

The Senate Judiciary Committee offered the following substitute to SB 458:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 36 of Title 50 of the Official Code of Georgia Annotated, relating to the
2 verification of lawful presence within the United States, so as to modify provisions relating
3 to verification requirements, procedures, and conditions for applicants for public benefits;
4 to modify the definition of a secure and verifiable document; to modify provisions relating
5 to the Immigration Enforcement Review Board; to provide for related matters; to provide for
6 an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 36 of Title 50 of the Official Code of Georgia Annotated, relating to the verification
10 of lawful presence within the United States, is amended by revising Code Section 50-36-1,
11 relating to verification requirements, procedures, conditions, exceptions, regulations, and
12 criminal and other penalties for violations, as follows:

13 "50-36-1.

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

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

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

20 (3) 'Applicant' means any natural person, 18 years of age or older, who has made
21 application for access to public benefits on behalf of an individual, business, corporation,
22 partnership, or other private entity.

23 (4)(A) 'Public benefit' means a federal benefit as defined in 8 U.S.C. Section 1611, a
24 state or local benefit as defined in 8 U.S.C. Section 1621, a benefit identified as a public
25 benefit by the Attorney General of Georgia, ~~or a~~ and the following public benefit which
26 ~~shall include the following benefits:~~

- 27 (i) Adult education;
- 28 (ii) Authorization to conduct a commercial enterprise or business;
- 29 (iii) Business certificate, license, or registration;
- 30 (iv) Business loan;
- 31 (v) Cash allowance;
- 32 (vi) Disability assistance or insurance;
- 33 (vii) Down payment assistance;
- 34 (viii) Energy assistance;
- 35 (ix) Food stamps;
- 36 (x) Gaming license;
- 37 (xi) Health benefits;
- 38 (xii) Housing allowance, grant, guarantee, or loan;
- 39 (xiii) Loan guarantee;
- 40 (xiv) Medicaid;
- 41 (xv) Occupational license;
- 42 (xvi) Postsecondary education;
- 43 (xvii) Professional license;
- 44 ~~(xvii)~~(xviii) Registration of a regulated business;
- 45 ~~(xviii)~~(xix) Rent assistance or subsidy;
- 46 ~~(xix)~~(xx) State grant or loan;
- 47 ~~(xx)~~(xxi) State identification card;
- 48 ~~(xxi)~~(xxii) Tax certificate required to conduct a commercial business;
- 49 ~~(xxii)~~(xxiii) Temporary assistance for needy families (TANF);
- 50 ~~(xxiii)~~(xxiv) Unemployment insurance; and
- 51 ~~(xxiv)~~(xxv) Welfare to work.

52 (B) Each year before August 1, the Attorney General shall prepare a detailed report
 53 indicating ~~any~~ all 'public ~~benefit~~ benefits' that may be administered in this state ~~as~~
 54 ~~defined in 8 U.S.C. Sections 1611 and 1621 and whether such benefit is.~~ The report
 55 shall include all public benefits listed in subparagraph (A) of this paragraph. The report
 56 shall also provide notice that each benefit listed is subject to SAVE verification
 57 pursuant to this Code section. The Attorney General shall not remove or fail to disclose
 58 or report any public benefit listed in subparagraph (A) of this paragraph, and he or she
 59 shall only be authorized to add to such list and not remove therefrom. Such report shall
 60 provide the description of the benefit and shall be updated annually and distributed to
 61 the members of the General Assembly and be posted to the Attorney General's website.

62 (b) Except as provided in subsection (d) of this Code section or where exempted by federal
 63 law, every agency or political subdivision shall verify the lawful presence in the United
 64 States of any applicant for public benefits.

65 (c) This Code section shall be enforced without regard to race, religion, gender, ethnicity,
 66 or national origin.

67 (d) Verification of lawful presence under this Code section shall not be required:

68 (1) For any purpose for which lawful presence in the United States is not required by
 69 law, ordinance, or regulation;

70 (2) For assistance for health care items and services that are necessary for the treatment
 71 of an emergency medical condition, as defined in 42 U.S.C. Section 1396b(v)(3), of the
 72 alien involved and are not related to an organ transplant procedure;

73 (3) For short-term, noncash, in-kind emergency disaster relief;

74 (4) For public health assistance for immunizations with respect to immunizable diseases
 75 and for testing and treatment of symptoms of communicable diseases whether or not such
 76 symptoms are caused by a communicable disease;

77 (5) For programs, services, or assistance such as soup kitchens, crisis counseling and
 78 intervention, and short-term shelter specified by the United States Attorney General, in
 79 the United States Attorney General's sole and unreviewable discretion after consultation
 80 with appropriate federal agencies and departments, which:

81 (A) Deliver in-kind services at the community level, including through public or
 82 private nonprofit agencies;

83 (B) Do not condition the provision of assistance, the amount of assistance provided,
 84 or the cost of assistance provided on the individual recipient's income or resources; and

85 (C) Are necessary for the protection of life or safety; or

86 (6) For prenatal care; ~~or~~

87 ~~(7) For postsecondary education, whereby the Board of Regents of the University System~~
 88 ~~of Georgia or the State Board of the Technical College System of Georgia shall set forth,~~
 89 ~~or cause to be set forth, policies regarding postsecondary benefits that comply with all~~
 90 ~~federal law including but not limited to public benefits as described in 8 U.S.C. Section~~
 91 ~~1611, 1621, or 1623.~~

92 (d.1) All policies of agencies or political subdivisions regarding public benefits for
 93 postsecondary education shall comply with federal law as described in 8 U.S.C. Section
 94 1623.

95 (e)(1) An agency or political subdivision providing or administering a public benefit
 96 shall require every applicant for such benefit to:

97 ~~(A)~~(A) Provide at least one secure and verifiable document, as defined in Code Section
 98 50-36-2; and

- 99 ~~(2)~~(B) Execute a signed and sworn affidavit verifying the applicant's lawful presence
 100 in the United States, which affidavit shall state:
- 101 ~~(A)~~(i) The applicant is a United States citizen or legal permanent resident 18 years
 102 of age or older; or
- 103 ~~(B)~~(ii) The applicant is a qualified alien or nonimmigrant under the federal
 104 Immigration and Nationality Act, Title 8 U.S.C., 18 years of age or older lawfully
 105 present in the United States and provide the applicant's alien number issued by the
 106 Department of Homeland Security or other federal immigration agency;~~and~~.
- 107 (2) An applicant may satisfy the requirements of this subsection by submitting
 108 documents at any time within nine months prior to the application deadline, provided that
 109 documents that are submitted early remain valid through the licensing or approval period,
 110 or such other period for which the applicant is applying to receive a public benefit.
- 111 (3) If an applicant for a public benefit for postsecondary education is under 18 years of
 112 age, the applicant shall be required to execute the signed and sworn affidavit within 30
 113 days following such applicant's eighteenth birthday to continue the enrollment process
 114 or attendance at a public postsecondary educational institution.
- 115 ~~(3)~~(4) The state auditor shall create affidavits for use under this ~~Code section~~ subsection
 116 and shall keep a current version of such affidavits on the Department of Audits and
 117 Account's Accounts' official website.
- 118 ~~(4)~~(5) Documents or copies of documents required by this ~~Code section~~ subsection may
 119 be submitted in person, by mail, or electronically, provided the submission complies with
 120 Chapter 12 of Title 10. Copies of documents submitted in person, by mail, or
 121 electronically shall satisfy the requirements of this Code section. For purposes of this
 122 paragraph, electronic submission includes a submission via facsimile, Internet, electronic
 123 texting, or any other electronically assisted transmission.
- 124 (6) The requirements of this subsection shall not apply to any applicant renewing an
 125 application for a public benefit, within the same agency, where the applicant has
 126 previously complied with the requirements of this subsection by submission of a secure
 127 and verifiable document establishing that such applicant is a United States citizen.
- 128 (f) For any applicant who has executed an affidavit that he or she is an alien lawfully
 129 present in the United States, eligibility for public benefits shall be made through the
 130 Systematic Alien Verification of Entitlement (SAVE) program operated by the United
 131 States Department of Homeland Security or a successor program designated by the United
 132 States Department of Homeland Security. Until such eligibility verification is made, the
 133 affidavit may be presumed to be proof of lawful presence for the purposes of this Code
 134 section.

135 (g) Any person who knowingly and willfully makes a false, fictitious, or fraudulent
136 statement of representation in an affidavit executed pursuant to this Code section shall be
137 guilty of a violation of Code Section 16-10-20.

138 (h) Verification of citizenship through means required by federal law shall satisfy the
139 requirements of this Code section.

140 (i) It shall be unlawful for any agency or political subdivision to provide or administer any
141 public benefit in violation of this Code section. On or before January 1 of each year, each
142 agency or political subdivision which administers any public benefit shall provide an
143 annual report to the Department of Community Affairs that identifies each public benefit,
144 as defined in subparagraph (a)(3)(A) of this Code section, administered by the agency or
145 political subdivision and a listing of each public benefit for which SAVE authorization for
146 verification has not been received.

147 (j) Any and all errors and significant delays by SAVE shall be reported to the United
148 States Department of Homeland Security.

149 (k) Notwithstanding subsection (g) of this Code section, any applicant for public benefits
150 shall not be guilty of any crime for executing an affidavit attesting to lawful presence in the
151 United States that contains a false statement if said affidavit is not required by this Code
152 section.

153 (l) In the event a legal action is filed against any agency or political subdivision alleging
154 improper denial of a public benefit arising out of an effort to comply with this Code
155 section, the Attorney General shall be served with a copy of the proceeding and shall be
156 entitled to be heard.

157 (m) Compliance with this Code section by an agency or political subdivision shall include
158 taking all reasonable, necessary steps required by a federal agency to receive authorization
159 to utilize the SAVE program or any successor program designated by the United States
160 Department of Homeland Security or other federal agency, including providing copies of
161 statutory authorization for the agency or political subdivision to provide public benefits and
162 other affidavits, letters of memorandum of understanding, or other required documents or
163 information needed to receive authority to utilize the SAVE program or any successor
164 program for each public benefit provided by such agency or political subdivision. An
165 agency or political subdivision that takes all reasonable, necessary steps and submits all
166 requested documents and information as required in this subsection but either has not been
167 given access to use such programs by such federal agencies or has not completed the
168 process of obtaining access to use such programs shall not liable for failing to use the
169 SAVE program or any such successor program to verify eligibility for public benefits.

170 (n) In the case of noncompliance with the provisions of this Code section by an agency or
 171 political subdivision, the appropriations committee of each house of the General Assembly
 172 may consider such noncompliance in setting the budget and appropriations.

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

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

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

183 The Attorney General shall have the authority to conduct a criminal and civil investigation
 184 of an alleged violation of this chapter by an agency or agency head and to bring a
 185 prosecution or civil action against an agency or agency head for all cases of violations
 186 under this chapter. In the event that an order is entered against an employer, the state shall
 187 be awarded attorney's fees and expenses of litigation incurred in bringing such an action
 188 and investigating such violation."

189 **SECTION 2.**

190 Said chapter is further amended by revising subsection (b) of Code Section 50-36-2, relating
 191 to secure and verifiable identification documents, as follows:

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

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

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

197 (3) 'Secure and verifiable document' means a an unexpired document issued by a state
 198 or federal jurisdiction or recognized by the United States government and that is
 199 verifiable by federal or state law enforcement, intelligence, or homeland security
 200 agencies. Secure and verifiable document shall not mean a Matricula Consular de Alta
 201 Seguridad, matricula consular card, consular matriculation card, consular identification
 202 card, or similar identification card issued by a foreign government regardless of the
 203 holder's immigration status. Secure and verifiable documents shall not include any
 204 foreign passport unless the passport is submitted with a valid United States Homeland
 205 Security Form I-94 or I-94A or other federal document specifying an alien's lawful

206 immigration status. Only those documents approved and posted by the Attorney General
207 pursuant to subsection (f) of this Code section shall be considered secure and verifiable
208 documents. No secure and verifiable document shall be submitted or relied upon for
209 purposes that are in conflict with any limitation or restriction specified in such document.
210 Copies of secure and verifiable documents submitted in person, by mail, or electronically
211 shall satisfy the definition of 'secure and verifiable document' in this chapter. For
212 purposes of this paragraph, electronic submission includes a submission via facsimile,
213 Internet, electronic texting, or any other electronically assisted transmission."

214 **SECTION 3.**

215 This Act shall become effective on July 1, 2012.

216 **SECTION 4.**

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