

House Bill 796

By: Representatives Marin of the 96th, James of the 135th, Abrams of the 84th, Fullerton of the 151st, Baker of the 78th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend the Official Code of Georgia Annotated, so as to repeal those provisions enacted
2 by House Bill 87 of the 2011 Session of the Georgia General Assembly and related
3 provisions; to amend Chapter 10 of Title 13 of the Official Code of Georgia Annotated,
4 relating to contracts for public works, so as to repeal provisions relating to verification of
5 new employee eligibility and immigration compliance; to amend Chapter 9 of Title 16 of the
6 Official Code of Georgia Annotated, relating to identity fraud, by striking provisions relating
7 to the offense of aggravated identity fraud and offenses relating to immigration and illegal
8 aliens; to amend Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating
9 to searches and seizures, so as to repeal provisions relating to illegal aliens; to amend Title
10 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and
11 agencies, so as to strike provisions relating to local law enforcement agencies entering into
12 agreements with federal agencies for the enforcement of immigration laws and provisions
13 relating to incentives for using federal Department of Homeland Security's Secure
14 Communities initiative and obligations of the Criminal Justice Coordinating Council; to
15 amend Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to general
16 provisions applicable to counties and municipal corporations, so as to remove provisions
17 requiring verification of lawful immigration status by businesses and applicants for business
18 licenses; to modify and strike provisions relating to utilization of federal work authorization
19 program, defining employee, issuance of license, evidence of state licensure, annual
20 reporting, standardized form affidavit, violations, and investigations; to amend Title 42 of
21 the Official Code of Georgia Annotated, relating to penal institutions, so as to remove the
22 requirement of reporting certain aliens confined in jail to federal officials; to provide for
23 related matters; to provide an effective date; to repeal conflicting laws; and for other
24 purposes.

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to contracts for public works, is amended by repealing Article 3, relating to security and immigration compliance.

SECTION 2.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended in Article 8 of Chapter 9, relating to identity fraud, by revising Code Section 16-9-121.1, relating to the offense of aggravated identity fraud, as follows:

~~"16-9-121.1:~~

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

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

SECTION 3.

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

~~"16-9-126.~~

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

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

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

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

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

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

SECTION 4.

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

"16-9-128.

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

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

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

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

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

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

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

SECTION 5.

Said title is further amended in Chapter 11, relating to criminal offenses against public order and safety, by repealing Article 5, relating to criminal offenses involving illegal aliens.

SECTION 6.

Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to searches and seizures, is amended by repealing Article 5, relating to immigrants.

SECTION 7.

Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and agencies, is amended by revising Code Section 35-1-17, relating to local law enforcement agencies to enter into agreements with federal agencies for the enforcement of immigration laws, as follows:

~~"35-1-17.~~

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

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

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

SECTION 8.

Said title is further amended by revising Code Section 35-6A-10, relating to incentives for using federal Department of Homeland Security's Secure Communities initiative and obligations of council, as follows:

~~"35-6A-10.~~

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

~~(b) The council shall:~~

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

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

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

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

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

SECTION 9.

Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to General provisions applicable to counties and municipal corporations, is amended by revising Code Section 36-60-6, relating to utilization of federal work authorization program, defining employee, issuance of license, evidence of state licensure, annual reporting, standardized form affidavit, violations, and investigations, as follows:

"36-60-6.

~~(a) Every private employer with more than ten employees shall register with and utilize the federal work authorization program, as defined by Code Section 13-10-90. The requirements of this subsection shall be effective on January 1, 2012, as to employers with 500 or more employees, on July 1, 2012, as to employers with 100 or more employees but fewer than 500 employees, and on July 1, 2013, as to employers with more than ten employees but fewer than 100 employees.~~

~~(b) For purposes of this Code section, the term 'employee' shall have the same meaning as set forth in subparagraph (A) of paragraph (1.1) of Code Section 48-13-5, provided that such person is also employed to work not less than 35 hours per week.~~

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

~~(d) Before any county or municipal corporation issues or renews a business license, occupational tax certificate, or other document required to operate a business to any person,~~

~~the person shall provide evidence that he or she is authorized to use the federal work authorization program or evidence that the provisions of this Code section do not apply. Evidence of such use shall be in the form of an affidavit as provided by the Attorney General in subsection (f) of this Code section attesting that he or she utilizes the federal work authorization program in accordance with federal regulations or that he or she employs fewer than 11 employees or otherwise does not fall within the requirements of this Code section. Whether an employer is exempt from using the federal work authorization program as required by this Code section shall be determined by the number of employees employed by such employer on January 1 of the year during which the affidavit is submitted. The affidavit shall include the employer's federally assigned employment eligibility verification system user number and the date of authority for use. The requirements of this subsection shall be effective on January 1, 2012, as to employers with 500 or more employees, on July 1, 2012, as to employers with 100 or more employees but fewer than 500 employees, and on July 1, 2013, as to employers with more than ten employees but fewer than 100 employees.~~

~~(e) Beginning December 31, 2012, and annually thereafter, any county or municipal corporation issuing or renewing a business license, occupational tax certificate, or other document required to operate a business shall provide to the Department of Audits and Accounts a report demonstrating that such county or municipality is acting in compliance with the provisions of this Code section. This annual report shall identify each license or certificate issued by the agency in the preceding 12 months and include the name of the person and business issued a license or other document and his or her federally assigned employment eligibility verification system user number as provided in the affidavit submitted at the time of application. Subject to funding, the Department of Audits and Accounts shall annually conduct an audit of no fewer than 20 percent of such reporting agencies.~~

~~(f) In order to assist private businesses and counties and municipal corporations in complying with the provisions of this Code section, the Attorney General shall provide a standardized form affidavit which may be used as acceptable evidence demonstrating use of the federal employment eligibility verification system or that the provisions of subsection (b) of this Code section do not apply to the applicant. The form affidavit shall be posted by the Attorney General on the Department of Law's official website no later than January 1, 2012.~~

~~(g) Once an applicant for a business license, occupational tax certificate, or other document required to operate a business has submitted an affidavit with a federally assigned employment eligibility verification system user number, he or she shall not be authorized to submit a renewal application using a new or different federally assigned~~

~~employment eligibility verification system user number, unless accompanied by a sworn document explaining the reason such applicant obtained a new or different federally assigned employment eligibility verification system user number.~~

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

~~(i) Documents required by this Code section may be submitted electronically, provided the submission complies with Chapter 12 of Title 10.~~

~~(j) The Attorney General shall be authorized to conduct an investigation and bring any criminal or civil action he or she deems necessary to ensure compliance with the provisions of this Code section. The Attorney General shall provide an employer who is found to have committed a good faith violation of this Code section 30 days to demonstrate to the Attorney General that such employer has come into compliance with this Code section. During the course of any investigation of violations of this Code section, the Attorney General shall also investigate potential violations of Code Section 16-9-121.1 by employees that may have led to violations of this Code section."~~

SECTION 10.

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

"42-4-14.

~~(a) As used in this Code section, the term '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.~~

~~(b)(a) When any person is confined, for any period, in the jail of a county or municipality or a jail operated by a regional jail authority in compliance with Article 36 of the Vienna Convention on Consular Relations, a reasonable effort shall be made to determine the nationality of the person so confined and to allow such confined person to contact his or her consular general.~~

~~(c) When any foreign national is confined, for any period, in a county or municipal jail, a reasonable effort shall be made to verify that such foreign national has been lawfully admitted to the United States and if lawfully admitted, that such lawful status has not~~

~~expired. If verification of lawful status cannot be made from documents in the possession of the foreign national, verification shall be made within 48 hours through a query to the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or other office or agency designated by the federal government. If the foreign national is determined to be an illegal alien, the keeper of the jail or other officer shall notify the United States Department of Homeland Security, or other office or agency designated for notification by the federal government.~~

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

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

SECTION 11.

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

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

SECTION 12.

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:

"45-10-28.

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

(A) Removal from office or employment;

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

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

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

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

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

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

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

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

(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.

~~(c) As used in this subsection, the term 'agency head' shall have the same meaning as set forth in Code Section 50-36-1. Any public official, agency head, or employee who violates Code Section 13-10-91 or 50-36-1 shall be subject to:~~

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

~~(B) Restitution to the state or local government, whichever is applicable, of any pecuniary benefit received as a result of such violation; and~~

~~(C) Where such violation is committed knowingly and intentionally, removal from office or employment."~~

339 **SECTION 13.**

340 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
341 by repealing and reserving Chapter 36, relating to verification of lawful presence within the
342 United States.

343 **SECTION 14.**

344 This Act shall become effective upon its approval by the Governor or upon its becoming law
345 without such approval.

346 **SECTION 15.**

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