

House Bill 1164

By: Representatives Austin of the 10th, Rice of the 51st, Everson of the 106th, Day of the 163rd, Coan of the 101st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 13-10-91 of the Official Code of Georgia Annotated, relating to the
2 verification of new employee eligibility, applicability, and rules and regulations, so as to
3 clarify certain provisions and requirements relating to public employers' verification of
4 employee work eligibility; to amend Code Section 35-2-14 of the Official Code of Georgia
5 Annotated, relating to peace officers and the enforcement of immigration and custom laws,
6 so as to modify provisions relating to the designation of peace officers for training; to amend
7 Code Section 42-4-14 of the Official Code of Georgia Annotated, relating to the
8 determination of the nationality of a person charged with a felony and confined in a jail
9 facility, so as to extend the requirement to verify nationality to other persons confined in a
10 jail; to amend Code Section 48-7-21.1 of the Official Code of Georgia Annotated, relating
11 to compensation paid by a taxpayer disallowed as a business expense for state income tax
12 purposes, so as to provide for certain verification and reporting procedures; to amend Chapter
13 36 of Title 50 of the Official Code of Georgia Annotated, relating to verification of lawful
14 presence within the United States, so as to extend the types of benefits requiring verification
15 of eligibility and to provide for additional verification and reporting procedures; to provide
16 for related matters; to repeal conflicting laws; and for other purposes.

17 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

18 **SECTION 1.**

19 Code Section 13-10-91 of the Official Code of Georgia Annotated, relating to the verification
20 of new employee eligibility, applicability, and rules and regulations, is amended by revising
21 subsection (b) as follows:

22 "(b)(1) No public employer shall enter into a contract pursuant to this chapter for the
23 physical performance of services within this state unless the contractor registers and
24 participates in the federal work authorization program to verify information of all newly
25 hired employees or subcontractors in its employ. Before a bid for any such service is

26 considered by a public employer, the bid shall include a signed, notarized affidavit from
27 the contractor attesting to the following:

28 (A) The affiant has registered with and is authorized to use the federal work
29 authorization program;

30 (B) The user identification number and date of authorization for the affiant; and

31 (C) The affiant is using and will continue to use the federal work authorization
32 program throughout the contract period.

33 An affidavit required by this subsection shall be considered an open public record once
34 a public employer has entered into a contract for services; provided, however, that any
35 information protected from public disclosure by federal law shall be redacted.

36 (2) No contractor or subcontractor who enters a contract pursuant to this chapter with a
37 public employer shall enter into such a contract or subcontract in connection with the
38 physical performance of services within this state unless the contractor or subcontractor
39 registers and participates in the federal work authorization program to verify information
40 of all newly hired employees.

41 (3) The Georgia Department of Audits and Accounts shall require compliance reports
42 from each state or local government agency. Each report shall be submitted by the
43 department head and have attached thereto his or her sworn affidavit attesting to the
44 accuracy of the information contained therein. The Georgia Department of Audits and
45 Accounts shall conduct annual compliance audits on a minimum of at least half of the
46 reporting agencies and publish the results of such audits annually on or before September
47 30. The annual audit shall give priority to auditing those agencies that have never had
48 an audit or have the greatest time since the agency's last audit.

49 (4) In order to verify compliance with the provisions of this subsection, each year the
50 Commissioner of Labor shall conduct 200 random audits of public employers and
51 contractors. The results of the audits shall be published on the OPEN GEORGIA website
52 no later than September 30 of each year.

53 (5) Any state or local agency found to be in violation of this subsection shall be excluded
54 from the list of qualified local governments. In addition, any agency found to be in
55 violation shall forfeit 10 percent of its state funding for the year in which such agency
56 was found to be in violation. Contractors found to be in violation of this subsection shall
57 be prohibited from bidding on or entering into any public contract for 12 months
58 following the discovery of the violation."

59 **SECTION 2.**

60 Code Section 35-2-14 of the Official Code of Georgia Annotated, relating to peace officers
 61 and the enforcement of immigration and custom laws, is amended by revising subsection (d)
 62 as follows:

63 "(d) The commissioner shall designate ~~appropriate~~ no fewer than ten peace officers to be
 64 trained annually pursuant to the memorandum of understanding provided for in subsections
 65 (b) and (c) of this Code section. Such training shall be funded pursuant to the federal
 66 Homeland Security Appropriation Act of 2006, Public Law 109-90, or any subsequent
 67 source of federal funding. The provisions of this subsection shall become effective upon
 68 such funding."

69 **SECTION 3.**

70 Code Section 42-4-14 of the Official Code of Georgia Annotated, relating to the
 71 determination of the nationality of a person charged with a felony and confined in a jail
 72 facility, is amended by revising subsection (b) as follows:

73 "(b) If the prisoner is a foreign national ~~charged with a felony, driving under the influence~~
 74 ~~pursuant to Code Section 40-6-391, driving without being licensed pursuant to subsection~~
 75 ~~(a) of Code Section 40-5-20, or with a misdemeanor of a high and aggravated nature,~~ the
 76 keeper of the jail or other officer shall make a reasonable effort to verify that the prisoner
 77 has been lawfully admitted to the United States and if lawfully admitted, that such lawful
 78 status has not expired. If verification of lawful status can not be made from documents in
 79 the possession of the prisoner, verification shall be made within 48 hours through a query
 80 to the Law Enforcement Support Center (LESC) of the United States Department of
 81 Homeland Security or other office or agency designated for that purpose by the United
 82 States Department of Homeland Security. If the prisoner is determined not to be lawfully
 83 admitted to the United States, the keeper of the jail or other officer shall notify the United
 84 States Department of Homeland Security. In addition, the keeper of the jail or other officer
 85 shall obtain the fingerprints of the prisoner and provide a copy of the fingerprints to the
 86 United States Department of Homeland Security."

87 **SECTION 4.**

88 Code Section 48-7-21.1 of the Official Code of Georgia Annotated, relating to compensation
 89 paid by a taxpayer disallowed as a business expense for state income tax purposes, is
 90 amended by revising subsection (c) as follows:

91 "(c) This Code section shall not apply to any business which:

92 (1) Has enrolled and participates in the ~~basic pilot program~~ federal employment
 93 eligibility verification system known as E-Verify and has provided a user number and

94 date of authorization to use the federal employment eligibility verification system or any
 95 subsequent federal employment eligibility verification system replacing E-Verify; or
 96 (2) Is exempt from compliance with federal employment eligibility verification
 97 procedures under federal law which makes the employment of unauthorized aliens
 98 unlawful. Any business claiming exemption from the federal employment eligibility
 99 verification procedures shall submit annually on or before April 15 a report to the
 100 Georgia Department of Audits and Accounts which shall provide facts supporting the
 101 exemption. The report shall be submitted with an affidavit in support of the report
 102 attesting under oath that the information contained in the report is truthful and accurate
 103 to the best of the affiant's knowledge and belief."

104 SECTION 5.

105 Chapter 36 of Title 50 of the Official Code of Georgia Annotated, relating to verification of
 106 lawful presence within the United States, is amended by revising Code Section 50-36-1,
 107 relating to verification requirements, procedures, and conditions, exceptions, regulations, and
 108 criminal and other penalties for violations as follows:

109 "50-36-1.

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

111 (1) 'Agency or political subdivision' means any department, agency, authority,
 112 commission, or government entity of this state or any subdivision of this state.

113 (2) 'Applicant' means any natural person, 18 years of age or older, who has made
 114 application for access to public benefits on behalf of an individual, business, corporation,
 115 partnership, or other private entity.

116 (3)(A) 'Public benefit' means a federal benefit as defined in 8 U.S.C. Section 1611, a
 117 state or local benefit as defined in 8 U.S.C. Section 1621, a benefit identified as a public
 118 benefit by the Attorney General of Georgia, or a public benefit which shall include the
 119 following:

120 (i) Adult education;

121 (ii) Airport badges;

122 ~~(ii)~~(iii) Authorization to conduct a commercial enterprise or business;

123 (iv) Background investigation report;

124 ~~(iii)~~(v) Business certificate, license, or registration;

125 ~~(iv)~~(vi) Business loan;

126 ~~(v)~~(vii) Cash allowance;

127 (viii) Cash assistance;

128 (ix) Child care or child care assistance;

129 (x) Commercial license;

- 130 (xi) Community transportation;
 131 (xii) County general assistance;
 132 ~~(vi)~~(xiii) Disability assistance or insurance;
 133 ~~(vii)~~(xiv) Down payment assistance;
 134 ~~(viii)~~(xv) Energy assistance;
 135 (xvi) Farm loan;
 136 ~~(ix)~~(xvii) Food stamps;
 137 ~~(x)~~(xviii) Gaming license;
 138 (xix) Government badges;
 139 ~~(xi)~~(xx) Health benefits;
 140 (xxi) Homestead exemption;
 141 ~~(xii)~~(xxii) Housing allowance, grant, guarantee, or loan;
 142 ~~(xiii)~~(xxiii) Loan guarantee;
 143 ~~(xiv)~~(xxiv) Medicaid;
 144 ~~(xv)~~(xxv) Occupational license;
 145 (xxvi) Occupational tax certificate;
 146 (xxvii) Passport;
 147 ~~(xvi)~~(xxviii) Professional license;
 148 ~~(xvii)~~(xxix) Registration of a regulated business;
 149 ~~(xviii)~~(xxx) Rent assistance or subsidy;
 150 ~~(xix)~~(xxxi) State grant or loan;
 151 ~~(xx)~~(xxxii) State identification card;
 152 ~~(xxi)~~(xxxiii) Tax certificate required to conduct a commercial business;
 153 ~~(xxii)~~(xxxiv) Temporary assistance for needy families (TANF);
 154 ~~(xxiii)~~(xxxv) Unemployment insurance; and
 155 ~~(xxiv)~~(xxxvi) Welfare to work.

156 (B) Each year before August 1, the Attorney General shall prepare a detailed report
 157 indicating any additional 'public benefit' that may be administered in this state as
 158 defined in 8 U.S.C. Sections 1611 and 1621 and whether such benefit is subject to
 159 SAVE verification pursuant to this Code section. Such report shall provide the
 160 description of the benefit and shall be updated annually and distributed to the members
 161 of the General Assembly and be posted to the Attorney General's website.

162 (b) Except as provided in subsection (d) of this Code section or where exempted by federal
 163 law, every agency or political subdivision shall verify the ~~lawful presence in the United~~
 164 ~~States~~ eligibility of any applicant for public benefits.

165 (c) This Code section shall be enforced without regard to race, religion, gender, ethnicity,
 166 or national origin.

- 167 (d) Verification of ~~lawful presence~~ eligibility under this Code section shall not be required:
- 168 (1) For any purpose for which lawful presence in the United States is not required by
- 169 law, ordinance, or regulation;
- 170 (2) For assistance for health care items and services that are necessary for the treatment
- 171 of an emergency medical condition, as defined in 42 U.S.C. Section 1396b(v)(3), of the
- 172 alien involved and are not related to an organ transplant procedure;
- 173 (3) For short-term, noncash, in-kind emergency disaster relief;
- 174 (4) For public health assistance for immunizations with respect to immunizable diseases
- 175 and for testing and treatment of symptoms of communicable diseases whether or not such
- 176 symptoms are caused by a communicable disease; or
- 177 (5) For programs, services, or assistance such as soup kitchens, crisis counseling and
- 178 intervention, and short-term shelter specified by the United States Attorney General, in
- 179 the United States Attorney General's sole and unreviewable discretion after consultation
- 180 with appropriate federal agencies and departments, which:
- 181 (A) Deliver in-kind services at the community level, including through public or
- 182 private nonprofit agencies;
- 183 (B) Do not condition the provision of assistance, the amount of assistance provided,
- 184 or the cost of assistance provided on the individual recipient's income or resources; and
- 185 (C) Are necessary for the protection of life or safety; ~~;~~
- 186 ~~(6) For prenatal care; or~~
- 187 ~~(7) For postsecondary education, whereby the Board of Regents of the University System~~
- 188 ~~of Georgia or the State Board of Technical and Adult Education shall set forth, or cause~~
- 189 ~~to be set forth, policies regarding postsecondary benefits that comply with all federal law~~
- 190 ~~including but not limited to public benefits as described in 8 U.S.C. Section 1611, 1621,~~
- 191 ~~or 1623.~~
- 192 (e) An agency or political subdivision providing or administering a public benefit shall
- 193 require every applicant for such benefit to ~~execute~~:
- 194 (1) Provide a photographic identification card issued by the United States government
- 195 or a state government within the United States; and
- 196 (2) Execute a signed and sworn affidavit verifying the applicant's lawful presence in the
- 197 United States, which affidavit shall state:
- 198 ~~(1)(A)~~ (A) The applicant is a United States citizen or legal permanent resident 18 years of
- 199 age or older; or
- 200 ~~(2)(B)~~ (B) The applicant is a qualified alien or nonimmigrant under the federal
- 201 Immigration and Nationality Act, Title 8 U.S.C., as amended, 18 years of age or older
- 202 lawfully present in the United States and provide the applicant's alien number issued
- 203 by the Department of Homeland Security or other federal immigration agency or the

204 applicant's federal CBP Form I-94, for nonimmigrant visitors with a visa for the United
205 States.

206 (f) Every agency or political subdivision administering a public benefit shall register and
207 participate in the Systematic Alien Verification for Entitlements (SAVE) program for the
208 purpose of verifying the eligibility of all foreign born applicants. Upon federal
209 authorization, all agencies shall forward to the Georgia Department of Audits and Accounts
210 a copy of the executed user agreement and shall post the employer's federally issued user
211 identification number and date of authorization on the agency or political subdivision's
212 website or, if the agency or political subdivision does not have a website, for state agencies
213 on the OPEN GEORGIA website and for local agencies on the website of the local
214 governing authority with which the agency is affiliated with and the OPEN GEORGIA
215 website.

216 (g) For any applicant who has executed an affidavit that he or she is an alien lawfully
217 present in the United States, eligibility for public benefits shall be made through the
218 Systematic Alien Verification of Entitlement (SAVE) program operated by the United
219 States Department of Homeland Security or a successor program designated by the United
220 States Department of Homeland Security. Until such eligibility verification is made, the
221 affidavit may be presumed to be proof of lawful presence for the purposes of this Code
222 section. Any applicant who receives a negative response from the SAVE query shall be
223 reported to the United States Department of Homeland Security or other federal
224 immigration enforcement authority.

225 (g)(h) Any person who knowingly and willfully makes a false, fictitious, or fraudulent
226 statement of representation in an affidavit executed pursuant to this Code section shall be
227 guilty of a violation of Code Section 16-10-20.

228 (h)(i) Verification of citizenship through means required by federal law shall satisfy the
229 requirements of this Code section.

230 (i)(j) It shall be unlawful for any agency or political subdivision to provide or administer
231 any public benefit in violation of this Code section. On or before January 1 of each year,
232 each agency or political subdivision which administers any public benefit shall provide an
233 annual report to the Department of Audits and Accounts the Department of Community
234 Affairs that identifies each public benefit, as defined in subparagraph (a)(3)(A) of this Code
235 section, administered by the agency or political subdivision and a listing of each public
236 benefit for which SAVE authorization for verification has not been received. The
237 Department of Audits and Accounts shall conduct annual compliance audits on a minimum
238 of at least half of the reporting agencies and publish the results of such audits annually on
239 or before September 30. The annual audit shall give priority to auditing those agencies that
240 have never had an audit or have the greatest time since the agency's last audit.

241 ~~(j)~~(k) Any and all errors and significant delays by SAVE shall be reported to the United
 242 States Department of Homeland Security.

243 ~~(k)~~(l) Notwithstanding subsection ~~(g)~~ (h) of this Code section, any applicant for public
 244 benefits shall not be guilty of any crime for executing an affidavit attesting to lawful
 245 presence in the United States that contains a false statement if said affidavit is not required
 246 by this Code section.

247 ~~(h)~~(m) In the event a legal action is filed against any agency or political subdivision
 248 alleging improper denial of a public benefit arising out of an effort to comply with this
 249 Code section, the Attorney General shall be served with a copy of the proceeding and shall
 250 be entitled to be heard.

251 ~~(m)~~(n) Compliance with this Code section by an agency or political subdivision shall
 252 include taking all reasonable, necessary steps required by a federal agency to receive
 253 authorization to utilize the SAVE program or any successor program designated by the
 254 United States Department of Homeland Security or other federal agency, including
 255 providing copies of statutory authorization for the agency or political subdivision to
 256 provide public benefits and other affidavits, letters of memorandum of understanding, or
 257 other required documents or information needed to receive authority to utilize the SAVE
 258 program or any successor program for each public benefit provided by such agency or
 259 political subdivision. An agency or political subdivision that takes all reasonable,
 260 necessary steps and submits all requested documents and information as required in this
 261 subsection but either has not been given access to use such programs by such federal
 262 agencies or has not completed the process of obtaining access to use such programs shall
 263 not liable for failing to use the SAVE program or any such successor program to verify
 264 eligibility for public benefits.

265 ~~(n)~~(o) In the case of noncompliance with the provisions of this Code section by ~~an~~ a state
 266 ~~agency or political subdivision~~, the appropriations committee of each house of the General
 267 Assembly ~~may~~ shall consider such noncompliance in setting the budget and appropriations
 268 and shall reduce a violating agency's budget by 10 percent in the fiscal year following the
 269 discovery of the violation.

270 ~~(o)~~(p) No employer, agency, or political subdivision shall be subject to lawsuit or liability
 271 arising from any act to comply with the requirements of this chapter."

272 **SECTION 6.**

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