

The House Committee on Judiciary Non-civil offers the following substitute to HB 87:

A BILL TO BE ENTITLED
AN ACT

1 To enact the "Illegal Immigration Reform and Enforcement Act of 2011"; to amend Article
2 3 of Chapter 10 of Title 13, Chapter 80 of Title 36, and Code Section 50-36-1 of the Official
3 Code of Georgia Annotated, relating to security and immigration compliance, general
4 provisions relative to local government, and the verification of immigration status using the
5 federal SAVE system prior to the issuance of certain public benefits, requirements,
6 procedures, conditions, exceptions, regulations, and criminal and other penalties for
7 violations, respectively, so as to provide for definitions; to provide for a private cause of
8 action for enforcement of provisions relating to the prevention of illegal immigration; to
9 require private employers to use an employment eligibility verification system and provide
10 for civil penalties; to amend Title 16 of the Official Code of Georgia Annotated, relating to
11 crimes and offenses, so as to provide for offenses involving illegal aliens; to provide for the
12 offense of aggravated identity fraud; to provide for penalties; to amend Chapter 5 of Title 17
13 of the Official Code of Georgia Annotated, relating to searches and seizures, so as to provide
14 for the investigation of illegal alien status; to amend Title 35 of the Official Code of Georgia
15 Annotated, relating to law enforcement officers and agencies, so as to provide authority for
16 law enforcement officers to enforce federal immigration laws under certain circumstances
17 and to provide immunity for such officers subject to limitations; to provide for civil and
18 criminal penalties; to modify provisions relating to training peace officers for enforcement
19 of immigration and custom laws; to establish grant funding for local law enforcement
20 agencies to enter into agreements with federal agencies for the enforcement of immigration
21 law; to amend Title 42 of the Official Code of Georgia Annotated, relating to penal
22 institutions, so as to provide for the verification of the immigration status of foreign nationals
23 arrested and held in a county or municipal jail; to provide that local governing authorities that
24 have entered or attempted to enter into certain memorandums of agreement with the federal
25 government shall receive additional funding for confinement of state inmates; to provide for
26 a funding contingency; to amend Chapter 60 of Title 36 of the Official Code of Georgia
27 Annotated, relating to general provisions applicable to local governments, so as to require
28 proof that private businesses are participating in the employment eligibility verification

29 system prior to the issuance of a business license or other documents; to amend Chapter 36
 30 of Title 50 of the Official Code of Georgia Annotated, relating to verification of lawful
 31 presence within the United States, so as to provide for identification documents by applicants
 32 for public benefits; to enact the "Secure and Verifiable Identity Document Act"; to provide
 33 for related matters; to provide for an effective date and applicability; to repeal conflicting
 34 laws; and for other purposes.

35 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

36 I.
 37 TITLE

38 SECTION 1.

39 This Act shall be known and may be cited as the "Illegal Immigration Reform and
 40 Enforcement Act of 2011."

41 II.
 42 PRIVATE CAUSE OF ACTION FOR
 43 THE ENFORCEMENT OF PROVISIONS
 44 TO PREVENT ILLEGAL IMMIGRATION.

45 SECTION 2.

46 Article 3 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to
 47 security and immigration compliance, is amended in Code Section 13-10-91, relating to the
 48 verification of the immigration status of new employees, eligibility, applicability, and rules
 49 and regulations for use of the federal E-Verify identification system, by revising subsection
 50 (f) as follows:

51 "(f)(1) No employer or agency or political subdivision, as such term is defined in Code
 52 Section 50-36-1, shall be subject to lawsuit or liability arising from any act to comply
 53 with the requirements of this Code section; provided, however, that a person who is a
 54 legal resident as defined in Code Section 40-2-1 and at least 21 years of age may file a
 55 civil action for injunctive or other equitable relief against any official or agency of this
 56 state or a political subdivision of this state for the purpose of enforcing the provisions of
 57 this Code section.

58 (2) A civil action filed pursuant to this subsection shall be filed in the superior court of
 59 the county having jurisdiction of the agency's headquarters or where the violation is

60 alleged to have occurred. Prior to filing a civil action to enforce the provisions of this
61 Code section, notice shall be served as follows:

62 (A) Within six months of the discovery of an alleged failure by an official or agency
63 to enforce the provisions of this Code section, a person entitled to bring a claim based
64 upon such failure shall serve a copy of his or her proposed claim in writing, by certified
65 mail or statutory overnight delivery, on the official or agency, or both, alleged to have
66 failed to enforce a provision or provisions of this Code section. A copy of such claim
67 shall also be served upon the governing authority of the official or agency. The claim
68 shall identify with specificity any provisions of this Code section that allegedly had not
69 been followed and the allegations that form the basis of the proposed claim; and

70 (B) Upon the service of such claim, the official or agency shall have 30 days from the
71 date of service to correct the alleged deficiency and take reasonable measures to
72 implement and follow the requirements of this Code section. No civil action brought
73 pursuant to this subsection shall be entertained by any court of this state against an
74 official or agency of this state or subdivision of this state until the claim has first been
75 presented for an opportunity to take corrective action as provided in this paragraph. If
76 corrective action is taken sufficient to satisfy the requirements of this Code section, any
77 civil action filed pursuant to this Code section shall be void ab initio. If, after the 30
78 day notice period, a claimant has a good faith basis for claiming that corrective action
79 has not been sufficiently taken, then the claimant may proceed with filing a civil action.
80 A copy of the notice served pursuant to this paragraph and proof of service shall be
81 attached to the civil action when filed.

82 (3) All discovery and any pending hearings or motions in a civil action based on a
83 violation of this Code section shall be stayed upon the filing of a motion to dismiss or a
84 motion to strike. The court, on noticed motion and for good cause shown, may order that
85 specified discovery or other hearings or motions be conducted notwithstanding this
86 paragraph. The court shall rule on such motion to dismiss or motion to strike within 45
87 days of the filing of a claimant's response or the agency or official's reply, whichever is
88 later.

89 (4) If there is a judicial finding that an agency or official of an agency has violated or
90 failed to abide by the provisions of this Code section, the court shall order the official or
91 agency, or both, to conform to the requirements of the law and shall assess against the
92 official or agency, or both, a civil penalty of not less than \$1,000.00 or more than
93 \$5,000.00 for each separate violation. The court shall collect the civil penalty and remit
94 the same to local law enforcement agencies or departments within the court's jurisdiction
95 for the purpose of training law enforcement officers in matters related to the enforcement
96 of immigration law. In addition, the court shall award all reasonable and necessary

97 attorney's fees and expenses of litigation to any prevailing party by an adjudication on the
 98 merits in a proceeding brought pursuant to this Code section. Reasonable and necessary
 99 attorney's fees and expenses of litigation under this Code section may be requested by
 100 motion at any time during the course of such civil action but not later than 45 days after
 101 the final disposition, including, but not limited to, dismissal by the plaintiff, of such civil
 102 action.

103 (5) Nothing in this Code section shall affect or preclude the right of any party to any
 104 recovery otherwise authorized by common law, statute, or rule."

105 **SECTION 3.**

106 Said Code section of said article is further amended by adding new subsections to read as
 107 follows:

108 "(g) The Attorney General shall be authorized to bring any civil action against a political
 109 subdivision of this state that he or she deems necessary to enforce compliance with this
 110 Code section, including a civil action as provided for in subsection (f) of this Code section.

111 (h) A civil action brought against an official or agency of this state or a political
 112 subdivision of this state shall be subject to the provisions of Article 5 of Chapter 7 of Title
 113 51, involving abusive litigation."

114 **SECTION 4.**

115 Chapter 80 of Title 36 of the Official Code of Georgia Annotated, relating to general
 116 provisions relative to local government, is amended by revising Code Section 36-80-23,
 117 relating to prohibition on immigration sanctuary policies by local governmental entities and
 118 certification of compliance, as follows:

119 "36-80-23.

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

121 ~~(1) 'Federal officials or law enforcement officers' means any person employed by the~~
 122 ~~United States government for the purpose of enforcing or regulating federal immigration~~
 123 ~~laws and any peace officer certified by the Georgia Peace Officer Standards and Training~~
 124 ~~Council where such federal official or peace officer is acting within the scope of his or~~
 125 ~~her employment for the purpose of enforcing federal immigration laws or preserving~~
 126 ~~homeland security.~~

127 ~~(2) 'Immigration status' means the legality or illegality of an individual's presence in the~~
 128 ~~United States as determined by federal law.~~

129 ~~(3) 'Immigration status information' means any information, not including any~~
 130 ~~information required by law to be kept confidential but otherwise including but not~~
 131 ~~limited to any statement, document, computer generated data, recording, or photograph,~~

132 ~~which is relevant to immigration status or the identity or location of an individual who~~
 133 ~~is reasonably believed to be illegally residing within the United States or who is~~
 134 ~~reasonably believed to be involved in domestic terrorism as that term is defined in Code~~
 135 ~~Section 16-4-10 or a terroristic act as that term is defined by Code Section 35-3-62.~~

136 ~~(4)(1) 'Local governing body' means any political subdivision of this state, including any~~
 137 ~~county, consolidated government, municipality, authority, school district, commission,~~
 138 ~~board, or any other local public body corporate, governmental unit, or political~~
 139 ~~subdivision.~~

140 ~~(5) 'Local official or employee' means any elected or appointed official, supervisor or~~
 141 ~~managerial employee, contractor, agent, or certified peace officer acting on behalf of or~~
 142 ~~in conjunction with a local governing body.~~

143 ~~(6)(2) 'Sanctuary policy' means any regulation, rule, policy, or practice adopted by a~~
 144 ~~local governing body which prohibits or restricts local officials or employees from~~
 145 ~~communicating or cooperating with federal officials or law enforcement officers with~~
 146 ~~regard to reporting immigration status information while such local official or employee~~
 147 ~~is acting within the scope of his or her official duties.~~

148 (b) No local governing body, whether acting through its governing body or by an initiative,
 149 referendum, or any other process, shall enact, adopt, implement, or enforce any sanctuary
 150 policy.

151 (c) Any local governing body that acts in violation of this Code section shall be subject to
 152 the withholding of state funding or state administered federal funding other than funds to
 153 provide services specified in subsection (c) of Code Section 50-36-1.

154 (d) The Department of Community Affairs, the Department of Transportation, or any other
 155 state agency that provides funding to local governing bodies ~~may~~ shall require certification
 156 of compliance with this Code section as a condition of funding.

157 (e)(1) A person who is a legal resident, as defined by Code Section 40-2-1, and at least
 158 21 years of age may file a civil action for injunctive or other equitable relief against any
 159 local governing body or official of such body for the purpose of enforcing the provisions
 160 of this Code section.

161 (2) A civil action filed pursuant to this subsection shall be filed in the superior court of
 162 the county having jurisdiction over the local governing body. Prior to filing a civil action
 163 to enforce the provisions of this Code section, notice shall be provided to the local
 164 governing body as follows:

165 (A) Within six months of the discovery of an alleged violation of this Code section by
 166 an official, agency, or local governing body, a person entitled to bring a claim based
 167 upon such failure shall serve a copy of his or her proposed claim in writing on the local
 168 governing body, by certified mail or statutory overnight delivery, alleged to have failed

169 to enforce a provision or provisions of this Code section. The claim shall identify with
170 specificity any provisions of this Code section that have been violated and the
171 allegations that form the basis of the proposed claim; and

172 (B) Upon the service of such claim, the local governing body shall have 30 days from
173 the date of service to correct the alleged violation and take reasonable measures to
174 implement and follow the requirements of this Code section. No civil action brought
175 pursuant to this subsection shall be entertained by any court of this state against a local
176 governing body until the claim has first been presented for an opportunity to take
177 corrective action as provided in this paragraph. If corrective action is taken sufficient
178 to satisfy the requirements of this Code section, any civil action filed pursuant to this
179 Code section shall be void ab initio. If, after the 30 day notice period, a claimant has
180 a good faith basis for claiming that corrective action has not been sufficiently taken,
181 then the claimant may proceed with filing a civil action. A copy of the notice served
182 pursuant to this paragraph and proof of service shall be attached to the civil action when
183 filed.

184 (3) All discovery and any pending hearings or motions in a civil action based on a
185 violation of this Code section shall be stayed upon the filing of a motion to dismiss or a
186 motion to strike. The court, on noticed motion and for good cause shown, may order that
187 specified discovery or other hearings or motions be conducted notwithstanding this
188 paragraph. The court shall rule on such motion to dismiss or motion to strike within 45
189 days of the filing of a claimant's response or the agency or official's reply, whichever is
190 later.

191 (4) If there is a judicial finding that a local governing body or official of a local
192 governing body has violated or failed to abide by the provisions of this Code section, the
193 court shall order the local governing body to conform to the requirements of the law and
194 shall assess against the local governing body a civil penalty of not less than \$1,000.00 or
195 more than \$5,000.00 for each separate violation. The court shall collect the civil penalty
196 and remit the same to local law enforcement agencies or departments within the court's
197 jurisdiction for the purpose of training law enforcement officers in matters related to the
198 enforcement of immigration law. In addition, the court shall award all reasonable and
199 necessary attorney's fees and expenses of litigation to any prevailing party by an
200 adjudication on the merits in a proceeding brought pursuant to this Code section.
201 Reasonable and necessary attorney's fees and expenses of litigation under this Code
202 section may be requested by motion at any time during the course of such civil action but
203 not later than 45 days after the final disposition, including, but not limited to, dismissal
204 by the plaintiff, of such civil action.

205 (5) Nothing in this Code section shall affect or preclude the right of any party to any
 206 recovery otherwise authorized by common law, statute, or rule.
 207 (f) The Attorney General shall be authorized to bring any civil action against a political
 208 subdivision of this state that he or she deems necessary to enforce compliance with this
 209 Code section, including a civil action as provided for in subsection (e) of this Code section.
 210 (g) A civil action brought pursuant to this Code section shall be subject to the provisions
 211 of Article 5 of Chapter 7 of Title 51, involving abusive litigation."

212 SECTION 5.

213 Code Section 50-36-1 of the Official Code of Georgia Annotated, relating to security and
 214 immigration compliance, general provisions relative to local government, and the verification
 215 of immigration status using the federal SAVE system prior to the issuance of certain public
 216 benefits, requirements, procedures, conditions, exceptions, regulations, and criminal and
 217 other penalties for violations, is amended by revising subsection (o) as follows:

218 "(o)(1) No employer, agency, or political subdivision shall be subject to lawsuit or
 219 liability arising from any act to comply with the requirements of this chapter; provided,
 220 however, that a person who is a legal resident as defined by Code Section 40-2-1 and at
 221 least 21 years of age may file a civil action for injunctive or other equitable relief against
 222 any official or agency of this state or political subdivision of this state for the purpose of
 223 enforcing the provisions of this Code section.

224 (2) A civil action filed pursuant to this subsection shall be filed in the superior court of
 225 the county having jurisdiction of the agency's headquarters or where the violation is
 226 alleged to have occurred. Prior to filing a civil action to enforce the provisions of this
 227 Code section, notice shall be served as follows:

228 (A) Within six months of the discovery of an alleged failure by an official or agency
 229 to enforce the provisions of this Code section, a person entitled to bring a claim based
 230 upon such failure shall serve a copy of his or her proposed claim in writing, by certified
 231 mail or statutory overnight delivery, on the official or agency, or both, alleged to have
 232 failed to enforce any provisions of this Code section. A copy of such claim shall also
 233 be served upon the governing authority of the official or agency. The claim shall
 234 identify with specificity the provision or provisions of this Code section that allegedly
 235 had not been followed and the allegations that form the basis of the proposed claim; and

236 (B) Upon the service of such claim, the official or agency shall have 30 days from the
 237 date of service to correct the alleged violation and take reasonable measures to
 238 implement and follow the requirements of this Code section. No civil action brought
 239 pursuant to this subsection shall be entertained by any court of this state against an
 240 official or agency of this state or subdivision of this state until the claim has first been

241 presented for an opportunity to take corrective action as provided in this paragraph. If
 242 corrective action is taken sufficient to satisfy the requirements of this Code section, any
 243 civil action filed pursuant to this Code section shall be void ab initio. If, after the 30
 244 day notice period, a claimant has a good faith basis for claiming that corrective action
 245 has not been sufficiently taken, then the claimant may proceed with filing a civil action.
 246 A copy of the notice served and pursuant to this paragraph and proof of service shall
 247 be attached to the civil action when filed.

248 (3) All discovery and any pending hearings or motions in a civil action based on a
 249 violation of this Code section shall be stayed upon the filing of a motion to dismiss or a
 250 motion to strike. The court, on noticed motion and for good cause shown, may order that
 251 specified discovery or other hearings or motions be conducted notwithstanding this
 252 paragraph. The court shall rule on such motion to dismiss or motion to strike within 45
 253 days of the filing of a claimant's response or the agency or official's reply, whichever is
 254 later.

255 (4) If there is a judicial finding that an agency or official of an agency has violated or
 256 failed to abide by the provisions of this Code section, the court shall order the agency to
 257 conform to the requirements of the law and shall assess against the agency a civil penalty
 258 of not less than \$1,000.00 or more than \$5,000.00 for each separate violation. The court
 259 shall collect the civil penalty and remit the same to local law enforcement agencies or
 260 departments within the court's jurisdiction for the purpose of training law enforcement
 261 officers in matters related to the enforcement of immigration law. In addition, the court
 262 shall award all reasonable and necessary attorney's fees and expenses of litigation to any
 263 prevailing party by an adjudication on the merits in a proceeding brought pursuant to this
 264 Code section. Reasonable and necessary attorney's fees and expenses of litigation under
 265 this Code section may be requested by motion at any time during the course of such civil
 266 action but not later than 45 days after the final disposition, including, but not limited to,
 267 dismissal by the plaintiff, of such civil action.

268 (5) Nothing in this Code section shall affect or preclude the right of any party to any
 269 recovery otherwise authorized by common law, statute, or rule."

270 **SECTION 6.**

271 Said Code section is further amended by adding new subsections to read as follows:

272 "(p) The Attorney General shall be authorized to bring any civil action against a political
 273 subdivision of this state that he or she deems necessary to enforce compliance with this
 274 Code section, including a civil action as provided for in subsection (o) of this Code section.

275 (q) A civil action brought against an official or agency of this state or a political
 276 subdivision of this state shall be subject to the provisions of Article 5 of Chapter 7 of Title
 277 51, involving abusive litigation."

278 III.
 279 CRIMINAL OFFENSES.

280 SECTION 7.

281 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 282 amended in Article 8 of Chapter 9, relating to identity fraud, by adding a new Code section
 283 to read as follows:

284 "16-9-121.1.

285 (a) A person commits the offense of aggravated identity fraud when he or she willfully and
 286 fraudulently uses any counterfeit or fictitious identifying information concerning a real,
 287 fictitious, or deceased person with intent to use such counterfeit or fictitious identifying
 288 information for the purpose of obtaining employment.

289 (b) The offense created by this Code section shall not merge with any other offense."

290 SECTION 8.

291 Said article of said title is further amended by revising Code Section 16-9-126, relating to
 292 penalties for violations, as follows:

293 "16-9-126.

294 (a) A violation of this article, other than a violation of Code Section 16-9-121.1 or
 295 16-9-122, shall be punishable by imprisonment for not less than one nor more than ten
 296 years or a fine not to exceed \$100,000.00, or both. Any person who commits such a
 297 violation for the second or any subsequent offense shall be punished by imprisonment for
 298 not less than three nor more than 15 years, a fine not to exceed \$250,000.00, or both.

299 (a.1) A violation of Code Section 16-9-121.1 shall be punishable by imprisonment for not
 300 less than one nor more than 15 years, a fine not to exceed \$250,000.00, or both, and such
 301 sentence shall run consecutively to any other sentence which the person has received.

302 (b) A violation of this article which does not involve the intent to commit theft or
 303 appropriation of any property, resource, or other thing of value that is committed by a
 304 person who is less than 21 years of age shall be punishable by imprisonment for not less
 305 than one nor more than three years or a fine not to exceed \$5,000.00, or both.

306 (c) Any person found guilty of a violation of this article may be ordered by the court to
 307 make restitution to any consumer victim or any business victim of such fraud.

308 (d) Each violation of this article shall constitute a separate offense.

309 (e) Upon a conviction of a violation of this article, the court may issue any order necessary
 310 to correct a public record that contains false information resulting from the actions which
 311 resulted in the conviction."

312 **SECTION 9.**

313 Said article of said title is further amended by revising Code Section 16-9-128, relating to
 314 exemptions, as follows:

315 "16-9-128.

316 (a) The prohibitions set forth in Code Sections 16-9-121, 16-9-121.1, and 16-9-122 shall
 317 not apply to nor shall any cause of action arise under Code Sections 16-9-129 and 16-9-131
 318 for:

319 (1) The lawful obtaining of credit information in the course of a bona fide consumer or
 320 commercial transaction;

321 (2) The lawful, good faith exercise of a security interest or a right to offset by a creditor
 322 or a financial institution;

323 (3) The lawful, good faith compliance by any party when required by any warrant, levy,
 324 garnishment, attachment, court order, or other judicial or administrative order, decree, or
 325 directive; or

326 (4) The good faith use of identifying information with the permission of the affected
 327 person.

328 (b) The exemptions provided in subsection (a) of this Code section ~~will~~ shall not apply to
 329 a person intending to further a scheme to violate Code Section 16-9-121, 16-9-121.1, or
 330 16-9-122.

331 (c) It is shall not be necessary for the state to negate any exemption or exception in this
 332 article in any complaint, accusation, indictment, or other pleading or in any trial, hearing,
 333 or other proceeding under this article involving a business victim. In such cases, the
 334 burden of proof of any exemption or exception is upon the business victim claiming it."

335 **SECTION 10.**

336 Said title is further amended in Chapter 11, relating to offenses against public order and
 337 safety, by adding a new article to read as follows:

338 "ARTICLE 5

339 16-11-200.

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

341 (1) 'Illegal alien' means a person who is verified by the federal government to be present
 342 in the United States in violation of federal immigration law.

343 (2) 'Motor vehicle' shall have the same meaning as provided in Code Section 40-1-1.

344 (b) A person who, while committing another criminal offense, knowingly and intentionally
 345 transports or moves an illegal alien in a motor vehicle for the purpose of furthering the
 346 illegal presence of the alien in the United States shall be guilty of the offense of
 347 transporting or moving an illegal alien.

348 (c) Except as provided in this subsection, a person convicted for a first offense of
 349 transporting or moving an illegal alien who moves seven or fewer illegal aliens at the same
 350 time shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by
 351 imprisonment not to exceed 12 months, a fine not to exceed \$1,000.00, or both. A person
 352 convicted for a second or subsequent offense of transporting or moving an illegal alien, and
 353 a person convicted on a first offense of transporting or moving an illegal alien who moves
 354 eight or more illegal aliens at the same time, shall be guilty of a felony and, upon
 355 conviction thereof, shall be punished by imprisonment of not less than one or more than
 356 five years, a fine of not less than \$5,000.00 or more than \$20,000.00, or both. A person
 357 who commits the offense of transporting or moving an illegal alien who does so with the
 358 intent of making a profit or receiving anything of value shall be guilty of a felony and,
 359 upon conviction thereof, shall be punished by imprisonment of not less than one or more
 360 than five years, a fine of not less than \$5,000.00 or more than \$20,000.00, or both.

361 (d) This Code section shall not apply to:

362 (1) A government employee transporting or moving an illegal alien as a part of his or her
 363 official duties or to any person acting at the direction of such employee;

364 (2) A person who transports an illegal alien to or from a judicial or administrative
 365 proceeding when such illegal alien is required to appear pursuant to a summons,
 366 subpoena, court order, or other legal process; or

367 (3) A person who transports an illegal alien to a law enforcement agency or a judicial
 368 officer for official government purposes.

369 16-11-201.

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

371 (1) 'Harboring' or 'harbors' means any conduct that tends to substantially help an illegal
 372 alien to remain in the United States in violation of federal law but shall not include a
 373 person providing services to infants, children, or victims of a crime; a person providing
 374 emergency medical service; or an attorney or his or her employees for the purpose of
 375 representing a criminal defendant.

376 (2) 'Illegal alien' means a person who is present in the United States in violation of
377 federal immigration law.

378 (b) A person who is acting in violation of another criminal offense and who knowingly
379 conceals, harbors, or shields an illegal alien from detection in any place in this state,
380 including any building or means of transportation, when such person knows that the person
381 being concealed, harbored, or shielded is an illegal alien, shall be guilty of the offense of
382 concealing or harboring an illegal alien.

383 (c) Except as provided in this subsection, a person convicted of concealing or harboring
384 an illegal alien who conceals or harbors seven or fewer illegal aliens at the same time in
385 the same location shall be guilty of a misdemeanor and, upon conviction thereof, shall be
386 punished by imprisonment not to exceed 12 months, a fine not to exceed \$1,000.00, or
387 both. A person convicted of concealing or harboring an illegal alien who conceals or
388 harbors eight or more illegal aliens at the same time in the same location, or who conceals
389 or harbors an illegal alien with the intent of making a profit or receiving anything of value,
390 shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment
391 of not less than one or more than five years, a fine of not less than \$5,000.00 or more than
392 \$20,000.00, or both.

393 (d) This Code section shall not apply to a government employee or any person acting at
394 the express direction of a government employee who conceals, harbors, or shelters an
395 illegal alien when such illegal alien is or has been the victim of a criminal offense or is a
396 witness in any civil or criminal proceeding or who holds an illegal alien in a jail, prison,
397 or other detention facility.

398 16-11-202.

399 (a) As used in this Code section, the term 'illegal alien' means a person who is verified by
400 the federal government to be present in the United States in violation of federal
401 immigration law.

402 (b) A person who is acting in violation of another criminal offense and who knowingly
403 induces, entices, or assists an illegal alien to enter into this state, when such person knows
404 that the person being induced, enticed, or assisted to enter into this state is an illegal alien,
405 shall be guilty of the offense of inducing an illegal alien to enter into this state.

406 (c) Except as provided in subsection (d) of this Code section, for a first offense, a person
407 convicted of inducing an illegal alien to enter into this state shall be guilty of a
408 misdemeanor and, upon conviction thereof, shall be punished by imprisonment not to
409 exceed 12 months, a fine not to exceed \$1,000.00, or both. For a second or subsequent
410 conviction of inducing an illegal alien to enter into this state, a person shall be guilty of a
411 felony and, upon conviction thereof, shall be punished by imprisonment of not less than

412 one or more than five years, a fine of not less than \$5,000.00 or more than \$20,000.00, or
 413 both.
 414 (d) A person who commits the offense of inducing an illegal alien to enter into this state
 415 who does so with the intent of making a profit or receiving any thing of value shall be
 416 guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not
 417 less than one or more than five years, a fine of not less than \$5,000.00 or more than
 418 \$20,000.00, or both."

419 IV.

420 LAW ENFORCEMENT OFFICERS AND
 421 ENFORCEMENT OF IMMIGRATION LAW.

422 SECTION 11.

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

425 "ARTICLE 5

426 17-5-100.

427 (a) As used in this Code section, the term 'illegal alien' means a person who is verified by
 428 the federal government to be present in the United States in violation of federal
 429 immigration law.

430 (b) Except as provided in subsection (f) of this Code section, during any investigation of
 431 a criminal suspect by a peace officer, when such officer has probable cause to believe that
 432 a suspect has committed a criminal offense, including any traffic offense, the officer shall
 433 be authorized to seek to verify such suspect's immigration status when the suspect is unable
 434 to provide one of the following:

435 (1) A secure and verifiable document as defined in Code Section 50-36-2;

436 (2) A valid Georgia driver's license;

437 (3) A valid Georgia identification card issued by the Department of Driver Services;

438 (4) If the entity requires proof of legal presence in the United States before issuance, any
 439 valid driver's license from a state or district of the United States or any valid
 440 identification document issued by the United States federal government; or

441 (5) Other information as to the suspect's identity that is sufficient to allow the peace
 442 officer to independently identify the suspect.

- 443 (c) When attempting to determine the immigration status of a suspect pursuant to
 444 subsection (b) of this Code section, a peace officer shall be authorized to use any
 445 reasonable means available to determine the immigration status of the suspect, including:
 446 (1) Use of any authorized federal identification data base;
 447 (2) Identification methods authorized by federal law, including those authorized by 8
 448 USCA 1373(c), 8 USCA 1644;
 449 (3) Use of electronic fingerprint readers or similar devices; or
 450 (4) Contacting an appropriate federal agency.
 451 (d) A peace officer shall not consider race, color, or national origin in implementing the
 452 requirements of this Code section except to the extent permitted by the Constitutions of
 453 Georgia and of the United States.
 454 (e) If during the course of the investigation into such suspect's identity, a peace officer
 455 receives verification that such suspect is an illegal alien, then such peace officer may take
 456 any action authorized by state and federal law, including, but not limited to, detaining such
 457 suspected illegal alien, securely transporting such suspect to any authorized federal or state
 458 detention facility, or notifying the United States Department of Homeland Security or
 459 successor agency. Nothing in this Code section shall be construed to hinder or prevent a
 460 peace officer or law enforcement agency from arresting or detaining any criminal suspect
 461 on other criminal charges.
 462 (f) No person who in good faith contacts or has contact with a state or local peace officer
 463 or prosecuting attorney or member of the staff of a prosecuting attorney for the purpose of
 464 acting as a witness to a crime, to report criminal activity, or to seek assistance as a victim
 465 to a crime shall have his or her immigration status investigated based on such contact or
 466 based on information arising from such contact.
 467 (g) A peace officer or prosecuting attorney, acting in good faith to carry out any provision
 468 of this Code section, shall have immunity from damages or liability from such actions."

469 **SECTION 12.**

470 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and
 471 agencies, is amended by adding a new Code section to read as follows:

472 "35-1-16.

- 473 (a) It is the intent of the General Assembly to encourage Georgia law enforcement officials
 474 to work in conjunction with federal immigration authorities and to utilize all resources
 475 made available by the federal government to assist state and local law enforcement officers
 476 in the enforcement of the immigration laws of this state and of the United States.

477 **(b) Cooperation with federal authorities.**

478 (1) To the extent authorized by federal law, state and local government employees,
479 including law enforcement officers and prosecuting attorneys, shall be authorized to send,
480 receive, and maintain information relating to the immigration status of any individual as
481 reasonably needed for public safety purposes. Except as provided by federal law, such
482 employees shall not be prohibited from receiving or maintaining information relating to
483 the immigration status of any individual or sending or exchanging such information with
484 other federal, state, or local governmental entities or employees for official public safety
485 purposes.

486 (2) State and local agencies shall be authorized to enter into memorandum of
487 understandings and agreements with the United States Department of Justice, the
488 Department of Homeland Security, or any other federal agency for the purpose of
489 enforcing federal immigration and customs laws and the detention, removal, and
490 investigation of illegal aliens and the immigration status of any person in this state. A
491 peace officer acting within the scope of his or her authority under any such memorandum
492 of understanding, agreement, or other authorization from the federal government shall
493 have the power to arrest, with probable cause, any person suspected of being an illegal
494 alien.

495 (3) Except as provided by federal law, no state or local agency or department shall be
496 prohibited from utilizing available federal resources, including data bases, equipment,
497 grant funds, training, or participation in incentive programs for any public safety purpose
498 related to the enforcement of state and federal immigration laws.

499 (4) When reasonably possible, applicable state agencies shall consider incentive
500 programs and grant funding for the purpose of assisting and encouraging state and local
501 agencies and departments to enter into agreements with federal entities and to utilize
502 federal resources consistent with the provisions of this Code section.

503 **(c) Authority to transport illegal aliens.** If a state or local law enforcement officer has
504 verification that a person is an illegal alien, then such officer shall be authorized to securely
505 transport such illegal alien to a federal facility in this state or to any other temporary point
506 of detention and to reasonably detain such illegal alien when authorized by federal law.
507 Nothing in this Code section shall be construed to hinder or prevent a peace officer or law
508 enforcement agency from arresting or detaining any criminal suspect on other criminal
509 charges.

510 **(d) Authority to arrest illegal aliens.** When authorized by federal law, a state or local
511 law enforcement officer shall be authorized to arrest any person based on such person's
512 status as an illegal alien or for a violation of any federal immigration law.

513 (e) Immunity. A law enforcement officer, acting in good faith to enforce immigration
 514 laws pursuant to an agreement with federal authorities to collect or share immigration
 515 status information, or to carry out any provision of this Code section, shall have immunity
 516 from damages or liability from such actions."

517 **SECTION 13.**

518 Said title is further amended in Code Section 35-2-14, relating to defining peace officer and
 519 the enforcement of immigration and custom laws, by revising subsection (d) as follows:

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

526 **SECTION 14.**

527 Said title is further amended by adding a new Code section to read as follows:

528 "35-6A-10.

529 (a) Subject to available funding, the council shall establish a grant or incentive program
 530 for the provision of funds to local law enforcement agencies as incentive to such agencies
 531 to use the federal Department of Homeland Security's Secure Communities initiative or any
 532 successor or similar program and shall establish an incentive program and a grant program
 533 to offset the costs for local law enforcement agencies to enter into and implement
 534 memorandums of agreement with federal agencies under Section 287(g) of the federal
 535 Immigration and Nationality Act. In awarding such grants or incentives, the council shall
 536 be authorized to consider and give priority to local areas with the highest crime rates for
 537 crimes committed by illegal aliens.

538 (b) The council shall:

539 (1) Subject to available funding, provide incentive programs and grants to local law
 540 enforcement agencies for utilizing federal resources and for entering into agreements with
 541 federal agencies for the enforcement of immigration law;

542 (2) Provide technical assistance to local governments and agencies for obtaining and
 543 qualifying for incentive programs and grant funds to utilize available federal resources
 544 and to enter into and implement such agreements provided for in subsection (a) of this
 545 Code section;

546 (3) Communicate information regarding the availability of federal resources and
 547 agreements provided for in subsection (a) of this Code section and the availability of

548 related incentive programs and grant funds and post such information on the agency's
 549 official Internet website;
 550 (4) Provide technical assistance and information regarding the process for contacting
 551 federal agencies, utilizing federal resources, and entering into agreements provided for
 552 in subsection (a) of this Code section and post such information on the agency's official
 553 Internet website; and
 554 (5) Support state-wide campaigns and information programs in an effort to encourage
 555 every local law enforcement agency in this state to utilize federal resources and enter into
 556 agreements for the enforcement of state and federal immigration law."

557 **SECTION 15.**

558 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
 559 by revising Code Section 42-4-14, relating to determination of nationality of a person
 560 charged with felony and confined in a jail facility, as follows:

561 "42-4-14.

562 (a) When any person is confined, for any period, in the jail of a county or municipality or
 563 a jail operated by a regional jail authority in compliance with Article 36 of the Vienna
 564 Convention on Consular Relations, a reasonable effort shall be made to determine the
 565 nationality of the person so confined.

566 ~~(b) If the prisoner is a foreign national charged with a felony, driving under the influence~~
 567 ~~pursuant to Code Section 40-6-391, driving without being licensed pursuant to subsection~~
 568 ~~(a) of Code Section 40-5-20, or with a misdemeanor of a high and aggravated nature, the~~
 569 ~~keeper of the jail or other officer shall make~~ When any foreign national is confined, for any
 570 period, in a county or municipal jail, a reasonable effort shall be made to verify that the
 571 prisoner such foreign national has been lawfully admitted to the United States and if
 572 lawfully admitted, that such lawful status has not expired. If verification of lawful status
 573 ~~can not~~ cannot be made from documents in the possession of the ~~prisoner~~ foreign national,
 574 verification shall be made within 48 hours through a query to the Law Enforcement
 575 Support Center (LESC) of the United States Department of Homeland Security or other
 576 office or agency designated ~~for that purpose by the United States Department of Homeland~~
 577 Security by the federal government. If the ~~prisoner~~ foreign national is determined ~~not to~~
 578 ~~be lawfully admitted to the United States to be an illegal alien~~, the keeper of the jail or
 579 other officer shall notify the United States Department of Homeland Security, or other
 580 office or agency designated for notification by the federal government.

581 (c) Nothing in this Code section shall be construed to deny a person bond or from being
 582 released from confinement when such person is otherwise eligible for release; provided,

583 however, that upon verification that any person confined in a jail is an illegal alien, such
 584 person may be detained, arrested, and transported as authorized by state and federal law.
 585 (d) The Georgia Sheriffs Association shall prepare and issue guidelines and procedures
 586 used to comply with the provisions of this Code section."

587 **SECTION 16.**

588 Said title is further amended by revising subsection (c) of Code Section 42-5-51, relating to
 589 reimbursement of counties for housing certain inmates, as follows:

590 "(c) After proper documentation is received from the clerk of the court, the department
 591 shall have 15 days to transfer an inmate under sentence to the place of confinement. If the
 592 inmate is not transferred within the 15 days, the department ~~will~~ shall reimburse the county,
 593 in a sum not less than \$7.50 per day per inmate and in such an amount as may be
 594 appropriated for this purpose by the General Assembly, for the cost of the incarceration,
 595 commencing 15 days after proper documentation is received by the department from the
 596 clerk of the court; provided, however, that, subject to an appropriation of funds, local
 597 governing authorities that have entered into memorandums of understanding or agreement
 598 or that demonstrate continuous attempts to enter into memorandums of understanding or
 599 agreement with the federal government under Section 287(g) of the federal Immigration
 600 and Nationality Act shall receive an additional payment in the amount of 10 percent of the
 601 established rate paid for reimbursement for the confinement of state inmates in local
 602 confinement facilities. The reimbursement provisions of this Code section shall only apply
 603 to payment for the incarceration of felony inmates available for transfer to the department,
 604 except inmates under death sentence awaiting transfer after their initial trial, and shall not
 605 apply to inmates who were incarcerated under the custody of the commissioner at the time
 606 they were returned to the county jail for trial on additional charges or returned to the county
 607 jail for any other purposes, including for the purpose of a new trial."

608 **V.**

609 **VERIFICATION REQUIREMENTS.**

610 **SECTION 17.**

611 Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to general
 612 provisions applicable to local governments, is amended by revising Code Section 36-60-6,
 613 relating to issuance of local business licenses and evidence of state licensure, as follows:

614 "36-60-6.

615 (a) Every private employer with five or more employees shall register with and utilize the
 616 federal employment eligibility verification system known as E-Verify, for verification of

617 the immigration status of newly hired employees. The requirements of this subsection shall
 618 be effective on September 1, 2011, as to employers with 500 or more employees, on
 619 January 1, 2012, as to employers with 100 or more employees, and on July 1, 2012, as to
 620 employers with five or more employees.

621 (a)(b) Before any county or municipal corporation issues a business license, occupational
 622 tax certificate, or other document required to operate a business to any person engaged in
 623 a profession or business required to be licensed by the state under Title 43, the person must
 624 shall provide evidence of such licensure to the appropriate agency of the county or
 625 municipal corporation that issues business licenses. No business license, occupational tax
 626 certificate, or other document required to operate a business shall be issued to any person
 627 subject to licensure under Title 43 without evidence of such licensure being presented.

628 (c) Before any county or municipal corporation issues or renews a business license,
 629 occupational tax certificate, or other document required to operate a business to any person,
 630 the person shall provide evidence that he or she is authorized to use the federal employment
 631 eligibility verification system known as E-Verify or evidence that the provisions of this
 632 Code section do not apply. Evidence of such use shall be in the form of a sworn affidavit
 633 attesting that he or she utilizes and will continue to utilize the employment eligibility
 634 verification system in accordance with federal regulations or that he or she employs fewer
 635 than five employees. The affidavit shall include the person's federally assigned
 636 employment eligibility verification system user number and the date of authority for use.
 637 The requirements of this subsection shall be effective on September 1, 2011, as to
 638 employers with 500 or more employees, on January 1, 2012, as to employers with 100 or
 639 more employees, and on July 1, 2012, as to employers with fewer than five employees.

640 (d) Any county or municipal corporation issuing or renewing a business license,
 641 occupational tax certificate, or other document required to operate a business shall provide
 642 to the Department of Audits and Accounts not later than December 31 of each year a report
 643 demonstrating that such county or municipality is acting in compliance with the provisions
 644 of this Code section. This annual E-Verify report shall identify each license or certificate
 645 issued by the agency in the preceding 12 months and include the name of the person and
 646 business issued a license or other document and his or her federally assigned employment
 647 eligibility verification system user number as provided in the affidavit submitted at the time
 648 of application. Subject to funding, the Department of Audits and Accounts shall annually
 649 conduct an audit of no fewer than 20 percent of such reporting agencies.

650 (e) In order to assist private businesses and counties and municipal corporations in
 651 complying with the provisions of this Code section, the Department of Audits and
 652 Accounts shall provide a standardized form affidavit which may be used as acceptable
 653 evidence demonstrating use of the federal employment eligibility verification system or

654 that the provisions of subsection (a) of this Code section do not apply to the applicant. The
 655 form affidavit shall be posted by the Department of Audits and Accounts on the agency's
 656 official website no later than July 1, 2011.

657 (f) Once an applicant for a business license, occupational tax certificate, or other document
 658 required to operate a business has submitted an affidavit with a federally assigned
 659 employment eligibility verification system user number, he or she shall not be authorized
 660 to submit a renewal application using a new or different federally assigned employment
 661 eligibility verification system user number, unless accompanied by a sworn document
 662 explaining the reason such applicant obtained a new or different federally assigned
 663 employment eligibility verification system user number.

664 (b)(g) Any person presenting false or misleading evidence of such state licensure shall be
 665 guilty of a misdemeanor. Any person, including any government official or employee,
 666 knowingly acting in violation of this Code section shall be guilty of a misdemeanor;
 667 provided, however, that any person who knowingly submits a false or misleading affidavit
 668 pursuant to this Code section shall be guilty of submitting a false document in violation of
 669 Code Section 16-10-20. It shall be a defense to a violation of this Code section that such
 670 person acted in good faith and made a reasonable attempt to comply with the requirements
 671 of this Code section.

672 (h) The Attorney General shall be authorized to bring any criminal or civil action he or she
 673 deems necessary to ensure compliance with the provisions of this Code section."

674 **SECTION 18.**

675 Chapter 36 of Title 50 of the Official Code of Georgia Annotated, relating to verification of
 676 lawful presence within the United States, is amended by revising subsection (e) of Code
 677 Section 50-36-1, relating to verification requirements, procedures, and conditions, as follows:

678 "(e) An agency or political subdivision providing or administering a public benefit shall
 679 require every applicant for such benefit to:

680 (1) Provide at least one secure and verifiable document, as defined in Code Section
 681 50-36-2; and

682 (2) Execute ~~execute~~ a signed and sworn affidavit verifying the applicant's lawful
 683 presence in the United States, which affidavit shall state:

684 (1)(A) The applicant is a United States citizen or legal permanent resident 18 years of
 685 age or older; or

686 (2)(B) The applicant is a qualified alien or nonimmigrant under the federal
 687 Immigration and Nationality Act, Title 8 U.S.C., ~~as amended~~, 18 years of age or older
 688 lawfully present in the United States and provide the applicant's alien number issued
 689 by the Department of Homeland Security or other federal immigration agency."

SECTION 19.

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

"50-36-2.

(a) This Code section shall be known and may be cited as the 'Secure and Verifiable Identity Document Act.'

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

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

(2) 'Public official' means an elected or appointed official or an employee or an agent of an agency or political subdivision.

(3) 'Secure and verifiable document' means a document issued by a state or federal jurisdiction or recognized by the United States government and that is verifiable by federal or state law enforcement, intelligence, or homeland security agencies. Secure and verifiable document shall not mean a Matricula Consular de Alta Seguridad, matricula consular card, consular matriculation card, consular identification card, or similar identification card issued by a foreign government regardless of the holder's immigration status.

(c) Unless required by federal law, on or after January 1, 2012, no agency or political subdivision shall accept, rely upon, or utilize an identification document for any official purpose that requires the presentation of identification by such agency or political subdivision or by federal or state law unless it is a secure and verifiable document.

(d) Any person acting in willful violation of this Code section by knowingly accepting documents that are not secure and verifiable documents shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment not to exceed 12 months, a fine not to exceed \$1,000.00, or both.

(e) This Code section shall not apply to:

(1) A person reporting a crime;

(2) An agency official accepting a crime report, conducting a criminal investigation, or assisting a foreign national to obtain a temporary protective order;

(3) A person providing services to infants, children, or victims of a crime;

(4) A person providing emergency medical service;

(5) A peace officer in the performance of the officer's official duties and within the scope of his or her employment;

(6) Instances when a federal law mandates acceptance of a document;

(7) A court, court official, or traffic violation bureau for the purpose of enforcing a citation, accusation, or indictment; or

726 (8) An attorney or his or her employees for the purpose of representing a criminal
727 defendant.

728 (f) Not later than August 1, 2011, the Attorney General shall provide and make public on
729 the Department of Law's website a list of acceptable secure and verifiable documents. The
730 list shall be reviewed and updated annually by the Attorney General."

731 VI.
732 SEVERABILITY, REPEAL,
733 AND ENFORCEMENT.

734 **SECTION 20.**

735 (a) If any provision or part of any provision of this Act or the application of the same is held
736 invalid or unconstitutional, the invalidity shall not affect the other provisions or applications
737 of this Act or any other part of this Act than can be given effect without the invalid provision
738 or application, and to this end, the provisions of this Act are severable.

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

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

743 **SECTION 21.**

744 Section 18 of this Act shall become effective on January 1, 2012. The remaining sections
745 of this Act shall become effective on July 1, 2011. Except as otherwise expressly provided,
746 the sections of this Act shall apply to offenses and violations occurring on or after their
747 respective effective dates.

748 **SECTION 22.**

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