

The House Committee on Judiciary Non-civil offers the following substitute to SB 458:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 50-13-2 of the Official Code of Georgia Annotated, relating to  
2 definitions applicable to provisions relating to administrative procedure, so as to exclude the  
3 Immigration Enforcement Review Board from certain administrative procedures; to amend  
4 Chapter 36 of Title 50 of the Official Code of Georgia Annotated, relating to the verification  
5 of lawful presence within the United States, so as to modify provisions relating to  
6 verification requirements, procedures, and conditions for applicants for public benefits; to  
7 modify the definition of a secure and verifiable document; to provide for related matters; to  
8 provide for an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

10 Code Section 50-13-2 of the Official Code of Georgia Annotated, relating to definitions  
11 applicable to provisions relating to administrative procedure, is amended by revising  
12 paragraph (1) as follows:  
13

14 "(1) 'Agency' means each state board, bureau, commission, department, activity, or  
15 officer authorized by law expressly to make rules and regulations or to determine  
16 contested cases, except the General Assembly; the judiciary; the Governor; the State  
17 Board of Pardons and Paroles; the State Financing and Investment Commission; the State  
18 Properties Commission; the Board of Bar Examiners; the Board of Corrections and its  
19 penal institutions; the State Board of Workers' Compensation; the Immigration  
20 Enforcement Review Board; all public authorities except as otherwise expressly provided  
21 by law; the State Personnel Board (Merit System); the Department of Administrative  
22 Services or commissioner of administrative services; the Technical College System of  
23 Georgia; the Department of Revenue when conducting hearings relating to alcoholic  
24 beverages or relating to bona fide coin operated amusement machines or any violations  
25 relating thereto; the Georgia Tobacco Community Development Board; the Georgia  
26 Higher Education Savings Plan; any school, college, hospital, or other such educational,

27 eleemosynary, or charitable institution; or any agency when its action is concerned with  
 28 the military or naval affairs of this state. The term 'agency' shall include the State Board  
 29 of Education and Department of Education, subject to the following qualifications:

30 (A) Subject to the limitations of subparagraph (B) of this paragraph, all otherwise valid  
 31 rules adopted by the State Board of Education and Department of Education prior to  
 32 January 1, 1990, are ratified and validated and shall be effective until January 1, 1991,  
 33 whether or not such rules were adopted in compliance with the requirements of this  
 34 chapter; and

35 (B) Effective January 1, 1991, any rule of the State Board of Education or Department  
 36 of Education which has not been proposed, submitted, and adopted in accordance with  
 37 the requirements of this chapter shall be void and of no effect."

### 38 SECTION 2.

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

43 "50-36-1.

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

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

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

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

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

- 57 (i) Adult education;
- 58 (ii) Authorization to conduct a commercial enterprise or business;
- 59 (iii) Business certificate, license, or registration;
- 60 (iv) Business loan;
- 61 (v) Cash allowance;
- 62 (vi) Disability assistance or insurance;

- 63 (vii) Down payment assistance;  
 64 (viii) Energy assistance;  
 65 (ix) Food stamps;  
 66 (x) Gaming license;  
 67 (xi) Health benefits;  
 68 (xii) Housing allowance, grant, guarantee, or loan;  
 69 (xiii) Loan guarantee;  
 70 (xiv) Medicaid;  
 71 (xv) Occupational license;  
 72 (xvi) Professional license;  
 73 (xvii) Public postsecondary education;  
 74 ~~(xvii)~~(xviii) Registration of a regulated business;  
 75 ~~(xviii)~~(xix) Rent assistance or subsidy;  
 76 ~~(xix)~~(xx) State grant or loan;  
 77 ~~(xx)~~(xxi) State identification card;  
 78 ~~(xxi)~~(xxii) Tax certificate required to conduct a commercial business;  
 79 ~~(xxii)~~(xxiii) Temporary assistance for needy families (TANF);  
 80 ~~(xxiii)~~(xxiv) Unemployment insurance; and  
 81 ~~(xxiv)~~(xv) Welfare to work.

82 (B) Each year before August 1, the Attorney General shall ~~prepare a detailed report~~  
 83 ~~indicating any 'public benefit' that may be administered in this state as defined in 8~~  
 84 ~~U.S.C. Sections 1611 and 1621 and whether such benefit~~ provide public notice listing  
 85 all public benefits set forth in subparagraph (A) of this paragraph. Such notice shall  
 86 also clearly provide that each benefit listed is subject to SAVE verification pursuant to  
 87 this Code section. Such report shall provide the description of the benefit and shall be  
 88 updated annually and distributed to the members of the General Assembly and be  
 89 posted to the Attorney General's website.

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

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

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

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

- 98 (2) For assistance for health care items and services that are necessary for the treatment  
 99 of an emergency medical condition, as defined in 42 U.S.C. Section 1396b(v)(3), of the  
 100 alien involved and are not related to an organ transplant procedure;
- 101 (3) For short-term, noncash, in-kind emergency disaster relief;
- 102 (4) For public health assistance for immunizations with respect to immunizable diseases  
 103 and for testing and treatment of symptoms of communicable diseases whether or not such  
 104 symptoms are caused by a communicable disease;
- 105 (5) For programs, services, or assistance such as soup kitchens, crisis counseling and  
 106 intervention, and short-term shelter specified by the United States Attorney General, in  
 107 the United States Attorney General's sole and unreviewable discretion after consultation  
 108 with appropriate federal agencies and departments, which:
- 109 (A) Deliver in-kind services at the community level, including through public or  
 110 private nonprofit agencies;
- 111 (B) Do not condition the provision of assistance, the amount of assistance provided,  
 112 or the cost of assistance provided on the individual recipient's income or resources; and
- 113 (C) Are necessary for the protection of life or safety; or
- 114 (6) For prenatal care; ~~or~~
- 115 ~~(7) For postsecondary education, whereby the Board of Regents of the University System~~  
 116 ~~of Georgia or the State Board of the Technical College System of Georgia shall set forth,~~  
 117 ~~or cause to be set forth, policies regarding postsecondary benefits that comply with all~~  
 118 ~~federal law including but not limited to public benefits as described in 8 U.S.C. Section~~  
 119 ~~1611, 1621, or 1623.~~
- 120 (e)(1) An agency or political subdivision providing or administering a public benefit  
 121 shall require every applicant for such benefit to:
- 122 ~~(A)~~(A) Provide at least one secure and verifiable document, as defined in Code Section  
 123 50-36-2; and
- 124 ~~(B)~~(B) Execute a signed and sworn affidavit verifying the applicant's lawful presence  
 125 in the United States, which affidavit shall state:
- 126 ~~(A)~~(i) The applicant is a United States citizen or legal permanent resident 18 years  
 127 of age or older; or
- 128 ~~(B)~~(ii) The applicant is a qualified alien or nonimmigrant under the federal  
 129 Immigration and Nationality Act, Title 8 U.S.C., 18 years of age or older lawfully  
 130 present in the United States and provide the applicant's alien number issued by the  
 131 Department of Homeland Security or other federal immigration agency; ~~and~~,
- 132 (2) An applicant may satisfy the requirements of this subsection by submitting  
 133 documents at any time within nine months prior to the application deadline, provided that

134 documents that are submitted early remain valid through the licensing or approval period,  
 135 or such other period for which the applicant is applying to receive a public benefit.  
 136 (3) If an applicant for a public benefit is under 18 years of age, the applicant shall be  
 137 required to execute the signed and sworn affidavit within 30 days following such  
 138 applicant's eighteenth birthday.

139 ~~(3)~~(4) The state auditor shall create affidavits for use under this ~~Code section~~ subsection  
 140 and shall keep a current version of such affidavits on the Department of Audits and  
 141 ~~Account's~~ Accounts' official website.

142 ~~(4)~~(5) Documents or copies of documents required by this ~~Code section~~ subsection may  
 143 be submitted in person, by mail, or electronically, provided the submission complies with  
 144 Chapter 12 of Title 10. Copies of documents submitted in person, by mail, or  
 145 electronically shall satisfy the requirements of this Code section. For purposes of this  
 146 paragraph, electronic submission includes a submission via facsimile, Internet, electronic  
 147 texting, or any other electronically assisted transmission.

148 (6) The requirements of this subsection shall not apply to any applicant renewing an  
 149 application for a public benefit, within the same agency, where the applicant has  
 150 previously complied with the requirements of this subsection by submission of a secure  
 151 and verifiable document establishing that such applicant is a United States citizen.

152 (f) For any applicant who has executed an affidavit that he or she is an alien lawfully  
 153 present in the United States, eligibility for public benefits shall be made through the  
 154 Systematic Alien Verification of Entitlement (SAVE) program operated by the United  
 155 States Department of Homeland Security or a successor program designated by the United  
 156 States Department of Homeland Security. Until such eligibility verification is made, the  
 157 affidavit may be presumed to be proof of lawful presence for the purposes of this Code  
 158 section.

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

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

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

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

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

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

181 (m) Compliance with this Code section by an agency or political subdivision shall include  
182 taking all reasonable, necessary steps required by a federal agency to receive authorization  
183 to utilize the SAVE program or any successor program designated by the United States  
184 Department of Homeland Security or other federal agency, including providing copies of  
185 statutory authorization for the agency or political subdivision to provide public benefits and  
186 other affidavits, letters of memorandum of understanding, or other required documents or  
187 information needed to receive authority to utilize the SAVE program or any successor  
188 program for each public benefit provided by such agency or political subdivision. An  
189 agency or political subdivision that takes all reasonable, necessary steps and submits all  
190 requested documents and information as required in this subsection but either has not been  
191 given access to use such programs by such federal agencies or has not completed the  
192 process of obtaining access to use such programs shall not liable for failing to use the  
193 SAVE program or any such successor program to verify eligibility for public benefits.

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

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

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

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

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

213 **SECTION 3.**

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

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

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

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

221 (3) 'Secure and verifiable document' means ~~a~~ an unexpired document issued by a state  
 222 or federal jurisdiction or recognized by the United States government and that is  
 223 verifiable by federal or state law enforcement, intelligence, or homeland security  
 224 agencies. Secure and verifiable document shall not mean a Matricula Consular de Alta  
 225 Seguridad, matricula consular card, consular matriculation card, consular identification  
 226 card, or similar identification card issued by a foreign government regardless of the  
 227 holder's immigration status. Secure and verifiable documents shall not include any  
 228 foreign passport unless the passport is submitted with a valid United States Homeland  
 229 Security Form I-94 or I-94A or other federal document specifying an alien's lawful  
 230 immigration status. Only those documents approved and posted by the Attorney General  
 231 pursuant to subsection (f) of this Code section shall be considered secure and verifiable  
 232 documents. No secure and verifiable document shall be submitted or relied upon for  
 233 purposes that are in conflict with any limitation or restriction specified in such document.  
 234 Copies of secure and verifiable documents submitted in person, by mail, or electronically  
 235 shall satisfy the definition of 'secure and verifiable document' in this chapter. For  
 236 purposes of this paragraph, electronic submission includes a submission via facsimile,  
 237 Internet, electronic texting, or any other electronically assisted transmission."

238 **SECTION 4.**

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

240

**SECTION 5.**

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