

The House Committee on Judiciary Non-civil offers the following substitute to SB 40:

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 16-11-203.

420 The testimony of a witness with knowledge of any officer, employee, or agent of the
 421 federal government having confirmed that a person is an illegal alien shall be admissible
 422 to prove that the federal government has verified such person to be present in the United
 423 States in violation of federal immigration law. Verification that a person is present in the
 424 United States in violation of federal immigration law may also be established by any
 425 document authorized by law to be recorded or filed and in fact recorded or filed in a public
 426 office where items of this nature are kept."

427 IV.
 428 LAW ENFORCEMENT OFFICERS AND
 429 ENFORCEMENT OF IMMIGRATION LAW.

430 **SECTION 11.**

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

433 "ARTICLE 5

434 17-5-100.

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

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

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

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

477 **SECTION 12.**

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

480 "35-1-16.

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

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

486 (1) To the extent authorized by federal law, state and local government employees,
487 including law enforcement officers and prosecuting attorneys, shall be authorized to send,
488 receive, and maintain information relating to the immigration status of any individual as
489 reasonably needed for public safety purposes. Except as provided by federal law, such
490 employees shall not be prohibited from receiving or maintaining information relating to
491 the immigration status of any individual or sending or exchanging such information with
492 other federal, state, or local governmental entities or employees for official public safety
493 purposes.

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

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

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

511 **(c) Authority to transport illegal aliens.** If a state or local law enforcement officer has
512 verification that a person is an illegal alien, then such officer shall be authorized to securely
513 transport such illegal alien to a federal facility in this state or to any other temporary point
514 of detention and to reasonably detain such illegal alien when authorized by federal law.
515 Nothing in this Code section shall be construed to hinder or prevent a peace officer or law

516 enforcement agency from arresting or detaining any criminal suspect on other criminal
 517 charges.

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

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

525 **SECTION 13.**

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

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

534 **SECTION 14.**

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

536 "35-6A-10.

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

546 (b) The council shall:

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

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

554 (3) Communicate information regarding the availability of federal resources and
 555 agreements provided for in subsection (a) of this Code section and the availability of
 556 related incentive programs and grant funds and post such information on the agency's
 557 official Internet website;

558 (4) Provide technical assistance and information regarding the process for contacting
 559 federal agencies, utilizing federal resources, and entering into agreements provided for
 560 in subsection (a) of this Code section and post such information on the agency's official
 561 Internet website; and

562 (5) Support state-wide campaigns and information programs in an effort to encourage
 563 every local law enforcement agency in this state to utilize federal resources and enter into
 564 agreements for the enforcement of state and federal immigration law."

565 **SECTION 15.**

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

569 "42-4-14.

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

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

586 ~~be lawfully admitted to the United States to be an illegal alien~~, the keeper of the jail or
 587 other officer shall notify the United States Department of Homeland Security, or other
 588 office or agency designated for notification by the federal government.

589 (c) Nothing in this Code section shall be construed to deny a person bond or from being
 590 released from confinement when such person is otherwise eligible for release; provided,
 591 however, that upon verification that any person confined in a jail is an illegal alien, such
 592 person may be detained, arrested, and transported as authorized by state and federal law.

593 (d) The Georgia Sheriffs Association shall prepare and issue guidelines and procedures
 594 used to comply with the provisions of this Code section."

595 **SECTION 16.**

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

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

616

V.

617

VERIFICATION REQUIREMENTS.

618

SECTION 17.

619 Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to general

620 provisions applicable to local governments, is amended by revising Code Section 36-60-6,

621 relating to issuance of local business licenses and evidence of state licensure, as follows:

622 "36-60-6.

623 (a) Every private employer with five or more employees shall register with and utilize the624 federal employment eligibility verification system known as E-Verify, for verification of625 the immigration status of newly hired employees. The requirements of this subsection shall626 be effective on July 1, 2012, as to employers with 100 or more employees and on627 December 31, 2012, as to employers with five or more employees.628 (a)(b) Before any county or municipal corporation issues a business license, occupational629 tax certificate, or other document required to operate a business to any person engaged in630 a profession or business required to be licensed by the state under Title 43, the person must631 shall provide evidence of such licensure to the appropriate agency of the county or632 municipal corporation that issues business licenses. No business license, occupational tax633 certificate, or other document required to operate a business shall be issued to any person634 subject to licensure under Title 43 without evidence of such licensure being presented.635 (c) Before any county or municipal corporation issues or renews a business license,636 occupational tax certificate, or other document required to operate a business to any person,637 the person shall provide evidence that he or she is authorized to use the federal employment638 eligibility verification system known as E-Verify or evidence that the provisions of this639 Code section do not apply. Evidence of such use shall be in the form of a sworn affidavit640 attesting that he or she utilizes and will continue to utilize the employment eligibility641 verification system in accordance with federal regulations or that he or she employs fewer642 than five employees. The affidavit shall include the person's federally assigned643 employment eligibility verification system user number and the date of authority for use.644 The requirements of this subsection shall be effective on July 1, 2012, as to employers with645 100 or more employees and on December 31, 2012, as to employers with five or more646 employees.647 (d) Any county or municipal corporation issuing or renewing a business license,648 occupational tax certificate, or other document required to operate a business shall provide649 to the Department of Audits and Accounts not later than December 31 of each year a report650 demonstrating that such county or municipality is acting in compliance with the provisions651 of this Code section. This annual E-Verify report shall identify each license or certificate

652 issued by the agency in the preceding 12 months and include the name of the person and
 653 business issued a license or other document and his or her federally assigned employment
 654 eligibility verification system user number as provided in the affidavit submitted at the time
 655 of application. Subject to funding, the Department of Audits and Accounts shall annually
 656 conduct an audit of no fewer than 20 percent of such reporting agencies.

657 (e) In order to assist private businesses and counties and municipal corporations in
 658 complying with the provisions of this Code section, the Department of Audits and
 659 Accounts shall provide a standardized form affidavit which may be used as acceptable
 660 evidence demonstrating use of the federal employment eligibility verification system or
 661 that the provisions of subsection (a) of this Code section do not apply to the applicant. The
 662 form affidavit shall be posted by the Department of Audits and Accounts on the agency's
 663 official website no later than July 1, 2011.

664 (f) Once an applicant for a business license, occupational tax certificate, or other document
 665 required to operate a business has submitted an affidavit with a federally assigned
 666 employment eligibility verification system user number, he or she shall not be authorized
 667 to submit a renewal application using a new or different federally assigned employment
 668 eligibility verification system user number, unless accompanied by a sworn document
 669 explaining the reason such applicant obtained a new or different federally assigned
 670 employment eligibility verification system user number.

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

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

681 **SECTION 18.**

682 Chapter 36 of Title 50 of the Official Code of Georgia Annotated, relating to verification of
 683 lawful presence within the United States, is amended by revising subsection (e) of Code
 684 Section 50-36-1, relating to verification requirements, procedures, and conditions, as follows:
 685 "(e) An agency or political subdivision providing or administering a public benefit shall
 686 require every applicant for such benefit to:

- 687 (1) Provide at least one secure and verifiable document, as defined in Code Section
 688 50-36-2; and
- 689 (2) Execute ~~execute~~ a signed and sworn affidavit verifying the applicant's lawful
 690 presence in the United States, which affidavit shall state:
- 691 ~~(1)~~(A) The applicant is a United States citizen or legal permanent resident 18 years of
 692 age or older; or
- 693 ~~(2)~~(B) The applicant is a qualified alien or nonimmigrant under the federal
 694 Immigration and Nationality Act, Title 8 U.S.C., ~~as amended~~, 18 years of age or older
 695 lawfully present in the United States and provide the applicant's alien number issued
 696 by the Department of Homeland Security or other federal immigration agency."

697 SECTION 19.

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

699 "50-36-2.

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

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

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

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

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

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

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

722 (e) This Code section shall not apply to:

- 723 (1) A person reporting a crime;
 724 (2) An agency official accepting a crime report, conducting a criminal investigation, or
 725 assisting a foreign national to obtain a temporary protective order;
 726 (3) A person providing services to infants, children, or victims of a crime;
 727 (4) A person providing emergency medical service;
 728 (5) A peace officer in the performance of the officer's official duties and within the scope
 729 of his or her employment;
 730 (6) Instances when a federal law mandates acceptance of a document;
 731 (7) A court, court official, or traffic violation bureau for the purpose of enforcing a
 732 citation, accusation, or indictment;
 733 (8) Paragraph (2) of subsection (a) of Code Section 40-5-21 or paragraph (2) of
 734 subsection (a) of Code Section 40-5-21.1; or
 735 (9) An attorney or his or her employees for the purpose of representing a criminal
 736 defendant.
 737 (f) Not later than August 1, 2011, the Attorney General shall provide and make public on
 738 the Department of Law's website a list of acceptable secure and verifiable documents. The
 739 list shall be reviewed and updated annually by the Attorney General."

740 VI.
 741 SEVERABILITY, REPEAL,
 742 AND ENFORCEMENT.

743 **SECTION 20.**

- 744 (a) If any provision or part of any provision of this Act or the application of the same is held
 745 invalid or unconstitutional, the invalidity shall not affect the other provisions or applications
 746 of this Act or any other part of this Act than can be given effect without the invalid provision
 747 or application, and to this end, the provisions of this Act are severable.
 748 (b) The terms of this Act regarding immigration shall be construed to have the meanings
 749 consistent with such terms under federal immigration law.
 750 (c) The provisions of this Act shall be implemented in a manner consistent with federal laws
 751 governing immigration and civil rights.

752 **SECTION 21.**

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

757

SECTION 22.

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