

# A comparison of 2006 Colorado immigration reform legislation to The Georgia Security and Immigration Compliance Act [ SB 529]

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## Summary of 2006 Colorado bills

\* Senate Bill 110 (Sen. Tom Wiens, R-Castle Rock) creates a \$50,000 civil fine for making counterfeit identification documents and pays for a law department investigator. Revenues from collected fines would go to immigration enforcement.

\* Senate Bill 20 (Sen. Peter Groff, D-Denver) makes human trafficking selling adults into indentured servitude or prostitution a state felony. *Corresponds to section 3 of the Georgia bill.*

\* Senate Bill 206 (Groff) makes human smuggling sneaking an illegal immigrant into the country a state felony. *Corresponds to section 3 of the Georgia bill.*

\* House Bill 1306, (Matt Knoedler, R-Lakewood) requires an audit of a 2003 law that limits the use of identification issued by foreign governments (HB-1224, disallowing the matricula consular ID card). *Roughly corresponds to section 7 of the Georgia bill.*

\* Senate Bill 90 (Wiens) disallows sanctuary city policies and disallows local governments from disallowing police and officials from contacting and cooperating with federal officials regarding immigration. It also directs police to notify immigration officials if they have reasonable cause to believe that an arrestee for offenses other than domestic violence or minor traffic violations is an illegal immigrant. *Roughly corresponds to section 5 of the Georgia bill.*

(For more information on the individual bills, go to <http://www.leg.state.co.us>, then to Bills under either the House or Senate sections, as appropriate).

## Correspondence:

<u>Georgia bill section</u>	<u>Colorado bill</u>
3	SB-20; SB-206
5	SB-90
9	Defend Colorado Now

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## **Summary of 2006 Georgia bill**

Section 1 of the bill establishes that the Georgia Security and Immigration Compliance Act shall be construed to conform with federal immigration law.

Section 2 - Public Employers and Contractors with the State Must Verify Status. Provides that all public employers and those working on public contracts must begin to register and participate in the federal work authorization program. This program is operated by the Department of Homeland Security and verifies the legal status of a person to be employed in the United States.

Section 2 of SB 529 has three effective dates for public employers and contractors, including subcontractors, to participate in the federal work authorization program to verify the status of newly hired employees. The Georgia Labor Commissioner and the Department of Transportation shall promulgate rules to effectuate this Code Section including, implementing a state work authorization program.

Section 3 - Human Trafficking. Section 3 states that any person who convicted of trafficking a person for labor or sexual servitude shall be found guilty of a felony and required to serve a prison sentence of at least one and no more than 20 years. Any person convicted of the same offense, however the victim is a minor, shall serve a prison sentence of at least 10 and no more than 20 years.

Section 3 of SB 529 defines human trafficking to include coercion, deception, labor servitude and sexual servitude, especially as these activities relate to child prostitution. A person convicted of human trafficking shall be guilty of a felony and, if the offense involves a child under 18, the convicted person shall be imprisoned for not less than ten years nor more than 20 years. If the offense does not involve a child, the convicted person shall be imprisoned for not less than one year nor more than 20 years. A corporation may be charged only if an agent acts within his scope of employment or knows, or should know, the illegal activity that was occurring.

Section 4 - CLEAR Act Provisions. Section 4 provides that the Georgia Commissioner of Public Safety must establish a "memorandum of understanding" between the state, U.S. Dept. of Justice or Homeland Security concerning the enforcement of immigration laws. Certain police officers shall be trained in accordance with the "memorandum of understanding" and shall be authorized to enforce federal immigration and custom laws.

This section relies on section 287 (g) of the Immigration and Naturalization Act (INA).

Pursuant to Section 4, the Commissioner of the Department of Public Safety is directed to negotiate terms of a Memorandum of Understanding between the Georgia and the U.S. Department of Homeland Security. The Commissioner shall select appropriate peace officers to be trained, conditioned on federal funding.

Section 5 - Verifying People Detained for Felony or DUI Charges. Section 5 provides that an officer must make a reasonable effort to determine the nationality of any person charged and arrested for a felony or DUI. If the prisoner is a foreign national, the officer must verify their lawful status either through documents in possession of the prisoner or a query to the Law Enforcement Support Center. If it is found that the prisoner is not lawfully present in the U.S., the arresting officer or officer in charge shall notify the U.S. Dept. of Homeland Security.

Section 5 of SB 529 requires the jailer to verify the nationality status at the time of booking for every person who is confined on a felony or DUI charge. If the jailer cannot determine the nationality status from the documents in the detainee's possession, verification must be made within 48 hours of confinement with the Law Enforcement Support Center. Any detainee determined to be present in the U.S. illegally must be reported to the Department of Homeland Security. The Georgia Sheriff's Association shall issue procedures to comply with this Code section.

Section 6 - Unauthorized Immigration Services. Section 6 establishes the "Registration of Immigration Assistance Act." This Act specifies exactly what actions a person who is not an attorney can take in assisting illegal immigrants with gaining legal status. Apparently people are claiming that they can assist illegal immigrants in becoming legal citizens and charging people fees for legal assistance and advice, however they have no authority to give such assistance or advice. Any person convicted of violating this section may be fined up to \$1,000.00 per violation.

Section 6 of SB 529, known as the "Registration of Immigration Assistance Act," prohibits unauthorized people from providing immigration services. Violations of Section 6 can result in fines up to \$1,000 per violation. A first offender shall be guilty of a misdemeanor and a person who commits a subsequent offense within five years of the same offense shall be guilty of a high and aggravated misdemeanor. Any person who offers immigration services who is not a licensed attorney, under the direct supervision of a licensed attorney, an employee of a non-profit religious, charitable, social service, or similar organization recognized by the Board of Immigration Appeals under 8 C.F.R. 292.2(d) is subject to prosecution if the person fails to post the specified notification.

Section 7 - Valid Identification and Employment Authorization Documents. Section 7 provides that no compensation over \$600.00 per year for labor services to a person who has not been verified to legally to work in the U.S. can be claimed as a deductible business expense for state income taxes, regardless if the individual is issued a IRS 1099 Form. The Georgia Commissioner of Revenue is authorized to create forms to be used in order to verify the legal status of an employee.

Section 7 provides that an employer cannot take a state tax deduction for payments of \$600 or more made to any person who does not have valid identification as identified in the Employment Eligibility Verification Form I-9 of the U.S. Department of Homeland Security. Additionally, Matricula Consular Cards shall not constitute valid identification.

Section 8 - State Withholding Tax. Section 8 states that a withholding agent is required to withhold 6% state income tax of an individual whose wages are reported on a 1099 Form and who has failed to provide a valid taxpayer identification number.

Section 8 requires that 6% must be withheld as state income tax if an individual fails to provide a valid tax ID number. Any person who fails to withhold the state income tax as required shall be liable, unless the person is exempt.

Section 9 - Verification of Domicile in Georgia to Receive Benefits. Section 9 states that any person applying for state or local public benefits, who is 18 years or older, must execute an affidavit that he or she is a legal citizen or lawfully present in the U.S. For any applicant that has indicated that they are an alien lawfully present in the U.S., the agency must verify that person's status through the Systematic Alien Verification of Entitlement (SAVE) Federal program. Any person who knowingly provides false information on this affidavit shall be guilty of a felony and upon conviction, pay a fine of no more than \$1,000.00 or be sentenced to imprisonment of no more than one year. Exceptions for this verification process include: federal exceptions such as emergency care, assistance for immunizations with respect to immunizable and communicable diseases, soup kitchens, and pre-natal care.

Section 9 provides that every state agency shall verify the lawful presence of anyone over the age of 18 applying for state or local public benefits, as defined in 8 U.S.C. Section 1621, and federal public benefits, as defined in 8 U.S.C. Section 1611, except for (1) emergency medical treatment, (2) short-term, non-cash, in-kind emergency disaster relief, (3) immunizations and treatment for communicable diseases, (4) programs, services or assistance such as soup kitchens, crisis counseling, or short term shelter specified by the U.S. Attorney General which meet three specified conditions, (5) prenatal care, or (6) postsecondary education. An applicant must sign an affidavit which shall be verified through the Systematic Alien Verification of Entitlement (SAVE) program. Anyone who knowingly and willfully executes an affidavit that contains a false statement shall be guilty of a felony and subject to a fine of up to \$1,000. However, a

person who is eligible to receive benefits will not be guilty of any crime for executing a false affidavit for such benefits.

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**Exact text of the Georgia bill:**

[http://www.legis.state.ga.us/legis/2005\\_06/pdf/sb529.pdf](http://www.legis.state.ga.us/legis/2005_06/pdf/sb529.pdf)

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**Fact Sheet on Georgia bill:** Georgia Security and Immigration Compliance Act Found in Press Release: Governor Perdue Signs Georgia Security and Immigration Compliance Act

Verification of Residence

Requires that entities verify legal U.S. residence for local, state or federal benefits administered by a state agency or a political subdivision of the state where residence is a requirement and where the individual requesting benefits is older than age 18.

Exempts prenatal and emergency care (same exemptions as federal exemptions for residence verification)

Requires that all individuals receiving state benefits sign one of two affidavits, either stating the individual is a U.S. citizen or a legal alien.

All "legal alien" affidavits must be checked in the federal SAVE program database to verify lawful eligibility for public benefits.

State Contracts

Requires contracts for state agencies, departments and instrumentalities of the state and contracts and subcontracts thereof to use the federal BASIC Pilot program for newly hired employees to verify lawful employment in the United States.

Employer must perform employment check post-hiring;

Prohibit tax benefits

Specifies that undocumented employee compensation over \$600 a year may not be used as an allowable business expense.

Allows Georgia Department of Revenue (DOR) to promulgate rules and regulations;

Withholding Tax Requirement

Requires six percent state withholding tax for all nonresident aliens.

Requires six percent state withholding tax for 1099 employees who cannot provide a taxpayer ID number, who provide an incorrect taxpayer ID number or who provide a nonresident taxpayer ID number.

State requirement is similar to federal requirement;

### Law Enforcement Training

Authorizes the Department of Public Safety (DPS) Commissioner to enter into an MOU with the U.S. Department of Justice (DOJ) concerning the enforcement of immigration laws.

Directs the DPS Commissioner to coordinate with law enforcement entities to choose appropriate peace officers for training;

States that state law enforcement training is contingent on funding by federal government;

Authorizes the trained law enforcement officers to enforce federal immigration and customs laws while performing their authorized duties;

### Human Trafficking

Creates the offense of human trafficking and contributing to human trafficking.

Penalty: 1-20 years; 10-20 years if the victim is under age 18;  
Georgia human trafficking language is similar to federal language;

Legal status verification for those charged with felony or DUI

Requires that jail personnel check the legal status of those who are charged with a felony or DUI and notify Immigration and Customs Enforcement (ICE) if the individual is not legally in the United States.

Practice already occurring in Georgia state prison system;

### Immigration Assistance Regulation

Limits what services a for-profit immigration assistance company can provide and criminalizes certain actions.

Requires that such businesses post signs stating they are not lawyers and cannot provide legal advice.

Restricts these individuals/businesses from using the terms notary, lawyer or attorney in advertising (may use term "notary public" if certified)

Misdemeanor for first offense of non-compliance; high and aggravated misdemeanor for second and subsequent offenses within 5 years.