

SENATE SUBSTITUTE TO HB 87

AS PASSED SENATEA 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 of the Official Code of Georgia Annotated, relating to security
 3 and immigration compliance, so as to provide penalties for the failure of a public employer
 4 to utilize the federal work authorization program; to require certain private employers to
 5 utilize the federal work authorization program; to provide for review by the state auditor and
 6 the Department of Labor; to provide for definitions; to amend Title 16 of the Official Code
 7 of Georgia Annotated, relating to crimes and offenses, so as to provide for offenses involving
 8 illegal aliens; to provide for the offense of aggravated identity fraud; to provide for penalties;
 9 to amend Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to
 10 searches and seizures, so as to provide for the investigation of illegal alien status; to amend
 11 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and
 12 agencies, so as to provide authority for law enforcement officers to enforce federal
 13 immigration laws under certain circumstances and to provide immunity for such officers
 14 subject to limitations; to provide for civil and criminal penalties; to modify provisions
 15 relating to training peace officers for enforcement of immigration and custom laws; to
 16 establish grant funding for local law enforcement agencies to enter into agreements with
 17 federal agencies for the enforcement of immigration law; to amend Title 42 of the Official
 18 Code of Georgia Annotated, relating to penal institutions, so as to provide for the verification
 19 of the immigration status of foreign nationals arrested and held in a county or municipal jail;
 20 to provide that local governing authorities that have entered or attempted to enter into certain
 21 memorandums of agreement with the federal government shall receive additional funding
 22 for confinement of state inmates; to provide for a funding contingency; to amend Title 45 of
 23 the Official Code of Georgia Annotated, relating to public officers and employees, so as to
 24 provide for penalties for failure of agency heads to abide by certain state immigration laws;
 25 to provide for a complaint procedure and authorization for legal action against public
 26 agencies and employees that fail to follow state law requiring the verification of employment
 27 eligibility of persons working on public works contracts, fail to follow state law requiring the
 28 verification of immigration status of persons receiving certain public benefits, and fail to

29 follow state law prohibiting local governing authorities from adopting immigration sanctuary
 30 policies; to amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia
 31 Annotated, relating to the imposition, rate, computation, and exemptions for revenue and
 32 taxation, so as to limit a business's income tax deduction where such business fails to use the
 33 federal employment eligibility verification program; to amend Chapter 36 of Title 50 of the
 34 Official Code of Georgia Annotated, relating to verification of lawful presence within the
 35 United States, so as to provide for identification documents by applicants for public benefits;
 36 to enact the "Secure and Verifiable Identity Document Act"; to provide penalties for the
 37 failure of an agency head to verify the lawful immigration status of certain applicants for
 38 public benefits; to provide for related matters; to provide for an effective date and
 39 applicability; to repeal conflicting laws; and for other purposes.

40 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

41 **SECTION 1.**

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

44 **SECTION 2.**

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

48 "13-10-90.

49 As used in this article, the term:

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

51 (2) 'Contractor' means a person or entity that enters into a contract for the physical
 52 performance of services with a public employer.

53 ~~(2)~~(3) 'Federal work authorization program' means any of the electronic verification of
 54 work authorization programs operated by the United States Department of Homeland
 55 Security or any equivalent federal work authorization program operated by the United
 56 States Department of Homeland Security to verify employment eligibility information of
 57 newly hired employees, ~~pursuant to the Immigration Reform and Control Act of 1986~~
 58 ~~(IRCA), D.L. 99-603~~ commonly known as E-Verify.

59 ~~(2.1)~~(4) 'Physical performance of services' means the building, altering, repairing,
 60 improving, or demolishing of any public structure or building or other public
 61 improvements of any kind to public real property within this state, including the
 62 construction, reconstruction, or maintenance of all or part of a public road; or any other

63 performance of labor for a public employer within this state under a contract or other
64 bidding process.

65 ~~(3)~~(5) 'Public employer' means every department, agency, or instrumentality of the state
66 or a political subdivision of the state.

67 ~~(4)~~(6) 'Subcontractor' means a person or entity having privity of contract with a
68 contractor and includes a ~~subcontractor~~; contract employee; or staffing agency; ~~or any~~
69 ~~contractor regardless of its tier.~~

70 (7) 'Sub-subcontractor' means a person or entity having privity of contract with a
71 subcontractor or privity of contract with another person or entity contracting with a
72 subcontractor or sub-subcontractor."

73 SECTION 3.

74 Said article is further amended by revising subsection (b) of Code Section 13-10-91, relating
75 to the verification of new employee eligibility, applicability, and rules and regulations, as
76 follows:

77 "(b)(1) ~~No~~ A public employer shall not enter into a contract pursuant to this chapter for
78 the physical performance of services ~~within this state~~ unless the contractor registers and
79 participates in the federal work authorization program ~~to verify information of all newly~~
80 ~~hired employees or subcontractors~~. Before a bid for any such service is considered by a
81 public employer, the bid shall include a signed, notarized affidavit from the contractor
82 attesting to the following:

83 (A) The affiant has registered with ~~and~~, is authorized to use, and uses the federal work
84 authorization program;

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

86 (C) The affiant ~~is using~~ and will continue to use the federal work authorization
87 program throughout the contract period; and

88 (D) The affiant will contract for the physical performance of services in satisfaction of
89 such contract only with subcontractors who present an affidavit to the contractor with
90 the same information required by subparagraphs (A), (B), and (C) of this paragraph.

91 An affidavit required by this subsection shall be considered an open public record once
92 a public employer has entered into a contract for physical performance of services;
93 provided, however, that any information protected from public disclosure by federal law
94 or by Article 4 of Chapter 18 of Title 50 shall be redacted. Affidavits shall be maintained
95 by the public employer for five years from the date of receipt.

96 (2) A contractor shall not enter into any contract with a public employer for ~~No~~
97 ~~contractor or subcontractor who enters a contract pursuant to this chapter with a public~~
98 ~~employer or a contractor of a public employer shall enter into such a contract or~~

99 ~~subcontract in connection with the physical performance of services within this state~~
100 ~~unless the contractor or subcontractor registers and participates in the federal work~~
101 ~~authorization program to verify information of all newly hired employees. Any~~
102 ~~employee, contractor, or subcontractor of such contractor or subcontractor shall also be~~
103 ~~required to satisfy the requirements of this paragraph.~~

104 ~~(3) Upon contracting with a new subcontractor, a contractor or subcontractor shall, as a~~
105 ~~condition of any contract or subcontract entered into pursuant to this chapter, provide a~~
106 ~~public employer with notice of the identity of any and all subsequent subcontractors hired~~
107 ~~or contracted by that contractor or subcontractor. Such notice shall be provided within~~
108 ~~five business days of entering into a contract or agreement for hire with any~~
109 ~~subcontractor. Such notice shall include an affidavit from each subsequent contractor~~
110 ~~attesting to the subcontractor's name, address, user identification number, and date of~~
111 ~~authorization to use the federal work authorization program.~~

112 (3) A subcontractor shall not enter into any contract with a contractor unless such
113 subcontractor registers and participates in the federal work authorization program. A
114 subcontractor shall submit, at the time of such contract, an affidavit to the contractor in
115 the same manner and with the same information required in paragraph (1) of this
116 subsection. It shall be the duty of any subcontractor receiving an affidavit from a
117 sub-subcontractor to forward notice to the contractor of the receipt, within five business
118 days of receipt, of such affidavit. It shall be the duty of a subcontractor receiving notice
119 of receipt of an affidavit from any sub-subcontractor that has contracted with a
120 sub-subcontractor to forward, within five business days of receipt, a copy of such notice
121 to the contractor.

122 (4) A sub-subcontractor shall not enter into any contract with a subcontractor or
123 sub-subcontractor unless such sub-subcontractor registers and participates in the federal
124 work authorization program. A sub-subcontractor shall submit, at the time of such
125 contract, an affidavit to the subcontractor or sub-subcontractor with whom such
126 sub-subcontractor has privity of contract, in the same manner and with the same
127 information required in paragraph (1) of this subsection. It shall be the duty of any
128 sub-subcontractor to forward notice of receipt of any affidavit from a sub-subcontractor
129 to the subcontractor or sub-subcontractor with whom such receiving sub-subcontractor
130 has privity of contract.

131 (5) In lieu of the affidavit required by this subsection, a contractor, subcontractor, or
132 sub-subcontractor who has no employees and does not hire or intend to hire employees
133 for purposes of satisfying or completing the terms and conditions of any part or all of the
134 original contract with the public employer shall instead provide a copy of the state issued
135 driver's license or state issued identification card of such contracting party and a copy of

136 the state issued driver's license or identification card of each independent contractor
137 utilized in the satisfaction of part or all of the original contract with a public employer.
138 A driver's license or identification card shall only be accepted in lieu of an affidavit if it
139 is issued by a state within the United States and such state verifies lawful immigration
140 status prior to issuing a driver's license or identification card. For purposes of satisfying
141 the requirements of this subsection, copies of such driver's license or identification card
142 shall be forwarded to the public employer, contractor, subcontractor, or sub-subcontractor
143 in the same manner as an affidavit and notice of receipt of an affidavit as required by
144 paragraphs (1), (3), and (4) of this subsection. Not later than July 1, 2011, the Attorney
145 General shall provide a list of the states that verify immigration status prior to the
146 issuance of a driver's license or identification card and that only issue licenses or
147 identification cards to persons lawfully present in the United States. The list of verified
148 state drivers' licenses and identification cards shall be posted on the website of the State
149 Law Department and updated annually thereafter. In the event that a contractor,
150 subcontractor, or sub-subcontractor later determines that he or she will need to hire
151 employees to satisfy or complete the physical performance of services under an
152 applicable contract, then he or she shall first be required to comply with the affidavit
153 requirements of this subsection.

154 (6)(A) Not later than December 31 of each year, a public employer shall submit a
155 compliance report to the state auditor certifying compliance with the provisions of this
156 subsection. Such compliance report shall contain the public employer's federal work
157 authorization program verification user number and date of authorization and the legal
158 name, address, and federal work authorization program user number of the contractor
159 and the date of the contract between the contractor and public employer. Subject to
160 available funding, the state auditor shall conduct annual compliance audits on a
161 minimum of at least one-half of the reporting agencies and publish the results of such
162 audits annually on the department's website on or before September 30.

163 (B) If the state auditor finds a political subdivision to be in violation of this subsection,
164 such political subdivision shall be provided 30 days to demonstrate to the state auditor
165 that such political subdivision has corrected all deficiencies and is in compliance with
166 this subsection. If, after 30 days, the political subdivision has failed to correct all
167 deficiencies, such political subdivision shall be excluded from the list of qualified local
168 governments under Chapter 8 of Title 50 until such time as the political subdivision
169 demonstrates to the state auditor that such political subdivision has corrected all
170 deficiencies and is in compliance with this subsection.

171 (C)(i) At any time after the state auditor finds a political subdivision to be in violation
172 of this subsection, such political subdivision may seek administrative relief through

173 the Office of State Administrative Hearings. If a political subdivision seeks
 174 administrative relief, the time for correcting deficiencies shall be tolled, and any
 175 action to exclude the political subdivision from the list of qualified governments
 176 under Chapter 8 of Title 50 shall be suspended until such time as a final ruling
 177 upholding the findings of the state auditor is issued.

178 (ii) A new compliance report submitted to the state auditor by the political
 179 subdivision shall be deemed satisfactory and shall correct the prior deficient
 180 compliance report so long as the new report fully complies with this subsection.

181 (iii) No political subdivision of this state shall be found to be in violation of this
 182 subsection by the state auditor as a result of any actions of a county constitutional
 183 officer.

184 (D) If the state auditor finds any political subdivision which is a state department or
 185 agency to be in violation of the provisions of this subsection twice in a five-year period,
 186 the funds appropriated to such state department or agency for the fiscal year following
 187 the year in which the agency was found to be in violation for the second time shall be
 188 not greater than 90 percent of the amount so appropriated in the second year of such
 189 noncompliance. Any political subdivision found to be in violation of the provisions of
 190 this subsection shall be listed on www.open.georgia.gov or another official state
 191 website with an indication and explanation of each violation.

192 ~~(4)~~(7) Contingent upon appropriation or approval of necessary funding and in order to
 193 verify compliance with the provisions of this subsection, each year the Commissioner
 194 shall conduct no fewer than 100 random audits of public employers and contractors or
 195 may conduct such an audit upon reasonable grounds to suspect a violation of this
 196 subsection. The results of the audits shall be published on the www.open.georgia.gov
 197 website and on the Georgia Department of Labor's website no later than December 31 of
 198 each year. The Georgia Department of Labor shall seek funding from the United States
 199 Secretary of Labor to the extent such funding is available.

200 ~~(5)~~(8) Any person who knowingly and willfully makes a false, fictitious, or fraudulent
 201 statement in an affidavit submitted pursuant to this subsection shall be guilty of a
 202 violation of Code Section 16-10-20 and, upon conviction, shall be punished as provided
 203 in such Code section. Contractors and subcontractors convicted for false statements
 204 based on a violation of this subsection shall be prohibited from bidding on or entering
 205 into any public contract for 12 months following such conviction. A contractor,
 206 subcontractor, or sub-subcontractor that has been found to have violated this subsection
 207 shall be listed by the Department of Labor on www.open.georgia.gov or other official
 208 website of the state with public information regarding such violation, including the
 209 identity of the violator, the nature of the contract, and the date of conviction. A public

210 employee, public employer, contractor, subcontractor, or sub-subcontractor shall not be
 211 held civilly liable or criminally responsible for unknowingly or unintentionally accepting
 212 a bid from or contracting with a contractor, subcontractor, or sub-subcontractor acting in
 213 violation of this subsection. A party may be held civilly liable and criminally responsible
 214 for his or her failure to submit an affidavit in accordance with the provisions of this
 215 subsection.

216 (9) There shall be a rebuttable presumption that a public employer, contractor,
 217 subcontractor, or sub-subcontractor receiving and acting upon an affidavit conforming
 218 to the content requirements of this subsection does so in good faith, and such public
 219 employer, contractor, subcontractor, or sub-subcontractor may rely upon such affidavit
 220 as being true and correct. The affidavit shall be admissible in any court of law for the
 221 purpose of establishing such presumption."

222 **SECTION 4.**

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

226 "16-9-121.1.

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

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

232 **SECTION 5.**

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

235 "16-9-126.

236 (a) A violation of this article, other than a violation of Code Section 16-9-121.1 or
 237 16-9-122, shall be punishable by imprisonment for not less than one nor more than ten
 238 years or a fine not to exceed \$100,000.00, or both. Any person who commits such a
 239 violation for the second or any subsequent offense shall be punished by imprisonment for
 240 not less than three nor more than 15 years, a fine not to exceed \$250,000.00, or both.

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

- 244 (b) A violation of this article which does not involve the intent to commit theft or
 245 appropriation of any property, resource, or other thing of value that is committed by a
 246 person who is less than 21 years of age shall be punishable by imprisonment for not less
 247 than one nor more than three years or a fine not to exceed \$5,000.00, or both.
- 248 (c) Any person found guilty of a violation of this article may be ordered by the court to
 249 make restitution to any consumer victim or any business victim of such fraud.
- 250 (d) Each violation of this article shall constitute a separate offense.
- 251 (e) Upon a conviction of a violation of this article, the court may issue any order necessary
 252 to correct a public record that contains false information resulting from the actions which
 253 resulted in the conviction."

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SECTION 6.

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

257 "16-9-128.

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

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

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

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

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

270 (b) The exemptions provided in subsection (a) of this Code section ~~will~~ shall not apply to
 271 a person intending to further a scheme to violate Code Section 16-9-121, 16-9-121.1, or
 272 16-9-122.

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

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SECTION 7.

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

"ARTICLE 5

16-11-200.

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

(1) 'Another criminal offense' means a felony violation of state or federal criminal law but shall not include a violation of any county or municipal law, regulation, or ordinance.

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

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

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

(c) Except as provided in this subsection, a person convicted for a first offense of transporting or moving an illegal alien who moves seven or fewer illegal aliens at the same time 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. A person convicted for a second or subsequent offense of transporting or moving an illegal alien, and a person convicted on a first offense of transporting or moving an illegal alien who moves eight or more illegal aliens at the same time, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one or more than five years, a fine of not less than \$5,000.00 or more than \$20,000.00, or both. A person who commits the offense of transporting or moving an illegal alien who does so with the intent of making a profit or receiving anything of value shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one or more than five years, a fine of not less than \$5,000.00 or more than \$20,000.00, or both.

(d) This Code section shall not apply to:

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

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

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

313 16-11-201.

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

315 (1) 'Another criminal offense' means a felony violation of state or federal criminal law
316 but shall not include a violation of any county or municipal law, regulation, or ordinance.

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

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

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

329 (c) Except as provided in this subsection, a person convicted of concealing or harboring
330 an illegal alien who conceals or harbors seven or fewer illegal aliens at the same time in
331 the same location shall be guilty of a misdemeanor and, upon conviction thereof, shall be
332 punished by imprisonment not to exceed 12 months, a fine not to exceed \$1,000.00, or
333 both. A person convicted of concealing or harboring an illegal alien who conceals or
334 harbors eight or more illegal aliens at the same time in the same location, or who conceals
335 or harbors an illegal alien with the intent of making a profit or receiving anything of value,
336 shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment
337 of not less than one or more than five years, a fine of not less than \$5,000.00 or more than
338 \$20,000.00, or both.

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

344 16-11-202.

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

- 346 (1) 'Another criminal offense' means a felony violation of state or federal criminal law
 347 but shall not include a violation of any county or municipal law, regulation, or ordinance.
 348 (2) 'Illegal alien' means a person who is verified by the federal government to be present
 349 in the United States in violation of federal immigration law.
 350 (b) A person who is acting in violation of another criminal offense and who knowingly
 351 induces, entices, or assists an illegal alien to enter into this state, when such person knows
 352 that the person being induced, enticed, or assisted to enter into this state is an illegal alien,
 353 shall be guilty of the offense of inducing an illegal alien to enter into this state.
 354 (c) Except as provided in subsection (d) of this Code section, for a first offense, a person
 355 convicted of inducing an illegal alien to enter into this state shall be guilty of a
 356 misdemeanor and, upon conviction thereof, shall be punished by imprisonment not to
 357 exceed 12 months, a fine not to exceed \$1,000.00, or both. For a second or subsequent
 358 conviction of inducing an illegal alien to enter into this state, a person shall be guilty of a
 359 felony and, upon conviction thereof, shall be punished by imprisonment of not less than
 360 one or more than five years, a fine of not less than \$5,000.00 or more than \$20,000.00, or
 361 both.
 362 (d) A person who commits the offense of inducing an illegal alien to enter into this state
 363 who does so with the intent of making a profit or receiving any thing of value shall be
 364 guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not
 365 less than one or more than five years, a fine of not less than \$5,000.00 or more than
 366 \$20,000.00, or both."

367 **SECTION 8.**

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

370 "ARTICLE 5

371 17-5-100.

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

373 (1) 'Criminal offense' means a felony violation of state or federal criminal law but shall
 374 not include a violation of any county or municipal law, regulation, or ordinance.

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

377 (b) Except as provided in subsection (f) of this Code section, during any investigation of
 378 a criminal suspect by a peace officer, when such officer has probable cause to believe that
 379 a suspect has committed a criminal offense, including any traffic offense, the officer shall

380 be authorized to seek to verify such suspect's immigration status when the suspect is unable
381 to provide one of the following:

- 382 (1) A secure and verifiable document as defined in Code Section 50-36-2;
383 (2) A valid Georgia driver's license;
384 (3) A valid Georgia identification card issued by the Department of Driver Services;
385 (4) If the entity requires proof of legal presence in the United States before issuance, any
386 valid driver's license from a state or district of the United States or any valid
387 identification document issued by the United States federal government; or
388 (5) Other information as to the suspect's identity that is sufficient to allow the peace
389 officer to independently identify the suspect.

390 (c) When attempting to determine the immigration status of a suspect pursuant to
391 subsection (b) of this Code section, a peace officer shall be authorized to use any
392 reasonable means available to determine the immigration status of the suspect, including:

- 393 (1) Use of any authorized federal identification data base;
394 (2) Identification methods authorized by federal law, including those authorized by 8
395 USCA 1373(c), 8 USCA 1644;
396 (3) Use of electronic fingerprint readers or similar devices; or
397 (4) Contacting an appropriate federal agency.

398 (d) A peace officer shall not consider race, color, or national origin in implementing the
399 requirements of this Code section except to the extent permitted by the Constitutions of
400 Georgia and of the United States.

401 (e) If during the course of the investigation into such suspect's identity, a peace officer
402 receives verification that such suspect is an illegal alien, then such peace officer may take
403 any action authorized by state and federal law, including, but not limited to, detaining such
404 suspected illegal alien, securely transporting such suspect to any authorized federal or state
405 detention facility, or notifying the United States Department of Homeland Security or
406 successor agency. Nothing in this Code section shall be construed to hinder or prevent a
407 peace officer or law enforcement agency from arresting or detaining any criminal suspect
408 on other criminal charges.

409 (f) No person who in good faith contacts or has contact with a state or local peace officer
410 or prosecuting attorney or member of the staff of a prosecuting attorney for the purpose of
411 acting as a witness to a crime, to report criminal activity, or to seek assistance as a victim
412 to a crime shall have his or her immigration status investigated based on such contact or
413 based on information arising from such contact.

414 (g) A peace officer or prosecuting attorney, acting in good faith to carry out any provision
415 of this Code section, shall have immunity from damages or liability from such actions."

SECTION 9.

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

"35-1-16.

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

(b) Cooperation with federal authorities.

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

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

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

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

(c) Authority to transport illegal aliens. If a state or local law enforcement officer has verification that a person is an illegal alien, then such officer shall be authorized to securely transport such illegal alien to a federal facility in this state or to any other temporary point

453 of detention and to reasonably detain such illegal alien when authorized by federal law.
 454 Nothing in this Code section shall be construed to hinder or prevent a peace officer or law
 455 enforcement agency from arresting or detaining any criminal suspect on other criminal
 456 charges.

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

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

464 **SECTION 10.**

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

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

473 **SECTION 11.**

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

475 "35-6A-10.

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

485 (b) The council shall:

- 486 (1) Subject to available funding, provide incentive programs and grants to local law
 487 enforcement agencies for utilizing federal resources and for entering into agreements with
 488 federal agencies for the enforcement of immigration law;
- 489 (2) Provide technical assistance to local governments and agencies for obtaining and
 490 qualifying for incentive programs and grant funds to utilize available federal resources
 491 and to enter into and implement such agreements provided for in subsection (a) of this
 492 Code section;
- 493 (3) Communicate information regarding the availability of federal resources and
 494 agreements provided for in subsection (a) of this Code section and the availability of
 495 related incentive programs and grant funds and post such information on the agency's
 496 official Internet website;
- 497 (4) Provide technical assistance and information regarding the process for contacting
 498 federal agencies, utilizing federal resources, and entering into agreements provided for
 499 in subsection (a) of this Code section and post such information on the agency's official
 500 Internet website; and
- 501 (5) Support state-wide campaigns and information programs in an effort to encourage
 502 every local law enforcement agency in this state to utilize federal resources and enter into
 503 agreements for the enforcement of state and federal immigration law."

504

SECTION 12.

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

508 "42-4-14.

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

513 ~~(b) If the prisoner is a foreign national charged with a felony, driving under the influence~~
 514 ~~pursuant to Code Section 40-6-391, driving without being licensed pursuant to subsection~~
 515 ~~(a) of Code Section 40-5-20, or with a misdemeanor of a high and aggravated nature, the~~
 516 ~~keeper of the jail or other officer shall make~~ When any foreign national is confined, for any
 517 period, in a county or municipal jail, a reasonable effort shall be made to verify that the
 518 prisoner such foreign national has been lawfully admitted to the United States and if
 519 lawfully admitted, that such lawful status has not expired. If verification of lawful status
 520 ~~can not~~ cannot be made from documents in the possession of the ~~prisoner~~ foreign national,
 521 verification shall be made within 48 hours through a query to the Law Enforcement

522 Support Center (LESC) of the United States Department of Homeland Security or other
 523 office or agency designated ~~for that purpose by the United States Department of Homeland~~
 524 ~~Security by the federal government.~~ If the prisoner foreign national is determined ~~not to~~
 525 ~~be lawfully admitted to the United States to be an illegal alien,~~ the keeper of the jail or
 526 other officer shall notify the United States Department of Homeland Security, or other
 527 office or agency designated for notification by the federal government.

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

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

534

SECTION 13.

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

537 "(c) After proper documentation is received from the clerk of the court, the department
 538 shall have 15 days to transfer an inmate under sentence to the place of confinement. If the
 539 inmate is not transferred within the 15 days, the department ~~will~~ shall reimburse the county,
 540 in a sum not less than \$7.50 per day per inmate and in such an amount as may be
 541 appropriated for this purpose by the General Assembly, for the cost of the incarceration,
 542 commencing 15 days after proper documentation is received by the department from the
 543 clerk of the court; provided, however, that, subject to an appropriation of funds, local
 544 governing authorities that have entered into memorandums of understanding or agreement
 545 or that demonstrate continuous attempts to enter into memorandums of understanding or
 546 agreement with the federal government under Section 287(g) of the federal Immigration
 547 and Nationality Act shall receive an additional payment in the amount of 10 percent of the
 548 established rate paid for reimbursement for the confinement of state inmates in local
 549 confinement facilities. The reimbursement provisions of this Code section shall only apply
 550 to payment for the incarceration of felony inmates available for transfer to the department,
 551 except inmates under death sentence awaiting transfer after their initial trial, and shall not
 552 apply to inmates who were incarcerated under the custody of the commissioner at the time
 553 they were returned to the county jail for trial on additional charges or returned to the county
 554 jail for any other purposes, including for the purpose of a new trial."

555

SECTION 14.

556

Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees, is amended by revising Code Section 45-10-28, relating to penalties for a violation of Part 1 of Article 2 of Chapter 10 of Title 45 and civil actions by the Attorney General to collect penalties, as follows:

559

560

"45-10-28.

561

(a)(1) Any appointed public official, agency head, or employee who violates Code Section 45-10-22, 45-10-23, 45-10-24, ~~or 45-10-26~~, or 50-36-1 shall be subject to:

562

563

(A) Removal from office or employment;

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(B) A civil fine not to exceed \$10,000.00; and

565

(C) Restitution to the state of any pecuniary benefit received as a result of such violation.

566

567

(2) Any elected public official or agency head who violates Code Section 45-10-22, 45-10-23, 45-10-24, ~~or 45-10-26~~, or 50-36-1 shall be subject to:

568

569

(A) A civil fine not to exceed \$10,000.00; and

570

(B) Restitution to the state of any pecuniary benefit received as a result of such violation.

571

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(3) Any business which violates Code Section 45-10-22, 45-10-23, 45-10-24, or 45-10-26 shall be subject to:

573

574

(A) A civil fine not to exceed \$10,000.00; and

575

(B) Restitution to the state of any pecuniary benefit received as a result of such violation.

576

577

(b) The penalties provided for in subsection (a) of this Code section may be imposed in any civil action brought for that purpose, and such actions shall be brought by the Attorney General.

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(c) As used in this Code section, the term 'agency head' shall have the same meaning as set forth in Code Section 50-36-1."

581

582

SECTION 15.

583

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

584

"45-15-71.

585

(a) As used in this Code section, the term 'public agency or employee' means any government, department, commission, committee, authority, board, or bureau of this state or any political subdivision of this state and any employee or official, whether appointed, elected, or otherwise employed by such governmental entities.

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(b) A resident of Georgia who is also a registered voter shall be authorized to file a complaint with the Attorney General for an alleged violation of Code Section 13-10-91,

590

591 36-80-23, or 50-36-1 by a public agency or employee. The Attorney General or his or her
 592 designee shall be authorized and empowered to conduct an investigation into the acts and
 593 practices of such public agency or employee. If, as a result of this investigation, the
 594 Attorney General finds that there is a reasonable basis to believe that one or more of the
 595 allegations in the complaint can be substantiated, he or she shall issue an opinion outlining
 596 the basis for his or her findings. Notice of the opinion shall be served on the applicable
 597 public agency and employee and the complainant.

598 (c) If there is a finding by the Attorney General that a public agency or employee has
 599 violated or failed to abide by the provisions of Code Section 13-10-91, 36-80-23, or
 600 50-36-1, the Attorney General shall order the public agency or employee, or both, to
 601 conform to the requirements of the law and shall assess against the public agency or
 602 employee, or both, a civil penalty of not less than \$1,000.00 or more than \$5,000.00 for
 603 each separate violation. The Attorney General shall collect the civil penalty and after
 604 retaining amounts for actual costs and attorney's fees incurred as a result of the
 605 investigation and litigation, if any, remit the same to the general fund.

606 (d) Any public agency or employee objecting to the findings or penalty shall be entitled
 607 to appeal the same as provided for by Chapter 13 of Title 50, the 'Georgia Administrative
 608 Procedure Act.' Such objection and request for a hearing shall be filed within 30 days of
 609 service of the notice of civil penalties.

610 (e) Nothing in this Code section shall affect or preclude the right of any party to any
 611 recovery otherwise authorized by common law, statute, or rule. The Attorney General shall
 612 be authorized to bring any civil action against a public agency or employee that he or she
 613 deems necessary to enforce compliance with this Code section."

614 **SECTION 16.**

615 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the
 616 imposition, rate, computation, and exemptions for revenue and taxation, is amended by
 617 adding a new Code section to read as follows:

618 "48-7-21.2.

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

620 (1) 'Authorized employee' means any individual authorized for employment in the
 621 United States through any of the electronic verification of work authorization programs
 622 operated by the United States Department of Homeland Security or any equivalent federal
 623 work authorization program operated by the United States Department of Homeland
 624 Security to verify employment information of newly hired employees, commonly known
 625 as E-Verify.

626 (2) 'Labor services' means the physical performance of services in this state.

627 (b) On or after January 1, 2012, no wages or remuneration for labor services to an
 628 individual of \$600.00 or more per annum may be claimed and allowed as a deductible
 629 business expense for state income tax purposes by a taxpayer unless such individual is an
 630 authorized employee. The provisions of this subsection shall apply whether or not an
 631 Internal Revenue Service Form 1099 is issued in conjunction with the wages or
 632 remuneration.

633 (c) This Code section shall not apply to any business domiciled in this state which is
 634 exempt from compliance with federal employment verification procedures under federal
 635 law.

636 (d) This Code section shall not apply to any individual hired by the taxpayer prior to
 637 January 1, 2012.

638 (e) This Code section shall not apply to any taxpayer where the individual being paid is
 639 not directly compensated or employed by said taxpayer.

640 (f) This Code section shall not apply to wages or remuneration paid for labor services to
 641 any individual who holds and presents to the taxpayer a valid license or identification card
 642 issued by the Georgia Department of Driver Services.

643 (g) The commissioner shall be authorized to prescribe forms and promulgate rules and
 644 regulations deemed necessary in order to administer and effectuate this Code section."

645 **SECTION 17.**

646 Chapter 36 of Title 50 of the Official Code of Georgia Annotated, relating to verification of
 647 lawful presence within the United States, is amended by revising subsection (a) of Code
 648 Section 50-36-1, relating to verification of lawful presence within the United States for
 649 receipt of certain government benefits, by renumbering paragraphs (1) through (3) as
 650 paragraphs (2) through (4), respectively, and by adding a new paragraph (1) to read as
 651 follows:

652 "(1) 'Agency head' means a director, commissioner, chairperson, mayor, councilmember,
 653 board member, sheriff, or other executive official, whether appointed or elected,
 654 responsible for establishing policy for a public employer."

655 **SECTION 18.**

656 Said Code section of said chapter is further amended by revising subsection (e) as follows:

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

659 (1) Provide at least one secure and verifiable document, as defined in Code Section
 660 50-36-2; and

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

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

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

669 **SECTION 19.**

670 Said Code section of said chapter is further amended by revising subsection (o) as follows:

671 "(o) No employer, agency, or political subdivision shall be subject to lawsuit or liability
 672 arising from any act to comply with the requirements of this chapter; provided, however,
 673 that the intentional and knowing failure of any agency head to abide by the provisions of
 674 this chapter shall:

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

678 (2) Be a high and aggravated misdemeanor offense where such agency head acts to
 679 willfully violate the provisions of this Code section or acts so as to intentionally and
 680 deliberately interfere with the implementation of the requirements of this Code section.

681 In addition to any other person authorized by law, the Attorney General shall have the
 682 authority to conduct a criminal and civil investigation of an alleged violation of this chapter
 683 by an agency or agency head and to bring a prosecution or civil action against an agency
 684 or agency head for all cases of violations under this chapter. In the event that an order is
 685 entered against an employer, the state shall be awarded attorney's fees and expenses of
 686 litigation incurred in bringing such an action and investigating such violation."

687 **SECTION 20.**

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

689 "50-36-2.

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

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

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

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

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

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

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

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

713 (1) A person reporting a crime;

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

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

717 (4) A person providing emergency medical service;

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

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

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

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

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

728 **SECTION 21.**

729 (a) If any provision or part of any provision of this Act or the application of the same is held
 730 invalid or unconstitutional, the invalidity shall not affect the other provisions or applications

731 of this Act or any other part of this Act than can be given effect without the invalid provision
732 or application, and to this end, the provisions of this Act are severable.

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

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

737 **SECTION 22.**

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

742 **SECTION 23.**

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