

Senate Bill 458

By: Senators Loudermilk of the 52nd, Rogers of the 21st, Hill of the 32nd and Albers of the 56th

AS PASSED SENATE

**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, regardless of whether such benefit is subsidized by
 27 state or federal funds:

- 28 (i) Adult education;
- 29 (ii) Authorization to conduct a commercial enterprise or business;
- 30 (iii) Business certificate, license, or registration;
- 31 (iv) Business loan;
- 32 (v) Cash allowance;
- 33 (vi) Disability assistance or insurance;
- 34 (vii) Down payment assistance;
- 35 (viii) Energy assistance;
- 36 (ix) Food stamps;
- 37 (x) Gaming license;
- 38 (xi) Health benefits;
- 39 (xii) Housing allowance, grant, guarantee, or loan;
- 40 (xiii) Loan guarantee;
- 41 (xiv) Medicaid;
- 42 (xv) Occupational license;
- 43 (xvi) Professional license;
- 44 ~~(xvii)~~(xvii) Registration of a regulated business;
- 45 ~~(xviii)~~(xviii) Rent assistance or subsidy;
- 46 ~~(xix)~~(xix) State grant or loan;
- 47 ~~(xx)~~(xx) State identification card;
- 48 ~~(xxi)~~(xxi) Tax certificate required to conduct a commercial business;
- 49 ~~(xxii)~~(xxii) Temporary assistance for needy families (TANF);
- 50 ~~(xxiii)~~(xxiii) Unemployment insurance; and
- 51 ~~(xxiv)~~(xxiv) 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 (e)(1) An agency or political subdivision providing or administering a public benefit
 93 shall require every applicant for such benefit to:

94 ~~(1)~~(A) Provide at least one secure and verifiable document, as defined in Code Section
 95 50-36-2; and

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

- 98 ~~(A)~~(i) The applicant is a United States citizen or legal permanent resident 18 years
99 of age or older; or
- 100 ~~(B)~~(ii) The applicant is a qualified alien or nonimmigrant under the federal
101 Immigration and Nationality Act, Title 8 U.S.C., 18 years of age or older lawfully
102 present in the United States and provide the applicant's alien number issued by the
103 Department of Homeland Security or other federal immigration agency; ~~and.~~
- 104 (2) An applicant may satisfy the requirements of this subsection by submitting
105 documents at any time within nine months prior to the application deadline, provided that
106 documents that are submitted early remain valid through the licensing or approval period,
107 or such other period for which the applicant is applying to receive a public benefit.
- 108 (3) If an applicant for a public benefit is under 18 years of age, the applicant shall be
109 required to execute the signed and sworn affidavit within 30 days following such
110 applicant's eighteenth birthday.
- 111 ~~(3)~~(4) The state auditor shall create affidavits for use under this ~~Code section~~ subsection
112 and shall keep a current version of such affidavits on the Department of Audits and
113 Account's Accounts' official website.
- 114 ~~(4)~~(5) Documents or copies of documents required by this ~~Code section~~ subsection may
115 be submitted in person, by mail, or electronically, provided the submission complies with
116 Chapter 12 of Title 10. Copies of documents submitted in person, by mail, or
117 electronically shall satisfy the requirements of this Code section. For purposes of this
118 paragraph, electronic submission includes a submission via facsimile, Internet, electronic
119 texting, or any other electronically assisted transmission.
- 120 (6) The requirements of this subsection shall not apply to any applicant renewing an
121 application for a public benefit, within the same agency, where the applicant has
122 previously complied with the requirements of this subsection by submission of a secure
123 and verifiable document establishing that such applicant is a United States citizen.
- 124 (f) For any applicant who has executed an affidavit that he or she is an alien lawfully
125 present in the United States, eligibility for public benefits shall be made through the
126 Systematic Alien Verification of Entitlement (SAVE) program operated by the United
127 States Department of Homeland Security or a successor program designated by the United
128 States Department of Homeland Security. Until such eligibility verification is made, the
129 affidavit may be presumed to be proof of lawful presence for the purposes of this Code
130 section.
- 131 (g) Any person who knowingly and willfully makes a false, fictitious, or fraudulent
132 statement of representation in an affidavit executed pursuant to this Code section shall be
133 guilty of a violation of Code Section 16-10-20.

- 134 (h) Verification of citizenship through means required by federal law shall satisfy the
135 requirements of this Code section.
- 136 (i) It shall be unlawful for any agency or political subdivision to provide or administer any
137 public benefit in violation of this Code section. On or before January 1 of each year, each
138 agency or political subdivision which administers any public benefit shall provide an
139 annual report to the Department of Community Affairs that identifies each public benefit,
140 as defined in subparagraph (a)(3)(A) of this Code section, administered by the agency or
141 political subdivision and a listing of each public benefit for which SAVE authorization for
142 verification has not been received.
- 143 (j) Any and all errors and significant delays by SAVE shall be reported to the United
144 States Department of Homeland Security.
- 145 (k) Notwithstanding subsection (g) of this Code section, any applicant for public benefits
146 shall not be guilty of any crime for executing an affidavit attesting to lawful presence in the
147 United States that contains a false statement if said affidavit is not required by this Code
148 section.
- 149 (l) In the event a legal action is filed against any agency or political subdivision alleging
150 improper denial of a public benefit arising out of an effort to comply with this Code
151 section, the Attorney General shall be served with a copy of the proceeding and shall be
152 entitled to be heard.
- 153 (m) Compliance with this Code section by an agency or political subdivision shall include
154 taking all reasonable, necessary steps required by a federal agency to receive authorization
155 to utilize the SAVE program or any successor program designated by the United States
156 Department of Homeland Security or other federal agency, including providing copies of
157 statutory authorization for the agency or political subdivision to provide public benefits and
158 other affidavits, letters of memorandum of understanding, or other required documents or
159 information needed to receive authority to utilize the SAVE program or any successor
160 program for each public benefit provided by such agency or political subdivision. An
161 agency or political subdivision that takes all reasonable, necessary steps and submits all
162 requested documents and information as required in this subsection but either has not been
163 given access to use such programs by such federal agencies or has not completed the
164 process of obtaining access to use such programs shall not liable for failing to use the
165 SAVE program or any such successor program to verify eligibility for public benefits.
- 166 (n) In the case of noncompliance with the provisions of this Code section by an agency or
167 political subdivision, the appropriations committee of each house of the General Assembly
168 may consider such noncompliance in setting the budget and appropriations.
- 169 (o) No employer, agency, or political subdivision shall be subject to lawsuit or liability
170 arising from any act to comply with the requirements of this chapter; provided, however,

171 that the intentional and knowing failure of any agency head to abide by the provisions of
 172 this chapter shall:

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

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

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

185 SECTION 2.

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

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

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

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

193 (3) 'Secure and verifiable document' means a an unexpired document issued by a state
 194 or federal jurisdiction or recognized by the United States government and that is
 195 verifiable by federal or state law enforcement, intelligence, or homeland security
 196 agencies. Secure and verifiable document shall not mean a Matricula Consular de Alta
 197 Seguridad, matricula consular card, consular matriculation card, consular identification
 198 card, or similar identification card issued by a foreign government regardless of the
 199 holder's immigration status. Secure and verifiable documents shall not include any
 200 foreign passport unless the passport is submitted with a valid United States Homeland
 201 Security Form I-94 or I-94A or other federal document specifying an alien's lawful
 202 immigration status. Only those documents approved and posted by the Attorney General
 203 pursuant to subsection (f) of this Code section shall be considered secure and verifiable
 204 documents. No secure and verifiable document shall be submitted or relied upon for
 205 purposes that are in conflict with any limitation or restriction specified in such document.
 206 Copies of secure and verifiable documents submitted in person, by mail, or electronically

207 shall satisfy the definition of 'secure and verifiable document' in this chapter. For
208 purposes of this paragraph, electronic submission includes a submission via facsimile,
209 Internet, electronic texting, or any other electronically assisted transmission."

210 **SECTION 3.**

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

212 **SECTION 4.**

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