

Senate Bill 104

By: Senators Mullis of the 53rd, Murphy of the 27th, Heath of the 31st, Gooch of the 51st, Loudermilk of the 52nd and others

A BILL TO BE ENTITLED
AN ACT

1 To provide for legislative findings; to amend Chapter 36 of Title 50 of the Official Code of
2 Georgia Annotated, relating to verification of lawful presence within the United States, so
3 as to provide legislative findings and intent; to provide definitions; to prohibit policies by
4 local governments that limit or restrict the enforcement of immigration laws; to provide for
5 enforcement of immigration laws; to provide for the transmission and exchange of
6 information regarding immigration status of individuals; to provide for penalties and
7 sanctions; to provide that it shall be illegal to be present in this state if a person is not legally
8 in the United States; to prohibit smuggling of human beings; to prohibit the blocking of
9 traffic by a motor vehicle for the purpose of hiring or attempting to hire workers; to prohibit
10 persons who are not legally in the United States from soliciting employment in a public place
11 or to perform work in this state; to prohibit the transportation of persons who are not legally
12 in the United States; to prohibit the concealment, harboring, or shielding of such persons; to
13 prohibit the encouragement or inducement for such persons to come into this state; to
14 prohibit the employment of such persons; to provide for complaints; to provide for civil and
15 criminal remedies and penalties; to require the verification of immigration status by
16 employers in certain circumstances; to provide for related matters; to provide for an effective
17 date; to repeal conflicting laws; and for other purposes.

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

19 **SECTION 1.**

20 The General Assembly finds that there is a compelling interest in the cooperative
21 enforcement of federal immigration laws throughout all of Georgia. The General Assembly
22 declares that the intent of this Act is to make attrition through enforcement the public policy
23 of all state and local government agencies in Georgia. The provisions of this Act are
24 intended to work together to discourage and deter the unlawful entry and presence of aliens
25 and economic activity by persons unlawfully present in the United States.

26 **SECTION 2.**

27 Chapter 36 of Title 50 of the Official Code of Georgia Annotated, relating to verification of
 28 lawful presence within the United States, is amended by designating the existing text as
 29 Article 1 and adding a new article to read as follows:

30 "ARTICLE 231 50-36-20.

32 As used in this article, the term 'unauthorized alien' means an alien who does not have the
 33 legal right or authorization under federal law to work in the United States as described in
 34 8 U.S.C. Section 1324a(h)(3).

35 50-36-21.

36 (a) No official or agency of this state or any county, city, town, or other political
 37 subdivision of this state shall adopt a policy that limits or restricts the enforcement of
 38 federal immigration laws to less than the full extent permitted by federal law.

39 (b) For any lawful stop, detention, or arrest made by a law enforcement official or agency
 40 of this state or any county, city, town, or other political subdivision of this state where
 41 reasonable suspicion exists that the person is an alien who is unlawfully present in the
 42 United States, a reasonable attempt shall be made, when practicable, to determine the
 43 immigration status of the person. The person's immigration status shall be verified with
 44 the federal government pursuant to 8 U.S.C. Section 1373(c).

45 (c) If an alien who is unlawfully present in the United States is convicted of a violation of
 46 state or local law, on discharge from imprisonment or assessment of any fine that is
 47 imposed the alien shall be transferred immediately to the custody of United States
 48 Immigration and Customs Enforcement or United States Customs and Border Protection.

49 (d) Notwithstanding any other law, a law enforcement agency may securely transport an
 50 alien who is unlawfully present in the United States and who is in the agency's custody to
 51 a federal facility in this state or to any other point of transfer into federal custody that is
 52 outside the jurisdiction of the law enforcement agency.

53 (e) A law enforcement officer, without a warrant, may arrest a person if the officer has
 54 probable cause to believe that the person has committed any public offense that makes the
 55 person removable from the United States.

56 (f) Except as provided in federal law, officials or agencies of this state and counties, cities,
 57 towns and other political subdivisions of this state shall not be prohibited or in any way be
 58 restricted from sending, receiving, or maintaining information relating to the immigration

59 status of any individual or exchanging that information with any other federal, state, or
 60 local governmental entity for the following official purposes:

61 (1) Determining eligibility for any public benefit, service, or license provided by any
 62 federal, state, local, or other political subdivision of this state;

63 (2) Verifying any claim of residence or domicile if determination of residence or
 64 domicile is required under the laws of this state or by a judicial order issued pursuant to
 65 a civil or criminal proceeding in this state;

66 (3) Confirming the identity of any person who is detained; or

67 (4) If the person is an alien, determining whether the person is in compliance with the
 68 federal registration laws prescribed by Title II, Chapter 7 of the federal Immigration and
 69 Nationality Act.

70 (g) A person may bring an action in the superior courts to challenge any official or agency
 71 of this state or a county, city, town, or other political subdivision of this state that adopts
 72 or implements a policy that limits or restricts the enforcement of federal immigration laws
 73 to less than the full extent permitted by federal law. If there is a judicial finding that an
 74 entity has violated this subsection, the court shall order any of the following:

75 (1) That the person who brought the action recover court costs and attorney fees; and

76 (2) That the entity pay a civil penalty of not less than \$1,000.00 and not more than
 77 \$5,000.00 for each day that the policy has remained in effect after the filing of an action
 78 pursuant to this subsection.

79 (h) A court shall collect the civil penalty prescribed in subsection (g) of this Code section
 80 and remit the civil penalty to the Office of the State Treasurer for deposit in the general
 81 fund of the state treasury.

82 (i) A law enforcement officer shall be indemnified by the law enforcement officer's agency
 83 against reasonable costs and expenses, including attorney fees, incurred by the officer in
 84 connection with any action, suit, or proceeding brought pursuant to this Code section to
 85 which the officer may be a party by reason of the officer being or having been a member
 86 of the law enforcement agency, except in relation to matters in which the officer is
 87 adjudged to have acted in bad faith.

88 (j) This Code section shall be implemented in a manner consistent with federal laws
 89 regulating immigration, protecting the civil rights of all persons, and respecting the
 90 privileges and immunities of United States citizens.

91 50-36-22.

92 (a) In addition to any violation of federal law, a person shall be guilty of unlawful presence
 93 if the person is both:

94 (1) Present on any public or private land in this state; and

- 95 (2) In violation of 8 U.S.C. Section 1304(e) or 1306(a).
- 96 (b) In the enforcement of this Code section, the final determination of an alien's
97 immigration status shall be determined by either:
- 98 (1) A law enforcement officer who is authorized by the federal government to verify or
99 ascertain an alien's immigration status; or
- 100 (2) A law enforcement officer or agency communicating with United States Immigration
101 and Customs Enforcement or United States Border Protection pursuant to 8 U.S.C.
102 Section 1373(c).
- 103 (c) A person who is sentenced pursuant to this Code section shall not be eligible for
104 suspension or commutation of sentence or release on any basis until the sentence imposed
105 is served.
- 106 (d) In addition to any other penalty prescribed by law, the court shall order the person to
107 pay jail costs and an additional assessment in the following amounts:
- 108 (1) For a first violation, \$500.00; and
- 109 (2) If the person was previously subject to an assessment pursuant to this subsection,
110 \$1,000.00.
- 111 (e) A court shall collect the assessments prescribed in subsection (d) of this Code section
112 and remit the assessments to the Office of the State Treasurer for deposit in the general
113 fund of the state treasury.
- 114 (f) This Code section shall not apply to a person who maintains authorization from the
115 federal government to remain in the United States.
- 116 (g)(1) Except as otherwise provided in this subsection, any person violating this Code
117 section shall be guilty of a misdemeanor.
- 118 (2) A person who violates this Code section while in possession of:
- 119 (A) A controlled substance or marijuana as defined in Code Section 16-13-21;
- 120 (B) Substances in violation of Code Section 16-13-30.5;
- 121 (C) A deadly weapon or any object, device, or instrument which, when used
122 offensively against a person, is likely to or actually does result in serious bodily
123 injury; or
- 124 (D) Property that is used for the purpose of any felony, including any completed or
125 preparatory offense, that involves the use of a deadly weapon or a weapon of mass
126 destruction or the intentional or knowing infliction of serious physical injury with the
127 intent to either:
- 128 (i) Influence the policy or affect the conduct of this state or any of the political
129 subdivisions, agencies, or instrumentalities of this state; or

130 (ii) Cause substantial damage to or substantial interruption of public communications,
 131 communication service providers, public transportation, common carriers, public
 132 utilities, public establishments, or other public services
 133 shall be guilty of a felony and, upon conviction thereof, shall be punished by
 134 imprisonment for not less than one nor more than ten years.

135 (3) Except as provided in paragraph (2) of this subsection, a person who is convicted of
 136 violating this Code section for a second or subsequent time or who, within 60 months
 137 before the violation, has been removed from the United States pursuant to 8 U.S.C.
 138 Section 1229a or has accepted a voluntary removal from the United States pursuant to
 139 8 U.S.C. Section 1229c shall be punished by imprisonment for not less than one nor more
 140 than five years.

141 50-36-23.

142 (a) For the purposes of this Code section, the term:

143 (1) 'Family member' means the person's parent, grandparent, sibling, or any other person
 144 who is related to the person by consanguinity or affinity to the second degree.

145 (2) 'Procurement of transportation' means any participation in or facilitation of
 146 transportation and includes:

147 (A) Providing services that facilitate transportation, including travel arrangement
 148 services or money transmission services; and

149 (B) Providing property that facilitates transportation, including a weapon, a vehicle or
 150 other means of transportation, or false identification, or selling, leasing, renting, or
 151 otherwise making available property or real property that is used to facilitate smuggling
 152 of human beings.

153 (3) 'Smuggling of human beings' means the transportation, procurement of
 154 transportation, or use of property or real property by a person or an entity that knows or
 155 has reason to know that the person or persons transported or to be transported are not
 156 United States citizens, permanent resident aliens, or persons otherwise lawfully in this
 157 state or have attempted to enter, entered, or remained in the United States in violation of
 158 law.

159 (b) It shall be unlawful for a person intentionally engage in the smuggling of human beings
 160 for profit or commercial purposes.

161 (c)(1) Except as otherwise provided in this subsection, a violation of this Code section
 162 shall be a felony punishable by imprisonment for not less than one nor more than five
 163 years.

164 (2) A violation of this Code section shall be punishable by imprisonment for not less than
 165 three nor more than ten years if the human being who is smuggled is under 18 years of

166 age and is not accompanied by a family member over 18 years of age or the offense
 167 involved the use of a deadly weapon or any object, device, or instrument which, when
 168 used offensively against a person, is likely to or actually does result in serious bodily
 169 injury.

170 (3) A violation of this Code section shall be punishable by imprisonment for not less than
 171 two nor more than ten years if the offense involves the use or threatened use of physical
 172 force, but does not involve the use of a deadly weapon or any object, device, or
 173 instrument which, when used offensively against a person, is likely to or actually does
 174 result in serious bodily injury.

175 (d) Notwithstanding any other law to the contrary, a peace officer may lawfully stop any
 176 person who is operating a motor vehicle if the officer has reasonable suspicion to believe
 177 the person is in violation of any traffic law and this Code section.

178 50-36-24.

179 (a) For the purposes of this Code section, the term 'solicit' means verbal or nonverbal
 180 communication by a gesture or a nod that would indicate to a reasonable person that a
 181 person is willing to be employed.

182 (b) It shall be unlawful for an occupant of a motor vehicle that is stopped on a street,
 183 roadway, or highway to attempt to hire or hire and pick up passengers for work at a
 184 different location if the motor vehicle blocks or impedes the normal movement of traffic.

185 (c) It shall be unlawful for a person to enter a motor vehicle that is stopped on a street,
 186 roadway, or highway in order to be hired by an occupant of the motor vehicle and to be
 187 transported to work at a different location if the motor vehicle blocks or impedes the
 188 normal movement of traffic.

189 (d) It shall be unlawful for a person who is unlawfully present in the United States and
 190 who is an unauthorized alien to knowingly apply for work, solicit work in a public place,
 191 or perform work as an employee or independent contractor in this state.

192 (e) A violation of this Code section shall be a misdemeanor.

193 50-36-25.

194 (a) It shall be unlawful for a person who is in violation of a criminal offense to:

195 (1) Transport or move or attempt to transport or move an alien in this state in a means
 196 of transportation if the person knows or recklessly disregards the fact that the alien has
 197 come to, has entered into, or remains in the United States in violation of law;

198 (2) Conceal, harbor, or shield or attempt to conceal, harbor, or shield an alien from
 199 detection in any place in this state, including any building or any means of transportation,

200 if the person knows or recklessly disregards the fact that the alien has come to, has
201 entered, or remains in the United States in violation of law; or

202 (3) Encourage or induce an alien to come to or reside in this state if the person knows or
203 recklessly disregards the fact that such coming to, entering, or residing in this state is or
204 will be in violation of law.

205 (b) A person who violates this Code section is guilty of a misdemeanor; provided,
206 however, that a violation of this Code section that involves ten or more illegal aliens shall
207 be a felony punishable by imprisonment for not less than one nor more than three years and
208 a fine of not more than \$1,000.00 for each alien involved.

209 (c) A means of transportation that is used in the commission of a violation of this Code
210 section shall be subject to seizure and forfeiture in the same manner and using the same
211 procedures as provided in Code Section 16-13-49.

212 50-36-26.

213 (a) An employer shall not knowingly or intentionally employ an unauthorized alien. If,
214 in the case when an employer uses a contract, subcontract, or other independent contractor
215 agreement to obtain the labor of an alien in this state, the employer knowingly or
216 intentionally contracts with an unauthorized alien or with a person who employs or
217 contracts with an unauthorized alien to perform the labor, the employer violates this
218 subsection.

219 (b) The Attorney General shall prescribe a complaint form for a person to allege a
220 violation of subsection (a) of this Code section. The complainant shall not be required to
221 list the complainant's social security number on the complaint form or to have the
222 complaint form notarized. On receipt of a complaint on a prescribed complaint form that
223 an employer allegedly knowingly or intentionally employs an unauthorized alien, the
224 Attorney General or district attorney of the judicial circuit in which the alleged
225 unauthorized alien is or was employed by the employer is located shall investigate whether
226 the employer has violated subsection (a) of this Code section. If a complaint is received
227 but is not submitted on a prescribed complaint form, the Attorney General or district
228 attorney of the judicial circuit in which the alleged unauthorized alien is or was employed
229 by the employer is located may investigate whether the employer has violated subsection
230 (a) of this Code section. This subsection shall not be construed to prohibit the filing of
231 anonymous complaints that are not submitted on a prescribed complaint form. The
232 Attorney General or district attorney shall not investigate complaints that are based solely
233 on race, color, or national origin. A complaint that is submitted to a district attorney shall
234 be submitted to the district attorney in the judicial circuit in which the alleged unauthorized
235 alien is or was employed by the employer. The sheriff or any other local law enforcement

236 agency may assist in investigating a complaint. When investigating a complaint, the
237 Attorney General or district attorney shall verify the work authorization of the alleged
238 unauthorized alien with the federal government pursuant to 8 U.S.C. Section 1373(c). A
239 state, county, or local official shall not attempt to independently make a final determination
240 on whether an alien is authorized to work in the United States. An alien's immigration
241 status or work authorization status shall be verified with the federal government pursuant
242 to 8 U.S.C. Section 1373(c). A person who knowingly files a false or frivolous complaint
243 under this subsection is guilty of a misdemeanor.

244 (c) If, after an investigation, the Attorney General or district attorney determines that the
245 complaint is not false and frivolous:

246 (1) The Attorney General or district attorney shall notify United States Immigration and
247 Customs Enforcement of the unauthorized alien;

248 (2) The Attorney General or district attorney shall notify the local law enforcement
249 agency of the unauthorized alien; and

250 (3) The Attorney General shall notify the appropriate district attorney to bring an action
251 pursuant to subsection (d) of this Code section if the complaint was originally filed with
252 the Attorney General.

253 (d) An action for a violation of subsection (a) of this Code section shall be brought against
254 the employer by the district attorney of the judicial circuit containing the county where the
255 unauthorized alien employee is or was employed by the employer. The district attorney
256 shall not bring an action against any employer for any violation of subsection (a) of this
257 Code section that occurs before January 1, 2012. A second violation of this Code section
258 shall be based only on an unauthorized alien who is or was employed by the employer after
259 an action has been brought for a violation of subsection (a) of this Code section.

260 (e) For any action in superior court under this Code section, the court shall expedite the
261 action, including assigning the hearing at the earliest practicable date.

262 (f)(1) For a first violation of subsection (a) of this Code section, as described in
263 paragraph (3) of this subsection, the court:

264 (A) Shall order the employer to terminate the employment of all unauthorized aliens
265 in this state;

266 (B) Shall order the employer to be subject to a five-year probationary period for the
267 business location where the unauthorized alien performed work. During the
268 probationary period the employer shall file with the district attorney quarterly reports
269 in a form and containing such information as may be ordered by the court of each new
270 employee who is hired by the employer at the business location where the unauthorized
271 alien performed work;

272 (C) Shall order the employer to file a signed sworn affidavit with the district attorney
273 within three business days after the order is issued. The affidavit shall state that the
274 employer has terminated the employment of all unauthorized aliens in this state and that
275 the employer will not intentionally or knowingly employ an unauthorized alien in this
276 state. The court shall order the appropriate agencies to suspend all licenses subject to
277 this subparagraph held by the employer if the employer fails to file such signed sworn
278 affidavit with the district attorney within three business days after the order is issued.
279 All licenses suspended under this subparagraph shall remain suspended until the
280 employer files a signed sworn affidavit with the district attorney. Notwithstanding any
281 other law, on filing of the affidavit, the suspended licenses shall be reinstated
282 immediately by the appropriate agencies. For the purposes of this subparagraph, the
283 licenses subject to suspension under this subparagraph are all licenses held by the
284 employer specific to the business location where the unauthorized alien performed
285 work. If the employer does not hold a license specific to the business location where
286 the unauthorized alien performed work, but a license is necessary to operate the
287 employer's business in general, the licenses subject to suspension under this
288 subparagraph are all licenses held by the employer at the employer's primary place of
289 business. On receipt of the court's order and notwithstanding any other law, the
290 appropriate agencies shall suspend the licenses according to the court's order. The court
291 shall send a copy of the court's order to the Attorney General and the Attorney General
292 shall maintain the copy pursuant to subsection (g) of this Code section; and
293 (D) May order the appropriate agencies to suspend all licenses described in
294 subparagraph (C) of this paragraph held by the employer for a period of time not to
295 exceed ten business days. The court shall base its decision to suspend under this
296 subparagraph on any evidence or information submitted to it during the action for a
297 violation of subsection (a) of this Code section and shall consider the following factors,
298 if relevant:
299 (i) The number of unauthorized aliens employed by the employer;
300 (ii) Any prior misconduct by the employer;
301 (iii) The degree of harm resulting from the violation;
302 (iv) Whether the employer made good faith efforts to comply with any applicable
303 requirements;
304 (v) The duration of the violation;
305 (vi) The role of the directors, officers, or principals of the employer in the violation;
306 and
307 (vii) Any other factors the court deems appropriate.

308 (2) For a second violation of subsection (a) of this Code section, as described in
309 paragraph (3) of this subsection, the court shall order the appropriate agencies to
310 permanently revoke all licenses held by the employer specific to the business location
311 where the unauthorized alien performed work. If the employer does not hold a license
312 specific to the business location where the unauthorized alien performed work, but a
313 license is necessary to operate the employer's business in general, the court shall order
314 the appropriate agencies to permanently revoke all licenses held by the employer at the
315 employer's primary place of business. On receipt of the order and notwithstanding any
316 other law, the appropriate agencies shall immediately revoke the licenses.

317 (3) A violation of subsection (a) of this Code section shall be considered:

318 (A) A first violation by an employer at a business location if the violation did not occur
319 during a probationary period ordered by the court under this subsection for that
320 employer's business location; or

321 (B) A second violation by an employer at a business location if the violation occurred
322 during a probationary period ordered by the court under this subsection for that
323 employer's business location.

324 (g) The Attorney General shall maintain copies of court orders received pursuant to
325 subsection (f) of this Code section and shall maintain a data base of the employers and
326 business locations that have a first violation of subsection (a) of this Code section and make
327 the court orders available on the Attorney General's website.

328 (h) On determining whether an employee is an unauthorized alien, the court shall consider
329 only the federal government's determination pursuant to 8 U.S.C. Section 1373(c). The
330 federal government's determination shall create a rebuttable presumption of the employee's
331 lawful status. The court may take judicial notice of the federal government's determination
332 and may request the federal government to provide automated or testimonial verification
333 pursuant to 8 U.S.C. Section 1373(c).

334 (i) For the purposes of this Code section, proof of verifying the employment authorization
335 of an employee through the federal E-Verify program shall create a rebuttable presumption
336 that an employer did not knowingly or intentionally employ an unauthorized alien.

337 (j) For the purposes of this Code section, an employer that establishes that it has complied
338 in good faith with the requirements of 8 U.S.C. Section 1324a(b) establishes an affirmative
339 defense that the employer did not knowingly or intentionally employ an unauthorized alien.
340 An employer is considered to have complied with the requirements of 8 U.S.C. Section
341 1324a(b), notwithstanding an isolated, sporadic, or accidental technical or procedural
342 failure to meet the requirements, if there is a good faith attempt to comply with the
343 requirements.

344 (k)(1) It is an affirmative defense to a violation of subsection (a) of this Code section that
 345 the employer was entrapped. To claim entrapment, the employer must admit by the
 346 employer's testimony or other evidence the substantial elements of the violation. An
 347 employer who asserts an entrapment defense has the burden of proving the following by
 348 clear and convincing evidence:

349 (A) The idea of committing the violation started with law enforcement officers or their
 350 agents rather than with the employer;

351 (B) The law enforcement officers or their agents urged and induced the employer to
 352 commit the violation; and

353 (C) The employer was not predisposed to commit the violation before the law
 354 enforcement officers or their agents urged and induced the employer to commit the
 355 violation.

356 (2) An employer does not establish entrapment if the employer was predisposed to
 357 violate subsection (a) of this Code section and the law enforcement officers or their
 358 agents merely provided the employer with an opportunity to commit the violation. It is
 359 not entrapment for law enforcement officers or their agents merely to use a ruse or to
 360 conceal their identity. The conduct of law enforcement officers and their agents may be
 361 considered in determining if an employer has proven entrapment.

362 50-36-27.

363 (a) For the purposes of this Code section, the term:

364 (1) 'Economic development incentive' means any grant, loan, or performance based
 365 incentive from any government entity that is awarded after December 31, 2010.
 366 Economic development incentive does not include any tax provision under Title 48.

367 (2) 'Government entity' means this state and any political subdivision of this state that
 368 receives and uses tax revenues.

369 (b) After December 31, 2011, every employer, after hiring an employee, shall verify the
 370 employment eligibility of the employee through the federal E-Verify program and shall
 371 keep a record of the verification for the duration of the employee's employment or at least
 372 three years, whichever is longer.

373 (c) In addition to any other requirement for an employer to receive an economic
 374 development incentive from a government entity, the employer shall register with and
 375 participate in the federal E-Verify program. Before receiving the economic development
 376 incentive, the employer shall provide proof to the government entity that the employer is
 377 registered with and is participating in the E-Verify program. If the government entity
 378 determines that the employer is not complying with this subsection, the government entity
 379 shall notify the employer by certified mail, return receipt requested, of the government

380 entity's determination of noncompliance and the employer's right to appeal the
381 determination. On a final determination of noncompliance, the employer shall repay all
382 moneys received as an economic development incentive to the government entity within
383 30 days of the final determination.

384 (d) Every three months, the Attorney General shall request from the United States
385 Department of Homeland Security a list of employers from this state that are registered
386 with the E-Verify program. On receipt of the list of employers, the Attorney General shall
387 make the list available on the Attorney General's website.

388 50-36-28.

389 As soon as practicable after the end of each fiscal year, the Office of the State Treasurer
390 shall report the amount of funds received pursuant to this article to the Office of Planning
391 and Budget. It is the intent of the General Assembly that, subject to appropriation, an
392 amount equal to such proceeds received from such fines in any fiscal year shall be made
393 available during the following fiscal year for the purposes of gang and immigration
394 enforcement and for county jail reimbursement costs relating to illegal immigration."

395 **SECTION 3.**

396 This Act shall become effective on January 1, 2012.

397 **SECTION 4.**

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