.

8 (5) 'Labor' means work of economic or financial value.

9 (6) 'Maintain' means, in relation to labor services, to secure continued performance
10 thereof, regardless of any initial agreement on the part of the victim to perform such type
11 of service.

12 (7) 'Obtain' means, in relation to labor or services, to secure performance thereof.

13 (8) 'Services' means an ongoing relationship between a person and the actor in which the
14 person performs activities under the supervision of or for the benefit of the actor.
15 Commercial sexual activity and sexually explicit performances are forms of 'services'
16 within the meaning of this Code section. Nothing in this paragraph shall be construed to
17 legitimize or legalize prostitution.

18 (9) 'Sexually explicit performance' means a live or public act or show intended to arouse
19 or satisfy the sexual desires or appeal to the prurient interests of patrons.

20 (b) Whoever knowingly subjects, or attempts to subject, another person to forced labor or
21 services shall, upon conviction thereof, be punished by imprisonment as follows:

22 (1) By causing or threatening to cause physical harm to any person, for not more than 20
23 years;

24 (2) By physically restraining or threatening to physically restrain another person, for not
25 more than 15 years;

26 (3) By abusing or threatening to abuse the law or legal process, for not more than ten
27 years;

28 (4) By knowingly destroying, concealing, removing, confiscating, or possessing any
29 actual or purported passport or other immigration document, or any other actual or
30 purported government identification document, of another person, for not more than five
31 years; or

32 (5) By using blackmail, or using or threatening to cause financial harm to using financial
33 control over any person, for not more than three years.

34 (c) Whoever knowingly recruits, entices, harbors, transports, provides, or obtains by any
35 means, or attempts to recruit, entice, harbor, transport, provide, or obtain by any means,
36 another person under 18 years of age, knowing that the minor will engage in commercial
37 sexual activity, sexually explicit performance, or the production of pornography, or causes

1 or attempts to cause a minor to engage in commercial sexual activity, sexually explicit
 2 performance, or the production of pornography, shall, upon conviction thereof, be punished
 3 by imprisonment as follows:

4 (1) In cases involving a minor between the ages of 15 and 17 years not involving overt
 5 force or threat, for not more than 15 years;

6 (2) In cases involving a minor under the age of 15 years not involving overt force or
 7 threat, for not more than 20 years; or

8 (3) In cases in which the violation involved overt force or threat, for not more than 25
 9 years.

10 (d) Whoever:

11 (1) Knowingly recruits, entices, harbors, transports, provides, or obtains by any means,
 12 or attempts to recruit, entice, harbor, transport, provide, or obtain by any means, another
 13 person, intending or knowing that the person will be subjected to forced labor or services;
 14 or

15 (2) Benefits, financially or by receiving anything of value, from participation in a venture
 16 which has violated subsection (b) or (c) of this Code section,
 17 shall, upon conviction thereof, be imprisoned for not more than 15 years.

18 (e) In addition to any other amount of loss identified, the court shall order restitution
 19 including the greater of the gross income or value to the defendant of the victim's labor or
 20 services or the value of the victim's labor as guaranteed under the minimum wage and
 21 overtime provisions of the federal Fair Labor Standards Act."

22 SECTION 4.

23 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,
 24 is amended by adding a new Code section immediately following Code Section 34-1-7, to
 25 be designated Code Section 34-1-8, to read as follows:

26 "34-1-8.

27 (a) As used in this Code section, the term 'Basic Pilot Program' means the electronic
 28 verification of a work authorization program of the Illegal Immigration Reform and
 29 Immigrant Responsibility Act of 1996, P.L. 104 - 208, Division C, Section 403(a), 8 U.S.C.
 30 Section 1324 (a), and operated by the United States Department of Homeland Security.

31 (b) The General Assembly finds that the United States government has established and
 32 maintains a national program for the electronic verification of work authorization, the Basic
 33 Pilot Program, which enables employers to verify promptly and accurately the employment
 34 eligibility of all job applicants.

35 (c)(1) No payment of compensation to an individual of \$600.00 or more, whether in the
 36 form of wages, salary, payment for labor, benefits, in-kind exchange, or expenses, may

1 be claimed and allowed as a deductible business expense for state income tax purposes
 2 by a taxpayer unless the person to whom such compensation was paid provides to the
 3 taxpayer a valid identification document from a list of documents maintained by the
 4 Department of Driver Services as proof of lawful presence in the United States. The
 5 provisions of this paragraph shall apply whether or not an Internal Revenue Service form
 6 1099 is issued in conjunction with the payment.

7 (2) The state revenue commissioner is authorized to prescribe forms and promulgate
 8 rules and regulations deemed necessary in order to administer and effectuate this
 9 subsection.

10 (d) This Code section shall not apply to any business domiciled in this state which:

11 (1) Has enrolled and participates in the Basic Pilot Program; or

12 (2) Is exempt from compliance with federal employment verification procedures under
 13 federal law which makes the employment of unauthorized aliens unlawful."

14 **SECTION 5.**

15 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement, is amended
 16 by adding a new Code section at the end of Article 1 of Chapter 2, relating to general
 17 provisions relative to the Department of Public Safety, to be designated Code Section
 18 35-2-14, to read as follows:

19 "35-2-14.

20 (a) Every person arrested for a violation of a criminal statute shall be required to show
 21 proof of lawful presence in the United States.

22 (b) The commissioner of the Department of Public Safety shall create, maintain, and
 23 publish procedures by which lawful presence in the United States is determined.

24 (c) In the case of a natural person arrested for a violation of a criminal statute where
 25 verification has not otherwise been made, verification shall be made through a query to the
 26 Law Enforcement Support Center (LESC) of the United States Department of Homeland
 27 Security or other office or agency designated for that purpose by the Department of
 28 Homeland Security.

29 (d) Any person who fails to prove lawful presence in the United States pursuant to this
 30 Code section shall be reported by the arresting law enforcement office to the Department
 31 of Public Safety and the United States Department of Homeland Security."

32 **SECTION 6.**

33 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
 34 by adding a new chapter at the end thereof, to be designated Chapter 36, to read as follows:

"CHAPTER 36

1
2 50-36-1.

3 (a) The Department of Driver Services shall create, maintain, and publish a list of
4 documents that shall be used as proof of lawful presence in the United States. For the
5 purposes of this Code section, only documents found on such list shall be used to establish
6 proof of lawful presence in the United States.

7 (b) A driver's license or identification card issued by any state which, on or after July 1,
8 2006, authorized such driver's license or identification card to be issued to persons not
9 lawfully present in the United States shall not be included on the list of documents
10 prescribed in subsection (a). A travel or identification document issued by a foreign
11 government shall not be included on the list of documents prescribed in subsection (a)
12 unless such document has been recognized by the United States Department of Homeland
13 Security as evidence of alien registration pursuant to federal law.

14 (c) Except as provided in subsection (e) of this Code section or where exempted by federal
15 law, on or after July 1, 2007, every agency of this state or a political subdivision thereof
16 shall verify the lawful presence in the United States of any natural person 18 years of age
17 or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section
18 1621, or for federal public benefits, as defined in 8 U.S.C. Section 1611, that is
19 administered by an agency of this state or a political subdivision thereof. The
20 commissioner of the Department of Human Resources is authorized to establish procedures
21 for assisting any person who is denied public benefits, as defined in 8 U.S.C. Section 1621
22 or 8 U.S.C. Section 1611, based on a failure to prove lawful presence in the United States.

23 (d) This Code section shall be enforced without regard to race, religion, gender, ethnicity,
24 or national origin.

25 (e) Verification of lawful presence under this Code section shall not be required:

26 (1) For any purpose for which lawful presence in the United States is not required by
27 law, ordinance, or regulation; or

28 (2) For prenatal care.

29 (f) Verification of lawful presence in the United States by the agency or political
30 subdivision required to make such verification shall occur as follows:

31 (1) By presentation of an unexpired document described in subsection (a) of this Code
32 section; or

33 (2)(A) Where a document described in subsection (a) of this Code section has not been
34 presented, the natural person who has applied for benefits may execute an affidavit that
35 he or she is a United States citizen or lawfully present in the United States at the time
36 of the application. A document or affidavit may be verified by the agency or political

1 subdivision to detect identity or document fraud and false statements. Until such
2 verification is made, the document or affidavit may be presumed to be proof of lawful
3 presence for the purposes of this Code section.

4 (B) Any person who knowingly and willfully executes an affidavit pursuant to
5 subparagraph (A) of this paragraph which contains a false statement shall be guilty of
6 a felony, and upon conviction thereof shall be punished by a fine of not more than
7 \$1,000.00, by imprisonment for not less than one nor more than five years, or both.

8 (g) If the document described in subsection (a) of this Code section has been presented to
9 establish eligibility for federal public benefits as defined in 8 U.S.C. Section 1611 that are
10 administered by an agency of this state or a political subdivision thereof, verification for
11 eligibility shall be made through the Systematic Alien Verification of Entitlement (SAVE)
12 program operated by the United States Department of Homeland Security or a successor
13 program designated by the Department of Homeland Security.

14 (h) The Department of Driver Services shall issue regulations, in accordance with Chapter
15 13 of this title, the 'Georgia Administrative Procedure Act,' to implement the provisions
16 of this Code section.

17 (i) With the concurrence of the Department of Driver Services, other agencies of this state
18 and political subdivisions thereof may adopt variations to such regulations to improve
19 efficiency or reduce delay in the verification process or to provide for adjudication of
20 unique individual circumstances where the verification procedures in subsection (f) of this
21 Code section would impose unusual hardship on a legal resident of Georgia.

22 (j) It shall be unlawful for any agency of this state or a political subdivision thereof to
23 provide any state, local, or federal benefit, as defined in 8 U.S.C. Section 1621 or 8 U.S.C.
24 Section 1611, to an alien in violation of this Code section. Each state agency or department
25 which administers any program of state or local public benefits shall provide an annual
26 report with respect to its compliance with this Code section."

27 SECTION 7.

28 (a) Except as otherwise provided in this section, this Act shall become effective on July 1,
29 2006.

30 (b) Section 2 of this Act shall become effective on July 1, 2006, and shall be applicable to
31 all contracts executed on or after that date.

32 (c) Section 3 of this Act shall become effective on July 1, 2006, and shall not apply to any
33 offense committed prior to July 1, 2006.

34 (d) Section 6 of this Act shall become effective on July 1, 2006, and shall apply to
35 proceedings initiated on or after that date.

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SECTION 8.

2 All laws and parts of laws in conflict with this Act are repealed.