

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

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"13-10-91.

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

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

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

(A) The affiant has registered with and is authorized to use the federal work authorization program;

(B) The user identification number and date of authorization for the affiant; and

(C) The affiant is using and will continue to use the federal work authorization program throughout the contract period.

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

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

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

~~(A) On or after July 1, 2007, with respect to public employers, contractors, or subcontractors of 500 or more employees;~~

~~(B) On or after July 1, 2008, with respect to public employers, contractors, or subcontractors of 100 or more employees; and~~

~~(C) On or after July 1, 2009, with respect to all public employers, contractors, or subcontractors.~~

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

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

(e) The commissioner of the Georgia Department of Transportation shall prescribe all forms and promulgate rules and regulations deemed necessary for the application of this Code section to any contract or agreement relating to public transportation and shall publish such rules and regulations on the Georgia Department of Transportation's website.

(f) No employer or agency or political subdivision, as such term is defined in Code Section 50-36-1, shall be subject to lawsuit or liability arising from any act to comply with the requirements of this Code section."

SECTION 2.

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

"42-4-14.

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

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

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

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

SECTION 3.

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

"50-36-1.

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

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

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

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

(i) Adult education;

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

(iii) Business certificate, license, or registration;

(iv) Business loan;

(v) Cash allowance;

(vi) Disability assistance or insurance;

(vii) Down payment assistance;

(viii) Energy assistance;

(ix) Food stamps;

(x) Gaming license;

(xi) Health benefits;

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

(xiii) Loan guarantee;

(xiv) Medicaid;

(xv) Occupational license;

(xvi) Professional license;

(xvii) Registration of a regulated business;

(xviii) Rent assistance or subsidy;

(xix) State grant or loan;

(xx) State identification card;

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

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

(xxiii) Unemployment insurance; and

(xxiv) Welfare to work.

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

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

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

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

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

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

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

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

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

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

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

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

(6) For prenatal care; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) In the case of noncompliance with the provisions of this Code section by an agency or political subdivision, the appropriations committee of each house of the General Assembly 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.