

Senate Bill 40

By: Senators Murphy of the 27th, Rogers of the 21st, Mullis of the 53rd, Gooch of the 51st, Miller of the 49th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated,
2 relating to security and immigration compliance, so as to provide penalties for the failure of
3 a public employer to utilize the federal work authorization program; to require certain private
4 employers to utilize the federal work authorization program; to provide for exceptions and
5 penalties; to provide for definitions; to amend Article 2 of Chapter 10 of Title 16 of the
6 Official Code of Georgia Annotated, relating to obstruction of public administration and
7 related offenses, so as to provide for the state offense for failure of an alien to carry a
8 certificate of registration as required by federal law; to amend Chapter 5 of Title 17 of the
9 Official Code of Georgia Annotated, relating to searches and seizures, so as to provide for
10 the arrest of illegal aliens; to amend Code Section 50-36-1 of the Official Code of Georgia
11 Annotated, relating to verification of lawful presence within the United States for receipt of
12 certain government benefits, so as to provide penalties for the failure of an agency head to
13 verify the lawful immigration status of certain applicants for public benefits; to provide for
14 related matters; to provide for an effective date and applicability; to repeal conflicting laws;
15 and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 Article 3 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to
19 security and immigration compliance, is amended by revising Code Section 13-10-90,
20 relating to definitions, as follows:

21 "13-10-90

22 As used in this article, the term:

23 (1) 'Agency head' means a director, commissioner, chairperson, mayor, councilmember,
24 chief, sheriff, board member, or other executive official responsible for establishing
25 policy for a public employer.

26 ~~(1)(2)~~ 'Commissioner' means the Commissioner of the Georgia Department of Labor.

27 ~~(2)~~(3) 'Federal work authorization program' means any of the electronic verification of
 28 work authorization programs operated by the United States Department of Homeland
 29 Security or any equivalent federal work authorization program operated by the United
 30 States Department of Homeland Security to verify information of newly hired employees,
 31 pursuant to the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603.

32 ~~(2.1)~~(4) 'Physical performance of services' means the building, altering, repairing,
 33 improving, or demolishing of any public structure or building or other public
 34 improvements of any kind to public real property, including the construction,
 35 reconstruction, or maintenance of all or part of a public road; or any other performance
 36 of labor for a public employer under a contract or other bidding process.

37 ~~(3)~~(5) 'Public employer' means every department, agency, or instrumentality of the state
 38 or a political subdivision of the state.

39 ~~(4)~~(6) 'Subcontractor' includes a subcontractor, contract employee, staffing agency, or
 40 any contractor regardless of its tier."

41 SECTION 2.

42 Said article is further amended in Code Section 13-10-91, relating to verification of new
 43 employee eligibility, applicability, and rules and regulations, by revising paragraph (3) of
 44 subsection (b) and subsection (f) and by adding new subsections to read as follows:

45 "(3) Upon contracting with a new subcontractor, a contractor ~~or subcontractor~~ shall, as
 46 a condition of any contract or subcontract entered into pursuant to this chapter, provide
 47 a public employer with notice of the identity of any and all subsequent subcontractors
 48 directly hired or contracted by that contractor ~~or subcontractor~~. Such notice shall be
 49 provided within five business days of entering into a contract or agreement for hire with
 50 any subcontractor. ~~Such notice shall include an affidavit from each subsequent contractor~~
 51 As a condition of any contract or subcontract entered into for the performance of services
 52 for a public employer, a subcontractor shall be responsible for providing to the public
 53 employer an affidavit attesting to the subcontractor's name, address, user identification
 54 number, and date of authorization to use the federal work authorization program. A
 55 contractor shall not be held legally or criminally responsible for a false statement in an
 56 affidavit submitted by a subcontractor."

57 "(f) No employer or agency or political subdivision, as such term is defined in Code
 58 Section 50-36-1, shall be subject to lawsuit or liability arising from any act to comply with
 59 the requirements of this Code section; provided, however, that the failure of any agency
 60 head to abide by the provisions of this Code section or to take reasonable steps to provide
 61 for the implementation of this Code section by the public employer for which he or she is
 62 responsible shall:

63 (1) Be a violation of the code of ethics for government service established in Code
 64 Section 45-10-1 and subject such agency head to the penalties provided for in Code
 65 Section 45-10-28, including removal from office and a fine not to exceed \$10,000.00;
 66 (2) Be an abandonment of office in violation of Code Section 45-5-1, and the position
 67 he or she held shall be deemed vacated. Such agency head shall be subject to removal
 68 from office pursuant to subsection (b) of Code Section 45-5-1; and
 69 (3) In addition to the civil penalties provided, be a misdemeanor offense where such
 70 agency head acts to willfully violate the provisions of this Code section or acts so as to
 71 intentionally and deliberately interfere with the implementation of the requirements of
 72 this Code section and, upon conviction therefore, shall be punishable by a fine of not less
 73 than \$5,000.00 or more than \$10,000.00 or by imprisonment of not more than 12 months,
 74 or both.

75 (g) In addition to any other person authorized by law, the Attorney General shall have the
 76 authority to conduct a criminal and civil investigation of an alleged violation of this Code
 77 section by a public employer or agency head and to bring a prosecution or civil action
 78 against a public employer or agency head for all cases of violations under this Code
 79 section.

80 (h) In order to assist contractors in complying with the provisions of this Code section, the
 81 Attorney General shall provide a standardized form affidavit which may be used as
 82 acceptable evidence demonstrating use of the federal employment eligibility verification
 83 system. The form affidavit shall be posted by the Attorney General on the State Law
 84 Department's official website no later than July 1, 2011.

85 (i) Documentation demonstrating the verification of a newly hired employee shall be
 86 maintained by a public employer for a minimum of five years.

87 (j) Contractors or subcontractors found to have submitted a false affidavit in an attempt
 88 to comply with the provisions of this Code section shall be prohibited from bidding on or
 89 entering into any public contract for 12 months following the discovery of such violation.
 90 In addition, a contractor or subcontractor shall be subject to a fine of \$1,000.00 per day for
 91 each day the contractor or subcontractor acts in violation of the provisions of this Code
 92 section. Such fines shall accrue to the benefit of the public employer.

93 (k) No public employer who fails to abide by the provisions of this Code section or fails
 94 to take reasonable steps in an attempt to abide by the provisions of this Code section shall
 95 receive state funding or state administered federal funding."

96 SECTION 3.

97 Said article is further amended by adding a new Code section to read as follows:

98 "13-10-92.
99 (a) After July 1, 2012, every private employer operating under a business license issued
100 by this state or a political subdivision of this state, after hiring an employee, shall verify the
101 employment eligibility of such newly hired employee through the federal work
102 authorization program, or any successor program. Verification shall be conducted within
103 three business days after employing a new employee. Documentation demonstrating the
104 verification of a newly hired employee shall be maintained by an employer for a minimum
105 of five years and shall be provided to the Commissioner upon his or her request.
106 (b) This Code section shall not apply to any person or entity who has filed an H-1 or H-2
107 application, or similar type of application, with the United States Department of Labor.
108 (c) For an initial violation of this Code section within an 18 month period, as measured
109 from the date of the initial violation, a private employer shall receive a written warning.
110 For a second or subsequent violation, a private employer shall be subject to a civil fine not
111 to exceed \$10,000.00 and shall also be subject to revocation of such private employer's
112 privilege to operate a business within this state. At the direction and final order of the
113 Commissioner, any municipal or county governing authority shall revoke the business
114 license of such violator. The license shall remain revoked for a period not to exceed two
115 years. The Commissioner shall waive any fine or business license revocation where he or
116 she finds that the violation was inadvertent or unintentional, or that the private employer
117 was acting in a good faith effort to attempt to comply with the provisions of this Code
118 section.
119 (d) The Commissioner shall be responsible for the enforcement of the provisions of this
120 Code section, including the holding of hearings to determine whether a violation of this
121 Code section has been committed and imposing and collecting sanctions against private
122 employers acting in violation of this Code section. The Commissioner shall adopt rules
123 and regulations for the implementation and enforcement of these provisions consistent with
124 the purposes of this article. The Commissioner shall have subpoena power for the limited
125 purpose of obtaining documents relating to a public or private employer's verification of
126 newly hired employees. The Attorney General shall be authorized, at the request of the
127 Commissioner, to bring an action for injunctive or other relief for the enforcement of the
128 provisions of this Code section.
129 (e) Beginning January 1, 2013, and every six months thereafter, the Commissioner shall
130 request from the United States Department of Homeland Security, or successor agency, a
131 list of employers from this state that are registered with the federal work authorization
132 program. Upon receipt of the list of employers, the Commissioner shall make the list
133 available on the department's website."

134 **SECTION 4.**

135 Article 2 of Chapter 10 of Title 16 of the Official Code of Georgia Annotated, relating to
 136 obstruction of public administration and related offenses, is amended by adding a new Code
 137 section to read as follows:

138 "16-10-34.

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

140 (1) 'Certificate of registration' means any certificate of alien registration or alien
 141 registration receipt card issued to an alien pursuant to subsection (d) of 8 U.S.C. 1304 or
 142 other federal provision as a requirement of lawful entry into the United States.

143 (2) 'Register' means the registration that every alien who plans to remain in the United
 144 States for 30 days or longer is required to complete pursuant to 8 U.S.C. 1302 or other
 145 federal registration required for an alien entering the United States.

146 (b) Every alien, 18 years of age and over, required to register pursuant to federal law and
 147 issued a certificate of registration shall at all times carry with him or her and have in his or
 148 her personal possession any valid certificate of registration issued to such person. Any alien
 149 who fails to comply with the provisions of this Code section shall be guilty of a
 150 misdemeanor and shall, upon conviction, be fined for an amount not to exceed \$100.00 or
 151 imprisoned for not more than 30 days, or both.

152 (c) A person charged with a violation of this Code section who produces in court a valid
 153 certificate of registration which was valid at the time such charge was issued shall not be
 154 guilty of a violation of this Code section.

155 (d) This Code section shall not be enforced against any person who in good faith contacts
 156 a state or local law enforcement officer or state prosecutor for the purpose of acting as a
 157 witness to a crime, to report criminal activity, or to seek assistance as a victim to a crime
 158 during the time that such contact is made. No information received during or arising from
 159 such contact shall be used against such person as a basis for a violation of this Code
 160 section."

161 **SECTION 5.**

162 Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to searches and
 163 seizures, is amended by adding a new article to read as follows:

164 "ARTICLE 5

165 17-5-100.

166 (a) As used in this Code section, the term 'illegal alien' means a person who has come to,
 167 entered, or remains in the United States in violation of federal law.

168 (b) During any stop of a criminal suspect by a law enforcement officer, where the officer
169 has probable cause to believe that such suspect has committed a criminal offense, including
170 any traffic offense, if, during the lawful detention of such suspect, the officer develops
171 reasonable cause to suspect that such person is an illegal alien, then the officer shall, when
172 reasonably practicable, make an attempt to determine the immigration status of such
173 suspect.

174 (c) A person shall be presumed to not be an illegal alien if such person provides to the law
175 enforcement officer:

176 (1) A valid Georgia driver's license;

177 (2) A valid Georgia identification card issued by the Department of Driver Services; or

178 (3) If the entity requires proof of legal presence in the United States before issuance, any
179 valid driver's license from a state or district of the United States or any valid
180 identification document issued by the United States federal government.

181 (d) If a suspect does not possess any one of the identification documents listed in
182 subsection (c) of this Code section, then the law enforcement officer shall use any
183 reasonable means available for determining whether the suspect is an illegal alien,
184 including:

185 (1) Use of any authorized federal identification data base;

186 (2) Identification methods authorized by federal law, such as 8 USCA 1373(c), 8 USCA
187 1644, or other federal provisions;

188 (3) Use of electronic fingerprint readers or similar devices; or

189 (4) Contacting an appropriate federal agency.

190 A suspect may be detained for a reasonable period of time necessary to determine the
191 immigration status of such suspect, even after the basis for the original probable cause for
192 the stop has expired.

193 (e) A law enforcement officer shall not consider race, color, or national origin in
194 implementing the requirements of this Code section except to the extent permitted by the
195 Constitutions of Georgia and of the United States.

196 (f) If during the course of the investigation, a law enforcement officer receives verification
197 that a suspect is an illegal alien or otherwise has probable cause to believe the suspect is
198 an illegal alien, then such law enforcement officer shall be authorized to arrest the
199 suspected illegal alien, securely transport the suspected illegal alien to a federal facility in
200 this state or to any other temporary point of detention for transfer into federal custody, and
201 to reasonably detain such suspected illegal alien for the period of time authorized by state
202 and federal law. Any suspect detained in state custody pending transfer to federal
203 authorities shall not be held for more than seven days without being taken before a

204 magistrate judge for a determination as to whether there is probable cause to continue the
 205 detention pending release to federal authorities.

206 (g) No person who in good faith contacts a state or local law enforcement officer or state
 207 prosecutor for the purpose of acting as a witness to a crime, to report criminal activity, or
 208 to seek assistance as a victim to a crime shall have his or her immigration status
 209 investigated based on such contact or based on information arising from such contact."

210 **SECTION 6.**

211 Code Section 50-36-1 of the Official Code of Georgia Annotated, relating to verification of
 212 lawful presence within the United States for receipt of certain government benefits, is
 213 amended in subsection (a) by renumbering paragraphs (1) through (3) as paragraphs (2)
 214 through (4), respectively, and by adding a new paragraph (1) to read as follows:

215 "(1) 'Agency head' means a director, commissioner, chairperson, mayor, councilmember,
 216 board member, or other executive official responsible for establishing policy for a public
 217 employer."

218 **SECTION 7.**

219 Said Code section is further amended by revising subsection (o) as follows:

220 "(o) No employer, agency, or political subdivision shall be subject to lawsuit or liability
 221 arising from any act to comply with the requirements of this chapter; provided, however,
 222 that the failure of any agency head to abide by the provisions of this chapter or to take
 223 reasonable steps to provide for the implementation of this chapter by the agency or political
 224 subdivision for which he or she is responsible shall:

225 (1) Be a violation of the code of ethics for government service established in Code
 226 Section 45-10-1 and subject such agency head to the penalties provided for in Code
 227 Section 45-10-28, including removal from office and a fine not to exceed \$10,000.00;

228 (2) Be an abandonment of office in violation of Code Section 45-5-1, and the position
 229 he or she held shall be deemed vacated. Such agency head shall be subject to removal
 230 from office pursuant to subsection (b) of Code Section 45-5-1; and

231 (3) In addition to the civil penalties provided, be a misdemeanor offense where such
 232 agency head acts to willfully violate the provisions of this Code section or acts so as to
 233 intentionally and deliberately interfere with the implementation of the requirements of
 234 this Code section and, upon conviction therefore, shall be punishable by a fine of not less
 235 than \$5,000.00 or more than \$10,000.00 or by imprisonment of not more than 12 months,
 236 or both.

237 In addition to any other person authorized by law, the Attorney General shall have the
 238 authority to conduct a criminal and civil investigation of an alleged violation of this chapter

239 by an agency or agency head and to bring a prosecution or civil action against an agency
240 or agency head for all cases of violations under this chapter."

241 **SECTION 8.**

242 (a) If any provision or part of any provision of this Act or the application of the same is held
243 invalid or unconstitutional, the invalidity shall not affect the other provisions or applications
244 of this Act or any other part of this Act that can be given effect without the invalid provision
245 or application, and to this end, the provisions of this Act are severable.

246 (b) The terms of this Act regarding immigration shall be construed to have the meanings
247 consistent with such terms under federal immigration law.

248 (c) The provisions of this Act shall be implemented in a manner consistent with federal laws
249 governing immigration and civil rights.

250 **SECTION 9.**

251 This Act shall become effective on July 1, 2011, and shall apply to offenses and violations
252 occurring on or after such date.

253 **SECTION 10.**

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