

## House Bill 87

By: Representatives Ramsey of the 72<sup>nd</sup>, Golick of the 34<sup>th</sup>, Dempsey of the 13<sup>th</sup>, Austin of the 10<sup>th</sup>, Allison of the 8<sup>th</sup>, and others

A 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, Chapter 80 of Title 36, and Code Section 50-36-1 of the Official  
3 Code of Georgia Annotated, relating to security and immigration compliance, general  
4 provisions relative to local government, and the verification of immigration status using the  
5 federal SAVE system prior to the issuance of certain public benefits, requirements,  
6 procedures, conditions, exceptions, regulations, and criminal and other penalties for  
7 violations, respectively, so as to provide for definitions; to provide for a private cause of  
8 action for enforcement of provisions relating to the prevention of illegal immigration; to  
9 require private employers to use an employment eligibility verification system and provide  
10 for civil penalties to be imposed by the Commissioner of Labor; to amend Chapter 11 of Title  
11 16 of the Official Code of Georgia Annotated, relating to offenses against public order and  
12 safety, so as to provide for offenses involving illegal aliens; to amend Chapter 5 of Title 17  
13 of the Official Code of Georgia Annotated, relating to searches and seizures, so as to provide  
14 for the investigation of illegal alien status; to amend Title 35 of the Official Code of Georgia  
15 Annotated, relating to law enforcement officers and agencies, so as to provide authority for  
16 law enforcement officers to enforce federal immigration laws under certain circumstances  
17 and to provide immunity for such officers subject to limitations; to provide for civil and  
18 criminal penalties; to modify provisions relating to training peace officers for enforcement  
19 of immigration and custom laws; to establish grant funding for local law enforcement  
20 agencies to enter into agreements with federal agencies for the enforcement of immigration  
21 law; to amend Title 42 of the Official Code of Georgia Annotated, relating to penal  
22 institutions, so as to provide for the verification of the immigration status of foreign nationals  
23 arrested and held in a county or municipal jail; to provide that counties that can demonstrate  
24 use or attempted use of the federal Department of Homeland Security's Secure Communities  
25 initiative or that have entered or attempted to enter into memorandums of agreement with the  
26 federal government under Section 287(g) of the federal Immigration and Nationality Act  
27 shall receive additional funding for confinement of state inmates; to provide for a funding  
28 contingency; to amend Chapter 60 of Title 36 of the Official Code of Georgia Annotated,

29 relating to general provisions applicable to local governments, so as to require proof that  
 30 private businesses are participating in the employment eligibility verification system prior  
 31 to the issuance of a business license or occupational tax certificate; to amend Chapter 36 of  
 32 Title 50 of the Official Code of Georgia Annotated, relating to verification of lawful presence  
 33 within the United States, so as to provide for identification cards by applicants for public  
 34 benefits; to enact the "Secure and Verifiable Identity Document Act"; to provide for related  
 35 matters; to provide for an effective date and applicability; to repeal conflicting laws; and for  
 36 other purposes.

37 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

38 I.

39 TITLE

40 SECTION 1.

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

43 II.

44 PRIVATE CAUSE OF ACTION FOR  
 45 THE ENFORCEMENT OF PROVISIONS  
 46 TO PREVENT ILLEGAL IMMIGRATION.

47 SECTION 2.

48 Article 3 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to  
 49 security and immigration compliance, is amended by revising Code Section 13-10-90,  
 50 relating to definitions for provisions relating to security and immigration compliance, by  
 51 redesignating paragraphs (2.1), (3), and (4) as paragraphs (4), (5), and (6), respectively, and  
 52 adding a new paragraph to read as follows:

53 "(3) 'Legal resident' means a person who is lawfully present within the United States and  
 54 who has a permanent home or domicile in Georgia in which he or she resided for a period  
 55 of not less than 180 days of the preceding calendar year and to which, in the event of his  
 56 or her absence, he or she has the intention of returning."

57

**SECTION 3.**

58 Said article is further amended in Code Section 13-10-91, relating to the verification of the  
59 immigration status of new employees, eligibility, applicability, and rules and regulations for  
60 use of the federal E-Verify identification system, by revising subsection (f) as follows:

61 "(f) No employer or agency or political subdivision, as such term is defined in Code  
62 Section 50-36-1, shall be subject to lawsuit or liability arising from any act to comply with  
63 the requirements of this Code section; provided, however, that a person who is a legal  
64 resident of this state and at least 21 years of age may file a cause of action for injunctive  
65 or other equitable relief against any official or agency of this state or subdivision of this  
66 state for the purpose of enforcing the provisions of this Code section or preventing a  
67 violation of federal immigration law. Such action shall be filed in the superior court of the  
68 county having jurisdiction of the agency's headquarters or where the violation is alleged  
69 to have occurred. If there is a judicial finding that an agency or official of an agency has  
70 violated or failed to abide by the provisions of this Code section or federal immigration  
71 law, the court shall order the agency to conform to the requirements of the law and shall  
72 assess against the agency a fine of not less than \$1,000.00 or more than \$5,000.00 for each  
73 separate violation. The court shall collect the civil penalty and remit the civil penalty for  
74 payment to any local law enforcement agency within the court's jurisdiction for the purpose  
75 of training such agency's law enforcement officers in matters related to the enforcement of  
76 immigration law. In addition, the court shall award all court costs and reasonable attorney  
77 fees to any person that prevails by an adjudication on the merits in a proceeding brought  
78 pursuant to this Code section."

79

**SECTION 4.**

80 Chapter 80 of Title 36 of the Official Code of Georgia Annotated, relating to general  
81 provisions relative to local government, is amended by revising Code Section 36-80-23,  
82 relating to prohibition on immigration sanctuary policies by local governmental entities and  
83 certification of compliance, as follows:

84 "36-80-23.

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

86 (1) 'Legal resident' means a person who is lawfully present within the United States and  
87 who has a permanent home or domicile in Georgia in which he or she resided for a period  
88 of not less than 180 days of the preceding calendar year and to which, in the event of his  
89 or her absence, he or she has the intention of returning. ~~'Federal officials or law~~  
90 enforcement officers' means any person employed by the United States government for  
91 the purpose of enforcing or regulating federal immigration laws and any peace officer  
92 certified by the Georgia Peace Officer Standards and Training Council where such federal

93 ~~official or peace officer is acting within the scope of his or her employment for the~~  
 94 ~~purpose of enforcing federal immigration laws or preserving homeland security.~~

95 ~~(2) 'Immigration status' means the legality or illegality of an individual's presence in the~~  
 96 ~~United States as determined by federal law.~~

97 ~~(3) 'Immigration status information' means any information, not including any~~  
 98 ~~information required by law to be kept confidential but otherwise including but not~~  
 99 ~~limited to any statement, document, computer generated data, recording, or photograph,~~  
 100 ~~which is relevant to immigration status or the identity or location of an individual who~~  
 101 ~~is reasonably believed to be illegally residing within the United States or who is~~  
 102 ~~reasonably believed to be involved in domestic terrorism as that term is defined in Code~~  
 103 ~~Section 16-4-10 or a terroristic act as that term is defined by Code Section 35-3-62.~~

104 ~~(4)~~(2) 'Local governing body' means any political subdivision of this state, including any  
 105 county, consolidated government, municipality, authority, school district, commission,  
 106 board, or any other local public body corporate, governmental unit, or political  
 107 subdivision. 'Legal resident' means a person who is lawfully present within the United  
 108 States and who has a permanent home or domicile in Georgia in which he or she resided  
 109 for a period of not less than 180 days of the preceding calendar year, and to which, in the  
 110 event of his or her absence, he or she has the intention of returning.

111 ~~(5) 'Local official or employee' means any elected or appointed official, supervisor or~~  
 112 ~~managerial employee, contractor, agent, or certified peace officer acting on behalf of or~~  
 113 ~~in conjunction with a local governing body.~~

114 ~~(6)~~(3) 'Sanctuary policy' means any regulation, rule, policy, or practice adopted by a  
 115 local governing body which prohibits or restricts local officials or employees from  
 116 communicating or cooperating with federal officials or law enforcement officers with  
 117 regard to reporting immigration status information while such local official or employee  
 118 is acting within the scope of his or her official duties.

119 (b) No local governing body, whether acting through its governing body or by an initiative,  
 120 referendum, or any other process, shall enact, adopt, implement, or enforce any sanctuary  
 121 policy.

122 (c) Any local governing body that acts in violation of this Code section shall be subject to  
 123 the withholding of state funding or state administered federal funding other than funds to  
 124 provide services specified in subsection (c) of Code Section 50-36-1.

125 (d) The Department of Community Affairs, the Department of Transportation, or any other  
 126 state agency that provides funding to local governing bodies ~~may~~ shall require certification  
 127 of compliance with this Code section as a condition of funding.

128 (e) A person who is a legal resident of this state and at least 21 years of age may file a  
 129 cause of action for injunctive or other equitable relief against any local governing body or

130 official of such body for the purpose of enforcing the provisions of this Code section or  
 131 preventing a violation of federal immigration law. Such action shall be filed in the superior  
 132 court of the county having jurisdiction over the local governing body. If there is a judicial  
 133 finding that a local governing body or official of a local governing body has violated or  
 134 failed to abide by the provisions of this Code section or federal immigration law, the court  
 135 shall order the local governing body to conform to the requirements of the law and shall  
 136 assess against the local governing body a fine of not less than \$1,000.00 or more than  
 137 \$5,000.00 for each separate violation. The court shall collect the civil penalty and remit  
 138 the civil penalty for payment to any local law enforcement agency within the court's  
 139 jurisdiction for the purpose of training such agency's law enforcement officers in matters  
 140 related to the enforcement of immigration law. In addition, the court shall award all court  
 141 costs and reasonable attorney fees to any person that prevails by an adjudication on the  
 142 merits in a proceeding brought pursuant to this Code section."

143 **SECTION 5.**

144 Code Section 50-36-1 of the Official Code of Georgia Annotated, relating to the verification  
 145 of immigration status using the federal SAVE system prior to the issuance of certain public  
 146 benefits, requirements, procedures, conditions, exceptions, regulations, and criminal and  
 147 other penalties for violations, is amended by redesignating paragraph (3) as paragraph (4) and  
 148 adding a new paragraph to read as follows:

149 "(3) 'Legal resident' means a person who is lawfully present within the United States and  
 150 who has a permanent home or domicile in Georgia in which he or she resided for a period  
 151 of not less than 180 days of the preceding calendar year and to which, in the event of his  
 152 or her absence, he or she has the intention of returning."

153 **SECTION 6.**

154 Said Code section is further amended by revising subsection (o) as follows:

155 "(o) No employer, agency, or political subdivision shall be subject to lawsuit or liability  
 156 arising from any act to comply with the requirements of this chapter; provided, however,  
 157 that a person who is a legal resident of this state and at least 21 years of age may file a  
 158 cause of action for injunctive or other equitable relief against any official or agency of this  
 159 state or subdivision of this state for the purpose of enforcing the provisions of this Code  
 160 section or preventing a violation of federal immigration law. Such action shall be filed in  
 161 the superior court of the county having jurisdiction of the agency's headquarters or where  
 162 the violation is alleged to have occurred. If there is a judicial finding that an agency or  
 163 official of an agency has violated or failed to abide by the provisions of this Code section  
 164 or federal immigration law, the court shall order the agency to conform to the requirements

165 of the law and shall assess against the agency a fine of not less than \$1,000.00 or more than  
 166 \$5,000.00 for each separate violation. The court shall collect the civil penalty and remit  
 167 the civil penalty for payment to any local law enforcement agency within the court's  
 168 jurisdiction for the purpose of training such agency's law enforcement officers in matters  
 169 related to the enforcement of immigration law. In addition, the court shall award all court  
 170 costs and reasonable attorney fees to any person that prevails by an adjudication on the  
 171 merits in a proceeding brought pursuant to this Code section."

172 III.

173 OFFENSES INVOLVING ILLEGAL ALIENS.

174 SECTION 7.

175 Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against  
 176 public order and safety, is amended by adding a new article to read as follows:

177 "ARTICLE 5

178 16-11-200.

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

180 (1) 'Illegal alien' means a person who has come to, entered, or remains in the United  
 181 States in violation of federal law.

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

183 (b) A person who transports or moves an illegal alien in a motor vehicle, where such  
 184 person knows or recklessly disregards the fact that such person being transported is an  
 185 illegal alien, shall be guilty of the offense of transporting or moving an illegal alien.

186 (c) A person convicted of transporting or moving an illegal alien who moves seven or  
 187 fewer illegal aliens at the same time shall be guilty of a misdemeanor and, upon conviction  
 188 thereof, shall be punished by a fine not to exceed \$1,000.00 or imprisonment not to exceed  
 189 12 months, or both. A person convicted of transporting or moving an illegal alien who  
 190 moves eight or more illegal aliens at the same time shall be guilty of a felony and, upon  
 191 conviction thereof, shall be punished by a fine of not less than \$5,000.00 or more than  
 192 \$20,000.00 or by imprisonment of not less than one or more than five years, or both.

193 (d) This Code section shall not apply to any government employee transporting or moving  
 194 an illegal alien as a part of his or her law enforcement or other official duties.

195 (e) A motor vehicle used in furtherance of a violation of this Code section shall be subject  
 196 to forfeiture pursuant to Code Section 16-6-13.2, provided that all proceeds generated from  
 197 such forfeiture, after the payment of court, prosecution, and forfeiture proceeding costs,

198 shall go to the law enforcement agency responsible for seizing such vehicle for  
199 reimbursement of the agency's costs and for purposes related to training and enforcement  
200 of immigration laws.

201 16-11-201.

202 (a) As used in this Code section, the term 'illegal alien' means a person who has come to,  
203 entered, or remains in the United States in violation of federal law.

204 (b) A person who conceals, harbors, or shields an illegal alien from detection in any place  
205 in this state, including any building or means of transportation, where such person knows  
206 or recklessly disregards the fact that such person being concealed, harbored, or shielded is  
207 an illegal alien, shall be guilty of the offense of concealing or harboring an illegal alien.

208 (c) A person convicted of concealing or harboring an illegal alien who conceals or harbors  
209 seven or fewer illegal aliens at the same time in the same location shall be guilty of a  
210 misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed  
211 \$1,000.00 or imprisonment not to exceed 12 months, or both. A person convicted of  
212 concealing or harboring an illegal alien who conceals or harbors more than seven illegal  
213 aliens at the same time in the same location shall be guilty of a felony and, upon conviction  
214 thereof, shall be punished by a fine of not less than \$5,000.00 or more than \$20,000.00 or  
215 by imprisonment of not less than one or more than five years, or both.

216 16-11-202.

217 (a) As used in this Code section, the term 'illegal alien' means a person who has come to,  
218 entered, or remains in the United States in violation of federal law.

219 (b) A person who encourages, entices, or induces an illegal alien to enter into this state,  
220 where such person knows or recklessly disregards the fact that such person being  
221 encouraged, enticed, or induced to enter into this state is an illegal alien, shall be guilty of  
222 the offense of encouraging an illegal alien to enter into this state.

223 (c) For a first offense, a person convicted of encouraging an illegal alien to enter into this  
224 state shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by  
225 a fine not to exceed \$1,000.00 or imprisonment not to exceed 12 months, or both. For a  
226 second or subsequent conviction of encouraging an illegal alien to enter into this state, a  
227 person shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine  
228 of not less than \$5,000.00 or more than \$20,000.00 or by imprisonment of not less than one  
229 or more than five years, or both."

230 IV.  
 231 LAW ENFORCEMENT OFFICERS AND  
 232 ENFORCEMENT OF IMMIGRATION LAW.

233 SECTION 8.

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

236 "ARTICLE 5

237 17-5-100.

238 (a) As used in this Code section, the term 'illegal alien' means a person who has come to,  
 239 entered, or remains in the United States in violation of federal law.

240 (b) During any stop of a criminal suspect by a law enforcement officer, where the officer  
 241 has probable cause to believe that such suspect has committed a criminal offense, including  
 242 any traffic offense, if, during the lawful detention of such suspect, the officer develops  
 243 reasonable suspicion to also suspect that such person is an illegal alien, then the officer  
 244 shall, when reasonably practicable, make an attempt to determine the immigration status  
 245 of such suspect.

246 (c) A person shall be presumed to not be an illegal alien if the person provides to the law  
 247 enforcement officer:

248 (1) A secure and verifiable document as defined in Code Section 50-36-2;

249 (2) A valid Georgia driver's license;

250 (3) A valid Georgia identification card issued by the Department of Driver Services; or

251 (4) If the entity requires proof of legal presence in the United States before issuance, any  
 252 valid driver's license from a state or district of the United States or any valid  
 253 identification document issued by the United States federal government.

254 (d) If a suspect does not possess any one of the identification documents listed in  
 255 subsection (c) of this Code section, then the law enforcement officer shall use any  
 256 reasonable means available for determining whether the suspect is an illegal alien,  
 257 including:

258 (1) Use of any authorized federal identification data base;

259 (2) Identification methods authorized by federal law such as 8 USCA 1373(c), 8 USCA  
 260 1644, or other federal provisions;

261 (3) Use of electronic fingerprint readers or similar devices; or

262 (4) Contacting an appropriate federal agency.

263 A suspect may be detained for a reasonable period of time necessary to determine the  
 264 immigration status of such suspect, even after the basis for the original probable cause for  
 265 the stop has expired.

266 (e) A law enforcement officer shall not consider race, color, or national origin in  
 267 implementing the requirements of this Code section except to the extent permitted by the  
 268 Constitutions of Georgia and of the United States.

269 (f) If during the course of the investigation, a law enforcement officer receives verification  
 270 that a suspect is an illegal alien, then such law enforcement officer shall be authorized to  
 271 arrest the suspected illegal alien, securely transport the suspected illegal alien to a federal  
 272 facility in this state or to any other temporary point of detention for transfer into federal  
 273 custody, and to reasonably detain such suspected illegal alien for the period of time  
 274 authorized by state and federal law.

275 (g) No person who in good faith contacts a state or local law enforcement officer or state  
 276 prosecutor for the purpose of acting as a witness to a crime, to report criminal activity, or  
 277 to seek assistance as a victim to a crime shall have his or her immigration status  
 278 investigated based on such contact or based on information arising from such contact."

279 **SECTION 9.**

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

282 "35-1-16.

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

287 (b) Cooperation with federal authorities.

288 (1) To the extent authorized by federal law, state and local law enforcement agencies  
 289 shall be authorized to send, receive, and maintain information relating to the immigration  
 290 status of any individual as reasonably needed for public safety purposes. Except as  
 291 provided by federal law, law enforcement agencies or officials shall not be prohibited  
 292 from receiving or maintaining information relating to the immigration status of any  
 293 individual or sending or exchanging such information with other federal, state, or local  
 294 governmental entities or officials for official public safety purposes.

295 (2) State and local law enforcement agencies shall be authorized to enter into  
 296 memorandum of understandings or agreements with the United States Department of  
 297 Justice, the Department of Homeland Security, or other federal agency for the purpose  
 298 of enforcing federal immigration and customs laws and the detention, removal, and

299 investigation of illegal aliens and the potential unlawful immigration status of any person  
 300 in this state. A peace officer acting within the scope of his or her authority under a  
 301 memorandum of understanding, agreement, or other authorization from the federal  
 302 government shall have the power to arrest, with probable cause, any person suspected of  
 303 being an illegal alien.

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

308 (4) When reasonably possible, applicable state agencies shall consider incentive  
 309 programs and grant funding for the purpose of assisting and encouraging state and local  
 310 law enforcement officers to enter into agreements with federal entities and to utilize  
 311 federal resources consistent with the provisions of this Code section. Local agencies shall  
 312 include measures for entering into memorandums of agreement with the federal  
 313 government under Section 287(g) of the federal Immigration and Nationality Act or  
 314 similar agreements in any comprehensive plans submitted to the Department of  
 315 Community Affairs.

316 (c) Authority to transport illegal aliens. If a state or local law enforcement officer has  
 317 probable cause to believe or verification that a person is an illegal alien, then such officer  
 318 shall be authorized to securely transport a suspected illegal alien to a federal facility in this  
 319 state or to any other temporary point of detention for transfer into federal custody and to  
 320 reasonably detain such suspected illegal alien as authorized by federal law.

321 (d) Authority to arrest illegal aliens. When authorized by federal law, a state or local law  
 322 enforcement officer of this state shall be authorized to arrest any person based on his or her  
 323 status as an illegal alien or for a violation of any federal immigration law.

324 (e) Immunity. A law enforcement officer, acting in good faith to enforce immigration laws  
 325 pursuant to an agreement with federal authorities to collect or share immigration status  
 326 information, or to carry out any provision of this Code section or Code Section 17-5-100,  
 327 shall have immunity from damages or liability from such actions."

## 328 **SECTION 10.**

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

331 "(d) The commissioner shall annually designate ~~appropriate~~ no fewer than ten peace  
 332 officers to apply to be trained pursuant to the memorandum of understanding provided for  
 333 in subsections (b) and (c) of this Code section. Such training shall be funded pursuant to  
 334 the federal Homeland Security Appropriation Act of 2006, Public Law 109-90, or any

335 subsequent source of federal funding. The provisions of this subsection shall become  
 336 effective upon such funding."

337 **SECTION 11.**

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

339 "35-6A-10.

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

350 (b) The council shall:

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

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

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

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

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

369

**SECTION 12.**

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

373 "42-4-14.

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

378 ~~(b) If the prisoner is a foreign national charged with a felony, driving under the influence~~  
 379 ~~pursuant to Code Section 40-6-391, driving without being licensed pursuant to subsection~~  
 380 ~~(a) of Code Section 40-5-20, or with a misdemeanor of a high and aggravated nature, the~~  
 381 ~~keeper of the jail or other officer shall make~~ When any foreign national is confined, for any  
 382 period, in a county or municipal jail, a reasonable effort shall be made to verify that the  
 383 prisoner such foreign national has been lawfully admitted to the United States and if  
 384 lawfully admitted, that such lawful status has not expired. If verification of lawful status  
 385 ~~can not~~ cannot be made from documents in the possession of the ~~prisoner~~ foreign national,  
 386 verification shall be made within 48 hours through a query to the Law Enforcement  
 387 Support Center (LESC) of the United States Department of Homeland Security or other  
 388 office or agency designated for that purpose by the United States Department of Homeland  
 389 Security, ~~or any successor agency~~. If the ~~prisoner~~ foreign national is determined ~~not to be~~  
 390 ~~lawfully admitted to the United States to be an illegal alien~~, the keeper of the jail or other  
 391 officer shall notify the United States Department of Homeland Security, ~~or successor~~  
 392 agency.

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

398 (d) The ~~Georgia Sheriffs Association~~ Georgia Peace Officer Standards and Training  
 399 Council shall prepare and issue model guidelines and procedures which may be used to  
 400 comply with the provisions of this Code section."

401

**SECTION 13.**

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

404 "(c) After proper documentation is received from the clerk of the court, the department  
 405 shall have 15 days to transfer an inmate under sentence to the place of confinement. If the  
 406 inmate is not transferred within the 15 days, the department will reimburse the county, in  
 407 a sum not less than \$7.50 per day per inmate and in such an amount as may be appropriated  
 408 for this purpose by the General Assembly, for the cost of the incarceration, commencing  
 409 15 days after proper documentation is received by the department from the clerk of the  
 410 court; provided, however, that, subject to an appropriation of funds, counties that  
 411 demonstrate continuous use or attempted use of the federal Department of Homeland  
 412 Security's Secure Communities initiative or successor program shall receive an additional  
 413 payment in the amount of 10 percent of the rate paid to counties for reimbursement for  
 414 confinement of state inmates, and also counties that have entered into memorandums of  
 415 agreement or that demonstrate continuous attempts to enter into memorandums of  
 416 agreement with the federal government under Section 287(g) of the federal Immigration  
 417 and Nationality Act or successor program to identify, process, and detain immigration  
 418 offenders shall receive an additional payment in the amount of 10 percent of the rate paid  
 419 to counties for reimbursement for the confinement of state inmates. The reimbursement  
 420 provisions of this Code section shall only apply to payment for the incarceration of felony  
 421 inmates available for transfer to the department, except inmates under death sentence  
 422 awaiting transfer after their initial trial, and shall not apply to inmates who were  
 423 incarcerated under the custody of the commissioner at the time they were returned to the  
 424 county jail for trial on additional charges or returned to the county jail for any other  
 425 purposes, including for the purpose of a new trial."

426 V.

427 VERIFICATION REQUIREMENTS.

428 **SECTION 14.**

429 Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to general  
 430 provisions applicable to local governments, is amended by revising Code Section 36-60-6,  
 431 relating to issuance of local business licenses and evidence of state licensure, as follows:

432 "36-60-6.

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

439 (b) Before any county or municipal corporation issues or renews a business license or  
440 occupational tax certificate to any person with more than five employees, the person shall  
441 provide evidence that he or she is authorized to use the federal employment eligibility  
442 verification system known as E-Verify or any future replacement employment eligibility  
443 verification system. Evidence of such use shall be in the form of a notarized sworn  
444 affidavit attesting that he or she utilizes and will continue to utilize the employment  
445 eligibility verification system in accordance with federal regulations. The affidavit shall  
446 include the person's federally assigned federal employment verification eligibility system  
447 user number and the date of authority for use. The requirements of this subsection shall  
448 be effective on September 1, 2011, as to employers with 500 or more employees, on  
449 January 1, 2012, as to employers with 100 or more employees, and on July 1, 2012, as to  
450 employers with five or more employees.

451 (c) Any county or municipal corporation issuing or renewing a business license or  
452 occupational tax certificate shall provide to the Department of Audits and Reports not later  
453 than December 31 of each year a report demonstrating that such county or municipality is  
454 acting in compliance with the provisions of this Code section. This annual E-Verify report  
455 shall identify each license or certificate issued by the agency in the preceding 12 months  
456 and include the name of the person and business issued a license or certificate and his or  
457 her federally assigned employment eligibility verification system user number as provided  
458 in the affidavit submitted at the time of application. Subject to funding, the Department  
459 of Audits and Reports shall annually conduct an audit of no fewer than 20 percent of such  
460 reporting agencies.

461 (d) In order to assist private businesses and counties and municipal corporations in  
462 complying with the provisions of this Code section, the Department of Audits and Reports  
463 shall provide a standardized form affidavit which may be used as acceptable evidence  
464 demonstrating use of the federal employment eligibility verification system. The form  
465 affidavit shall be posted by the Department of Audits and Reports on the agency's official  
466 website no later than July 1, 2011.

467 (e) Any person presenting false or misleading evidence of such state licensure shall be  
468 guilty of a misdemeanor. Any person, including any government official or employee,  
469 knowingly acting in violation of this Code section shall be guilty of a misdemeanor;  
470 provided, however, that any person who knowingly submits a false or misleading affidavit  
471 regarding the use of a federal employment eligibility verification system shall be guilty of  
472 submitting a false document in violation of Code Section 16-10-20. It shall be a defense  
473 to a violation of this Code section that such person acted in good faith and made a  
474 reasonable attempt to comply with the requirements of this Code section.

475 (f) The Attorney General shall be authorized to bring any criminal or civil action he or she  
 476 deems necessary to ensure compliance with the provisions of this Code section."

477 **SECTION 15.**

478 Chapter 36 of Title 50 of the Official Code of Georgia Annotated, relating to verification of  
 479 lawful presence within the United States, is amended by revising subsection (e) of Code  
 480 Section 50-36-1, relating to verification requirements, procedures, and conditions, as follows:

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

483 (1) Provide at least one secure and verifiable document, as defined in Code Section  
 484 50-36-2, which document shall have been issued by the United States government or a  
 485 state within the United States and which document shall also include a photograph of the  
 486 applicant; and

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

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

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

495 **SECTION 16.**

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

497 "50-36-2.

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

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

501 (1) 'Public entity' means any entity or political subdivision of this state.

502 (2) 'Public official' means an elected or appointed official or an employee or an agent of  
 503 a public entity.

504 (3) 'Secure and verifiable document' means a document issued by a state or federal  
 505 jurisdiction or recognized by the United States government and that is verifiable by  
 506 federal or state law enforcement, intelligence, or homeland security agencies. Secure and  
 507 verifiable document shall not mean a Matricula Consular de Alta Seguridad, matricula  
 508 consular card, consular matriculation card, consular identification card, or similar

509 identification card issued by a foreign government regardless of the holder's immigration  
 510 status.

511 (c) Unless required by federal law, no public entity shall accept, rely upon, or utilize an  
 512 identification document for official purposes unless it is a secure and verifiable document.

513 (d) A public entity that is issuing an identification card, license, permit, or official  
 514 document shall not authorize acceptance of an identification document, nor shall a public  
 515 official acting in an official capacity accept an identification document before issuing such  
 516 identification card, license, permit, or official document, unless such identification  
 517 document is a secure and verifiable document.

518 (e) Any person acting in willful violation of this Code section by knowingly accepting  
 519 documents that are not secure and verifiable shall be guilty of a misdemeanor and, upon  
 520 conviction therefor, shall be punished by a fine not to exceed \$1,000.00 or imprisonment  
 521 not to exceed 12 months, or both.

522 (f) This Code section shall not apply to:

523 (1) A person reporting a crime;

524 (2) A public entity or public official accepting a crime report or conducting a criminal  
 525 investigation;

526 (3) A person providing services to infants and children;

527 (4) A person providing emergency medical service;

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

530 (6) Instances when a federal law mandates acceptance of a document."

531 VI.  
 532 SEVERABILITY, REPEAL,  
 533 AND ENFORCEMENT.

534 **SECTION 17.**

535 (a) If any provision or part of any provision of this Act or the application of the same is held  
 536 invalid or unconstitutional, the invalidity shall not affect the other provisions or applications  
 537 of this Act or any other part of this Act than can be given effect without the invalid provision  
 538 or application, and to this end, the provisions of this Act are severable.

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

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

543 **SECTION 18.**

544 This Act shall become effective on July 1, 2011, and, except as otherwise expressly provided,  
545 shall apply to offenses and violations occurring on or after such date.

546 **SECTION 19.**

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