

House Bill 82

By: Representatives Reeves of the 99th, Martinez of the 111th, Oliver of the 84th, Powell of the 33rd, Werkheiser of the 157th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial
2 relations, so as to provide for a state administered guest worker program under the
3 Commissioner of Labor; to provide for the purpose of such program; to provide definitions;
4 to provide for the procedures for such program and the requirements to participate in such
5 program; to provide for authorizations to participate in such program, identification cards,
6 and renewals of authorizations; to provide for penalties for violations; to provide for the
7 promulgation of rules and regulations; to provide for contingent effectiveness; to provide a
8 short title; to provide for related matters; to provide for an effective date; to repeal conflicting
9 laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 This Act shall be known and may be cited as the "Georgia Guest Worker Act."

13 **SECTION 2.**

14 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,
15 is amended by revising Chapter 11, which was previously reserved, to read as follows:

H. B. 82

- 1 -

"CHAPTER 11

34-11-1.

The Commissioner of Labor shall create a state administered guest worker program within the Department of Labor. Such program shall conform to the provisions of this chapter and to applicable federal laws, rules, and regulations. Reserved.

34-11-2.

The state administered guest worker program shall be for the purpose of filling needed labor shortages in the State of Georgia through the hiring by employers within this state of willing citizens of other nations to perform work in this state for limited periods of time.

34-11-3.

(a) As used in this chapter, the term:

(1) 'Commissioner' means the Commissioner of Labor.

(2) 'Department' means the Department of Labor.

(3) 'Guest worker' means a citizen of another country allowed to work in this state pursuant to the program established by this chapter.

(4) 'Guest worker program' or 'program' means the program created by the Commissioner and administered by the State of Georgia as provided for in this chapter.

(b) Before any citizen of another country may be hired and allowed to come into this state under the guest worker program, the Commissioner shall conduct a study or studies to determine if there is a labor shortage in this state and, if a labor shortage is found to exist, determine the industries in which any such shortage exists and the scope of the shortage. A labor shortage shall exist only when the Commissioner, based upon a study or studies of the labor force in this state, determines that there is an insufficient number of qualified citizens of the United States or persons who are citizens of other countries who are legally

present in the United States available to fill the job openings in this state in a particular industry and employing foreign laborers under the program created by this chapter will not adversely affect other currently employed workers in this state. If the Commissioner determines that such a labor shortage does exist in this state in an industry, the Commissioner shall determine the magnitude of such shortage and utilize such determination to establish the number of guest workers to be allowed for such industry under the guest worker program.

34-11-4.

(a) A guest worker may be recruited for employment under this chapter only while currently present and living in his or her country of citizenship or while currently present in the United States pursuant to a valid visa. A person who is not a citizen of the United States shall not be allowed to participate in the guest worker program if such person:

(1) Has been previously refused admission into the United States;

(2) Has been deported from the United States;

(3) Has been convicted of a felony or crime involving moral turpitude or any act which if committed in this state would constitute reckless driving under Code Section 40-6-390 or driving under the influence of drugs, alcohol, or other intoxicating substances under Code Section 40-6-391; or

(4) Does not meet the qualifications for entry into the United States established by the federal government.

(b) If required or provided for in federal law, a guest worker hired and participating in the guest worker program may bring only immediate family members to accompany such guest worker. Immediate family members shall be limited to the guest worker's spouse and minor children.

34-11-5.

An employer in this state that desires to recruit and hire guest workers pursuant to this chapter shall agree to:

(1) Pay a fee to the department established by the Commissioner to offset the costs of administering the guest worker program;

(2) Recruit a guest worker only from such worker's country of citizenship or currently in the United States pursuant to a valid visa;

(3) Provide health insurance for such guest worker employed by such employer or ensure that such guest worker has and maintains health insurance while in this state. Such health insurance shall include each family member accompanying such guest worker;

(4) If required or provided for in federal law, provide housing for such guest worker and accompanying family members through housing provided by the employer or rental or public housing. The Commissioner shall provide for standards for such housing;

(5) Provide workers' compensation insurance coverage in compliance with state law covering injury and disease arising out of and in the course of the guest worker's employment. If the type of employment for which the guest worker is to be employed is not covered by or is exempt from the state workers' compensation law, the employer shall provide, at no cost to the guest worker, insurance covering injury and disease arising out of and in the course of such guest worker's employment that will provide benefits at least equal to those provided under the state workers' compensation law for other comparable employment;

(6) Provide to the guest worker, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned;

(7) If required or provided for in federal law, provide each guest worker with three meals a day or furnish free and convenient cooking and kitchen facilities to the guest worker that will enable the guest worker to prepare his or her own meals. Where the employer provides meals, the job offer shall state the charge, if any, to the guest worker for such

91 meals; provided, however, that the charges shall not exceed the costs of providing such
92 meals;

93 (8) Pay the guest worker at least the Adverse Effect Wage Rate established by the United
94 States Department of Labor; a prevailing wage set by the Commissioner; an agreed-upon
95 collective bargaining rate; the federal minimum wage; or the minimum wage of the State
96 of Georgia, whichever is highest, for every hour or portion thereof worked during a pay
97 period by the guest worker. As used in this paragraph, the term 'hours worked' shall have
98 the same meaning as set forth in the federal Fair Labor Standards Act, 29 U.S.C. 201, et
99 seq.;

100 (9) Pay the guest worker's costs of transportation, as established by rule and regulation,
101 from the guest worker's country of citizenship to this state and the cost to return upon
102 completion of such guest worker's employment contract or the termination without cause
103 of such guest worker's employment contract;

104 (10) If required or provided for in federal law, pay the costs of transportation to and from
105 the housing provided to the guest worker to the place of employment;

106 (11) Pay or ensure the payment of all payroll taxes for such guest worker assessed by the
107 federal government or the State of Georgia for guest workers;

108 (12) Ensure that each guest worker employed by such employer under the guest worker
109 program returns to the guest worker's country of citizenship upon termination of
110 employment or eligibility under the guest worker program; and

111 (13) Inform the department of the abandonment by the guest worker of such guest
112 worker's employment within three days of any such abandonment of employment by such
113 guest worker.

34-11-6.

(a) A guest worker and accompanying family members shall be authorized to participate in the guest worker program for a period of one year from the date such guest worker is hired. Such authorization may be renewed for additional one-year periods, provided that:

(1) The employer agrees to continue the employment of such guest worker under the terms and conditions set forth in this chapter and any rules and regulations promulgated by the Commissioner and agrees to pay the fee established by the Commissioner to offset the costs of the guest worker program; and

(2) The Commissioner of Labor certifies that there is a continuing labor shortage in the industry in which such guest worker is employed and there is a need for the continued employment of such guest worker to alleviate such labor shortage.

(b) Application for authorization to continue as a guest worker shall be filed not more than 60 days and not less than 30 days prior to the termination date of the existing authorization to be a guest worker. Provided that such application is timely filed, such guest worker may continue to be employed under the guest worker's existing authorization until such time as the department rules on the application.

(c) The Commissioner shall provide each guest worker and each family member accompanying such guest worker with an identification card bearing a photograph of the guest worker or family member along with the guest worker's or family member's name and other identifying information that the Commissioner deems necessary. The guest worker shall carry such identification card with him or her at all times and shall display it upon request to representatives of the department and law enforcement officers of this state. If the valid visa issued to the guest worker contains the information required by this subsection, such visa may be used in lieu of the state identification card provided for under this subsection.

34-11-7.

(a) Any employer participating in the guest worker program that violates any provision of this chapter or any rule or regulation promulgated by the Commissioner shall be subject to a civil fine of not more than \$5,000.00 for each such violation.

(b) Any person who participates in the guest worker program as a guest worker who fails or refuses to return to his or her country of citizenship within 30 days following the termination of his or her employment as a guest worker or within 30 days of the expiration of his or her status as a guest worker shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for a period of not less than one nor more than five years or a fine of not more than \$10,000.00, or both.

34-11-8.

The Commissioner shall be authorized to promulgate such rules and regulations as necessary to implement the provisions of this chapter.

34-11-9.

The provisions of this chapter shall become effective on the first day of the third month following a finding by the Attorney General that the program established under this chapter may be lawfully administered under the laws of the State of Georgia and the United States."

SECTION 3.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 4.

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