

House Bill 2 (AS PASSED HOUSE AND SENATE)

By: Representatives Rice of the 51st, Peake of the 137th, Lindsey of the 54th, and Graves of the 12th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated,
2 relating to security and immigration compliance, so as to clarify compliance requirements
3 of public employers; to provide certain immunity; to amend Article 1 of Chapter 4 of Title
4 42 of the Official Code of Georgia Annotated, relating to general provisions pertaining to
5 jails, so as to change certain provisions relating to keepers of jails and queries made to the
6 United States Department of Homeland Security; to amend Chapter 36 of Title 50 of the
7 Official Code of Georgia Annotated, relating to verification of lawful presence within the
8 United States, so as to change certain provisions relating to verification requirements,
9 procedures, and conditions; to provide for definitions; to provide for reports and duties of the
10 Attorney General; to provide certain immunity; to provide for related matters; to provide an
11 effective date; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Article 3 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to
15 security and immigration compliance, is amended by revising Code Section 13-10-91,
16 relating to verification of new employee information and applicability and rules and
17 regulations, as follows:

18 "13-10-91.

19 (a) ~~On or after July 1, 2007, every~~ Every public employer, including, but not limited to,
20 every municipality and county, shall register and participate in the federal work
21 authorization program to verify information employment eligibility of all new newly hired
22 employees. Upon federal authorization, a public employer shall permanently post the
23 employer's federally issued user identification number and date of authorization, as
24 established by the agreement for authorization, on the employer's website; provided,
25 however, that if a local public employer does not maintain a website, the identification

26 number and date of authorization shall be published annually in the official legal organ for
27 the county. State departments, agencies, or instrumentalities may satisfy the requirement
28 of this Code section by posting information required by this Code section on one website
29 maintained and operated by the state.

30 (b)(1) No public employer shall enter into a contract pursuant to this chapter for the
31 physical performance of services within this state unless the contractor registers and
32 participates in the federal work authorization program to verify information of all new
33 newly hired employees or subcontractors. Before a bid for any such service is considered
34 by a public employer, the bid shall include a signed, notarized affidavit from the
35 contractor attesting to the following:

36 (A) The affiant has registered with and is authorized to use the federal work
37 authorization program;
38 (B) The user identification number and date of authorization for the affiant; and
39 (C) The affiant is using and will continue to use the federal work authorization
40 program throughout the contract period.

41 An affidavit required by this subsection shall be considered an open public record once
42 a public employer has entered into a contract for services; provided, however, that any
43 information protected from public disclosure by federal law shall be redacted.

44 (2) No contractor or subcontractor who enters a contract pursuant to this chapter with a
45 public employer shall enter into such a contract or subcontract in connection with the
46 physical performance of services within this state unless the contractor or subcontractor
47 registers and participates in the federal work authorization program to verify information
48 of all new newly hired employees.

49 (3) Paragraphs (1) and (2) of this subsection shall apply as follows:

50 (A) On or after July 1, 2007, with respect to public employers, contractors, or
51 subcontractors of 500 or more employees;
52 (B) On or after July 1, 2008, with respect to public employers, contractors, or
53 subcontractors of 100 or more employees; and
54 (C) On or after July 1, 2009, with respect to all public employers, contractors, or
55 subcontractors.

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

58 (d) Except as provided in subsection (e) of this Code section, the Commissioner shall
59 prescribe forms and promulgate rules and regulations deemed necessary in order to
60 administer and effectuate this Code section and publish such rules and regulations on the
61 Georgia Department of Labor's website.

62 (e) The commissioner of the Georgia Department of Transportation shall prescribe all
63 forms and promulgate rules and regulations deemed necessary for the application of this
64 Code section to any contract or agreement relating to public transportation and shall
65 publish such rules and regulations on the Georgia Department of Transportation's website.
66 (f) No employer or agency or political subdivision, as such term is defined in Code
67 Section 50-36-1, shall be subject to lawsuit or liability arising from any act to comply with
68 the requirements of this Code section."

69 **SECTION 2.**

70 Article 1 of Chapter 4 of Title 42 of the Official Code of Georgia Annotated, relating to
71 general provisions pertaining to jails, is amended by revising Code Section 42-4-14, relating
72 to the determination of nationality of persons charged with a felony and confined in a jail
73 facility, as follows:

74 "42-4-14.

75 (a) When any person ~~charged with a felony or with driving under the influence pursuant~~
76 ~~to Code Section 40-6-391 or convicted of driving without being licensed in violation of~~
77 ~~subsection (a) of Code Section 40-5-20~~ is confined, for any period, in the jail of ~~the a~~
78 county; or any municipality or a jail operated by a regional jail authority in compliance
79 with Article 36 of the Vienna Convention on Consular Relations, a reasonable effort shall
80 be made to determine the nationality of the person so confined.

81 (b) If the prisoner is a foreign national charged with a felony, driving under the influence
82 pursuant to Code Section 40-6-391, driving without being licensed pursuant to
83 subsection (a) of Code Section 40-5-20, or with a misdemeanor of a high and aggravated
84 nature, the keeper of the jail or other officer shall make a reasonable effort to verify that
85 the prisoner has been lawfully admitted to the United States and if lawfully admitted, that
86 such lawful status has not expired. If verification of lawful status can not be made from
87 documents in the possession of the prisoner, verification shall be made within 48 hours
88 through a query to the Law Enforcement Support Center (LESC) of the United States
89 Department of Homeland Security or other office or agency designated for that purpose by
90 the United States Department of Homeland Security. If the prisoner is determined not to
91 be lawfully admitted to the United States, the keeper of the jail or other officer shall notify
92 the United States Department of Homeland Security.

93 (c) Nothing in this Code section shall be construed to deny a person bond or from being
94 released from confinement when such person is otherwise eligible for release.

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

97

SECTION 3.

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

102 "50-36-1.

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

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

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

109 (3)(A) 'Public benefit' means a federal benefit as defined in 8 U.S.C. Section 1611, a
110 state or local benefit as defined in 8 U.S.C. Section 1621, a benefit identified as a public
111 benefit by the Attorney General of Georgia, or a public benefit which shall include the
112 following:

113 (i) Adult education;

114 (ii) Authorization to conduct a commercial enterprise or business;

115 (iii) Business certificate, license, or registration;

116 (iv) Business loan;

117 (v) Cash allowance;

118 (vi) Disability assistance or insurance;

119 (vii) Down payment assistance;

120 (viii) Energy assistance;

121 (ix) Food stamps;

122 (x) Gaming license;

123 (xi) Health benefits;

124 (xii) Housing allowance, grant, guarantee, or loan;

125 (xiii) Loan guarantee;

126 (xiv) Medicaid;

127 (xv) Occupational license;

128 (xvi) Professional license;

129 (xvii) Registration of a regulated business;

130 (xviii) Rent assistance or subsidy;

131 (xix) State grant or loan;

132 (xx) State identification card;

133 (xxi) Tax certificate required to conduct a commercial business;

134 (xxii) Temporary assistance for needy families (TANF);

135 (xxiii) Unemployment insurance; and

136 (xxiv) Welfare to work.

137 (B) Each year before August 1, the Attorney General shall prepare a detailed report
138 indicating any 'public benefit' that may be administered in this state as defined in 8
139 U.S.C. Sections 1611 and 1621 and whether such benefit is subject to SAVE
140 verification pursuant to this Code section. Such report shall provide the description of
141 the benefit and shall be updated annually and distributed to the members of the General
142 Assembly and be posted to the Attorney General's website.

143 (b) Except as provided in subsection (c) (d) of this Code section or where exempted by
144 federal law, on or after July 1, 2007, every agency or a political subdivision of this state
145 shall verify the lawful presence in the United States of any natural person 18 years of age
146 or older who has applied for state or local applicant for public benefits, as defined in 8
147 U.S.C. Section 1621, or for federal public benefits, as defined in 8 U.S.C. Section 1611,
148 that is administered by an agency or a political subdivision of this state.

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

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

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

154 (2) For assistance for health care items and services that are necessary for the treatment
155 of an emergency medical condition, as defined in 42 U.S.C. Section 1396b(v)(3), of the
156 alien involved and are not related to an organ transplant procedure;

157 (3) For short-term, noncash, in-kind emergency disaster relief;

158 (4) For public health assistance for immunizations with respect to immunizable diseases
159 and for testing and treatment of symptoms of communicable diseases whether or not such
160 symptoms are caused by a communicable disease;

161 (5) For programs, services, or assistance such as soup kitchens, crisis counseling and
162 intervention, and short-term shelter specified by the United States Attorney General, in
163 the United States Attorney General's sole and unreviewable discretion after consultation
164 with appropriate federal agencies and departments, which:

165 (A) Deliver in-kind services at the community level, including through public or
166 private nonprofit agencies;

167 (B) Do not condition the provision of assistance, the amount of assistance provided,
168 or the cost of assistance provided on the individual recipient's income or resources; and

169 (C) Are necessary for the protection of life or safety;

170 (6) For prenatal care; or

171 (7) For postsecondary education, whereby the Board of Regents of the University System
172 of Georgia or the State Board of Technical and Adult Education shall set forth, or cause
173 to be set forth, policies regarding postsecondary benefits that comply with all federal law
174 including but not limited to public benefits as described in 8 U.S.C. Section 1611, 1621,
175 or 1623.

176 ~~(d)(e) An agency or political subdivision providing or administering a public benefit shall~~
177 ~~require every applicant for such benefit to execute a signed and sworn affidavit verifying~~
178 ~~the applicant's lawful presence in the United States, which affidavit shall state Verification~~
179 ~~of lawful presence in the United States by the agency or political subdivision required to~~
180 ~~make such verification shall occur as follows:~~

181 (1) The applicant ~~must execute an affidavit that he or she is a United States citizen or~~
182 ~~legal permanent resident 18 years of age or older; or~~

183 (2) The applicant ~~must execute an affidavit that he or she is a qualified alien or~~
184 ~~nonimmigrant under the federal Immigration and Nationality Act, Title 8 U.S.C., as~~
185 ~~amended, 18 years of age or older lawfully present in the United States and provide the~~
186 ~~applicant's alien number issued by the Department of Homeland Security or other federal~~
187 ~~immigration agency.~~

188 ~~(e)(f) For any applicant who has executed an affidavit that he or she is an alien lawfully~~
189 ~~present in the United States, eligibility for public benefits shall be made through the~~
190 ~~Systematic Alien Verification of Entitlement (SAVE) program operated by the United~~
191 ~~States Department of Homeland Security or a successor program designated by the United~~
192 ~~States Department of Homeland Security. Until such eligibility verification is made, the~~
193 ~~affidavit may be presumed to be proof of lawful presence for the purposes of this Code~~
194 ~~section.~~

195 ~~(f)(g) Any person who knowingly and willfully makes a false, fictitious, or fraudulent~~
196 ~~statement of representation in an affidavit executed pursuant to subsection (d) of this Code~~
197 ~~section shall be guilty of a violation of Code Section 16-10-20.~~

198 ~~(g) Agencies or political subdivisions of this state may adopt variations to the requirements~~
199 ~~of this Code section to improve efficiency or reduce delay in the verification process or to~~
200 ~~provide for adjudication of unique individual circumstances where the verification~~
201 ~~procedures in this Code section would impose unusual hardship on a legal resident of~~
202 ~~Georgia.~~

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

205 ~~(h)(i) It shall be unlawful for any agency or a political subdivision of this state to provide~~
206 ~~or administer any state, local, or federal public benefit, as defined in 8 U.S.C. Section 1621~~
207 ~~or 8 U.S.C. Section 1611, in violation of this Code section. Each state On or before~~

208 January 1 of each year, each agency or department political subdivision which administers
209 any program of state or local public benefits public benefit shall provide an annual report
210 with respect to its compliance with this Code section to the Department of Community
211 Affairs that identifies each public benefit, as defined in subparagraph (a)(3)(A) of this Code
212 section, administered by the agency or political subdivision and a listing of each public
213 benefit for which SAVE authorization for verification has not been received.

214 (f)(j) Any and all errors and significant delays by SAVE shall be reported to the United
215 States Department of Homeland Security and to the Secretary of State which will monitor
216 SAVE and its verification application errors and significant delays and report yearly on
217 such errors and significant delays to ensure that the application of SAVE is not wrongfully
218 denying benefits to legal residents of Georgia.

219 (j)(k) Notwithstanding subsection (f)(g) of this Code section, any applicant for public
220 benefits federal benefits as defined in 8 U.S.C. Section 1611 or state or local benefits as
221 defined in 8 U.S.C. Section 1621 shall not be guilty of any crime for executing an affidavit
222 attesting to lawful presence in the United States that contains a false statement if said
223 affidavit is not required by this Code section.

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

228 (m) Compliance with this Code section by an agency or political subdivision shall include
229 taking all reasonable, necessary steps required by a federal agency to receive authorization
230 to utilize the SAVE program or any successor program designated by the United States
231 Department of Homeland Security or other federal agency, including providing copies of
232 statutory authorization for the agency or political subdivision to provide public benefits and
233 other affidavits, letters of memorandum of understanding, or other required documents or
234 information needed to receive authority to utilize the SAVE program or any successor
235 program for each public benefit provided by such agency or political subdivision. An
236 agency or political subdivision that takes all reasonable, necessary steps and submits all
237 requested documents and information as required in this subsection but either has not been
238 given access to use such programs by such federal agencies or has not completed the
239 process of obtaining access to use such programs shall not liable for failing to use the
240 SAVE program or any such successor program to verify eligibility for public benefits.

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

244 (o) No employer, agency, or political subdivision shall be subject to lawsuit or liability
245 arising from any act to comply with the requirements of this chapter."

246 **SECTION 4.**

247 This Act shall become effective on January 1, 2010.

248 **SECTION 5.**

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