

House Bill 264

By: Representatives Hutchinson of the 107th, Park of the 101st, Lopez of the 86th, Nguyen of the 89th, Schofield of the 60th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 5 of Chapter 11 of Title 16, Chapter 5 of Title 17, Chapter 1 of Title 35,
2 and Chapter 4 of Title 42 of the Official Code of Georgia Annotated, relating to offenses
3 involving illegal aliens, searches and seizures, general provisions regarding law enforcement
4 officers and agencies, and jails, respectively, so as to revise terminology referring to persons
5 who are noncitizens and present in the United States without official documentation; to
6 provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 5 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to
10 offenses involving illegal aliens, is amended by revising Code Section 16-11-200, relating
11 to definitions and offenses of transporting or moving illegal aliens, as follows:

12 "16-11-200.

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

14 ~~(1) 'Illegal alien' means a person who is verified by the federal government to be present~~
15 ~~in the United States in violation of federal immigration law.~~

16 ~~(2)~~(1) 'Motor vehicle' shall have the same meaning as provided in Code Section 40-1-1.

17 (2) 'Undocumented person' means a person who is verified by the federal government
18 to be present in the United States in violation of federal immigration law.

19 (b) A person who, while committing another criminal offense, knowingly and intentionally
20 transports or moves an ~~illegal alien~~ undocumented person in a motor vehicle for the
21 purpose of furthering the ~~illegal~~ undocumented presence of the ~~alien~~ person in the United
22 States shall be guilty of the offense of transporting or moving an ~~illegal alien~~
23 undocumented person.

24 (c) Except as provided in this subsection, a person convicted for a first offense of
25 transporting or moving an ~~illegal alien~~ undocumented person who moves seven or fewer
26 ~~illegal aliens~~ undocumented persons at the same time shall be guilty of a misdemeanor and,
27 upon conviction thereof, shall be punished by imprisonment not to exceed 12 months, a
28 fine not to exceed \$1,000.00, or both. A person convicted for a second or subsequent
29 offense of transporting or moving an ~~illegal alien~~ undocumented person, and a person
30 convicted on a first offense of transporting or moving an ~~illegal alien~~ undocumented person
31 who moves eight or more ~~illegal aliens~~ undocumented persons at the same time, shall be
32 guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not
33 less than one or more than five years, a fine of not less than \$5,000.00 or more than
34 \$20,000.00, or both. A person who commits the offense of transporting or moving an
35 ~~illegal alien~~ undocumented person who does so with the intent of making a profit or
36 receiving anything of value shall be guilty of a felony and, upon conviction thereof, shall
37 be punished by imprisonment of not less than one or more than five years, a fine of not less
38 than \$5,000.00 or more than \$20,000.00, or both.

39 (d) This Code section shall not apply to:

40 (1) A government employee transporting or moving an ~~illegal alien~~ undocumented
41 person as a part of his or her official duties or to any person acting at the direction of such
42 employee;

- 43 (2) A person who transports an ~~illegal alien~~ undocumented person to or from a judicial
 44 or administrative proceeding when such ~~illegal alien~~ undocumented person is required
 45 to appear pursuant to a summons, subpoena, court order, or other legal process;
- 46 (3) A person who transports an ~~illegal alien~~ undocumented person to a law enforcement
 47 agency or a judicial officer for official government purposes;
- 48 (4) An employer transporting an employee who was lawfully hired; or
- 49 (5) A person providing privately funded social services."

50 **SECTION 2.**

51 Said article is further amended by revising Code Section 16-11-201, relating to definitions
 52 regarding offenses of concealing, harboring, or shielding an illegal alien, as follows:

53 "16-11-201.

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

55 (1) 'Harboring' or 'harbors' means any conduct that tends to substantially help an ~~illegal~~
 56 ~~alien~~ undocumented person to remain in the United States in violation of federal law but
 57 shall not include a person providing services to infants, children, or victims of a crime;
 58 a person providing privately funded social services; a person providing emergency
 59 medical service; or an attorney or his or her employees for the purpose of representing
 60 a criminal defendant.

61 (2) '~~Illegal alien~~' 'Undocumented person' means a person who is verified by the federal
 62 government to be present in the United States in violation of federal immigration law.

63 (b) A person who is acting in violation of another criminal offense and who knowingly
 64 conceals, harbors, or shields an ~~illegal alien~~ undocumented person from detection in any
 65 place in this state, including any building or means of transportation, when such person
 66 knows that the person being concealed, harbored, or shielded is an ~~illegal alien~~
 67 undocumented person, shall be guilty of the offense of concealing or harboring an ~~illegal~~
 68 ~~alien~~ undocumented person.

69 (c) Except as provided in this subsection, a person convicted of concealing or harboring
70 an ~~illegal alien~~ undocumented person who conceals or harbors seven or fewer ~~illegal aliens~~
71 undocumented persons at the same time in the same location shall be guilty of a
72 misdemeanor and, upon conviction thereof, shall be punished by imprisonment not to
73 exceed 12 months, a fine not to exceed \$1,000.00, or both. A person convicted of
74 concealing or harboring an ~~illegal alien~~ undocumented persons who conceals or harbors
75 eight or more ~~illegal aliens~~ undocumented persons at the same time in the same location,
76 or who conceals or harbors an ~~illegal alien~~ undocumented person with the intent of making
77 a profit or receiving anything of value, shall be guilty of a felony and, upon conviction
78 thereof, shall be punished by imprisonment of not less than one or more than five years, a
79 fine of not less than \$5,000.00 or more than \$20,000.00, or both.

80 (d) This Code section shall not apply to a government employee or any person acting at
81 the express direction of a government employee who conceals, harbors, or shelters an
82 ~~illegal alien~~ undocumented person when such ~~illegal alien~~ undocumented person is or has
83 been the victim of a criminal offense or is a witness in any civil or criminal proceeding or
84 who holds an ~~illegal alien~~ undocumented person in a jail, prison, or other detention
85 facility."

86

SECTION 3.

87 Said article is further amended by revising Code Section 16-11-202, relating to offense of
88 inducing an illegal alien to enter state and penalties, as follows:

89 "16-11-202.

90 (a) As used in this Code section, the term '~~illegal alien~~' 'undocumented person' means a
91 person who is verified by the federal government to be present in the United States in
92 violation of federal immigration law.

93 (b) A person who is acting in violation of another criminal offense and who knowingly
94 induces, entices, or assists an ~~illegal alien~~ undocumented person to enter into this state,

95 when such person knows that the person being induced, enticed, or assisted to enter into
96 this state is an ~~illegal alien~~ undocumented person, shall be guilty of the offense of inducing
97 an ~~illegal alien~~ undocumented person to enter into this state.

98 (c) Except as provided in subsection (d) of this Code section, for a first offense, a person
99 convicted of inducing an ~~illegal alien~~ undocumented person to enter into this state shall be
100 guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment
101 not to exceed 12 months, a fine not to exceed \$1,000.00, or both. For a second or
102 subsequent conviction of inducing an ~~illegal alien~~ undocumented person to enter into this
103 state, a person shall be guilty of a felony and, upon conviction thereof, shall be punished
104 by imprisonment of not less than one or more than five years, a fine of not less than
105 \$5,000.00 or more than \$20,000.00, or both.

106 (d) A person who commits the offense of inducing an ~~illegal alien~~ undocumented person
107 to enter into this state who does so with the intent of making a profit or receiving any thing
108 of value shall be guilty of a felony and, upon conviction thereof, shall be punished by
109 imprisonment of not less than one or more than five years, a fine of not less than \$5,000.00
110 or more than \$20,000.00, or both."

111

SECTION 4.

112 Said article is further amended by revising Code Section 16-11-203, relating to authority of
113 law enforcement officers to enforce federal immigration laws and documentation, as follows:
114 "16-11-203.

115 The testimony of any officer, employee, or agent of the federal government having
116 confirmed that a person is an ~~illegal alien~~ undocumented person shall be admissible to
117 prove that the federal government has verified such person to be present in the United
118 States in violation of federal immigration law. Verification that a person is present in the
119 United States in violation of federal immigration law may also be established by any

120 document authorized by law to be recorded or filed and in fact recorded or filed in a public
121 office where items of this nature are kept."

122 **SECTION 5.**

123 Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to searches and
124 seizures, is amended by revising Code Section 17-5-100, relating to investigation of illegal
125 alien status, as follows:

126 "17-5-100.

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

128 (1) 'Criminal violation' means a violation of state or federal criminal law but shall not
129 include a violation of a county or municipal law, regulation, or ordinance.

130 (2) ~~'Illegal alien'~~ 'Undocumented person' means a person who is verified by the federal
131 government to be present in the United States in violation of federal immigration law.

132 (b) Except as provided in subsection (f) of this Code section, during any investigation of
133 a criminal suspect by a peace officer, when such officer has probable cause to believe that
134 a suspect has committed a criminal violation, the officer shall be authorized to seek to
135 verify such suspect's immigration status when the suspect is unable to provide one of the
136 following:

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

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

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

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

143 (5) A document used in compliance with paragraph (2) of subsection (a) of Code
144 Section 40-5-21; or

145 (6) Other information as to the suspect's identity that is sufficient to allow the peace
146 officer to independently identify the suspect.

147 (c) When attempting to determine the immigration status of a suspect pursuant to
148 subsection (b) of this Code section, a peace officer shall be authorized to use any
149 reasonable means available to determine the immigration status of the suspect, including:

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

151 (2) Identification methods authorized by federal law, including those authorized by 8
152 U.S.C.A. Section 1373(c) and 8 U.S.C.A. Section 1644;

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

154 (4) Contacting an appropriate federal agency.

155 (d) A peace officer shall not consider race, color, or national origin in implementing the
156 requirements of this Code section except to the extent permitted by the Constitutions of
157 Georgia and of the United States.

158 (e) If during the course of the investigation into such suspect's identity, a peace officer
159 receives verification that such suspect is an ~~illegal alien~~ undocumented person, then such
160 peace officer may take any action authorized by state and federal law, including, but not
161 limited to, detaining such suspected ~~illegal alien~~ undocumented person, securely
162 transporting such suspect to any authorized federal or state detention facility, or notifying
163 the United States Department of Homeland Security or successor agency. Nothing in this
164 Code section shall be construed to hinder or prevent a peace officer or law enforcement
165 agency from arresting or detaining any criminal suspect on other criminal charges.

166 (f) No person who in good faith contacts or has contact with a state or local peace officer
167 or prosecuting attorney or member of the staff of a prosecuting attorney for the purpose of
168 acting as a witness to a crime, to report criminal activity, or to seek assistance as a victim
169 to a crime shall have his or her immigration status investigated based on such contact or
170 based on information arising from such contact.

171 (g) A peace officer, prosecuting attorney, or government official or employee, acting in
172 good faith to carry out any provision of this Code section, shall have immunity from
173 damages or liability from such actions."

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SECTION 6.

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

179 "35-1-17.

180 (a) **Legislative intent.** It is the intent of the General Assembly to encourage Georgia law
181 enforcement officials to work in conjunction with federal immigration authorities and to
182 utilize all resources made available by the federal government to assist state and local law
183 enforcement officers in the enforcement of the immigration laws of this state and of the
184 United States.

185 (b) **Cooperation with federal authorities.**

186 (1) To the extent authorized by federal law, state and local government employees,
187 including law enforcement officers and prosecuting attorneys, shall be authorized to send,
188 receive, and maintain information relating to the immigration status of any individual as
189 reasonably needed for public safety purposes. Except as provided by federal law, such
190 employees shall not be prohibited from receiving or maintaining information relating to
191 the immigration status of any individual or sending or exchanging such information with
192 other federal, state, or local governmental entities or employees for official public safety
193 purposes.

194 (2) State and local agencies shall be authorized to enter into memorandums of
195 understanding and agreements with the United States Department of Justice, the
196 Department of Homeland Security, or any other federal agency for the purpose of

197 enforcing federal immigration and customs laws and the detention, removal, and
198 investigation of ~~illegal aliens~~ undocumented persons and the immigration status of any
199 person in this state. A peace officer acting within the scope of his or her authority under
200 any such memorandum of understanding, agreement, or other authorization from the
201 federal government shall have the power to arrest, with probable cause, any person
202 suspected of being an ~~illegal alien~~ undocumented person.

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

207 (4) When reasonably possible, applicable state agencies shall consider incentive
208 programs and grant funding for the purpose of assisting and encouraging state and local
209 agencies and departments to enter into agreements with federal entities and to utilize
210 federal resources consistent with the provisions of this Code section.

211 (c) **Authority to transport ~~illegal aliens~~ undocumented persons.** If a state or local law
212 enforcement officer has verification that a person is an ~~illegal alien~~ undocumented person,
213 then such officer shall be authorized to securely transport such ~~illegal alien~~ undocumented
214 person to a federal facility in this state or to any other temporary point of detention and to
215 reasonably detain such ~~illegal alien~~ undocumented person when authorized by federal law.
216 Nothing in this Code section shall be construed to hinder or prevent a peace officer or law
217 enforcement agency from arresting or detaining any criminal suspect on other criminal
218 charges.

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

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

227 **SECTION 7.**

228 Chapter 4 of Title 42 of the Official Code of Georgia Annotated, relating to jails, is amended
229 by revising Code Section 42-4-14, relating to "illegal alien" defined and determination of
230 nationality of person charged with felony and confined in jail facility, as follows:

231 "42-4-14.

232 (a) As used in this Code section, the term ~~'illegal alien'~~ 'undocumented person' means a
233 person who is verified by the federal government to be present in the United States in
234 violation of federal immigration law.

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

239 (c) When any foreign national is confined, for any period, in a county or municipal jail,
240 a reasonable effort shall be made to verify that such foreign national has been lawfully
241 admitted to the United States and if lawfully admitted, that such lawful status has not
242 expired. If verification of lawful status cannot be made from documents in the possession
243 of the foreign national, verification shall be made within 48 hours through a query to the
244 Law Enforcement Support Center (LESC) of the United States Department of Homeland
245 Security or other office or agency designated by the federal government. If the foreign
246 national is determined to be an ~~illegal alien~~ undocumented person, the keeper of the jail or
247 other officer shall notify the United States Department of Homeland Security, or other
248 office or agency designated for notification by the federal government.

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

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

256

SECTION 8.

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