

Senate Bill 529

By: Senators Rogers of the 21st, Hamrick of the 30th, Douglas of the 17th, Schaefer of the 50th, Seabaugh of the 28th and others

AS PASSED

AN ACT

To amend Titles 13, 16, 35, 42, 43, 48, and 50 of the Official Code of Georgia Annotated, relating to contracts, crimes and offenses, law enforcement officers and agencies, penal institutions, professions and businesses, revenue and taxation, and state government, respectively, so as to provide for the comprehensive regulation of persons in this state who are not lawfully present in the United States; to provide for a short title; to provide for statutory construction; to provide for definitions; to provide for procedures and requirements applicable to certain contracts or subcontracts; to provide for powers, duties, and authority of the Commissioner of Labor; to provide that it shall be unlawful to traffic a person for labor or sexual servitude; to provide that the commissioner of public safety is authorized and directed to negotiate the terms of a memorandum of understanding between the State of Georgia and the United States Department of Justice or Department of Homeland Security concerning the enforcement of federal immigration laws and related activities; to provide for a definition; to provide for certain training; to provide for funding; to provide for certain authorized activities by certain peace officers; to provide for valid identification documents; to provide for exceptions; to provide procedures for determining nationality and immigration status of certain persons who are booked into a jail; to provide for the development of guidelines relative to such booking procedures; to provide for the comprehensive regulation of private immigration assistance services; to provide for a short title; to provide a statement of purpose and definitions; to specify conditions under which certain compensation paid by a taxpayer shall be disallowed as a business expense for state income tax purposes; to provide for powers, duties, and authority of the state revenue commissioner; to provide for additional withholding requirements and procedures; to provide for exceptions; to provide for verification of lawful presence requirements, procedures, and conditions regarding applications for certain benefits; to provide for exceptions; to provide for the promulgation of regulations; to provide for criminal and other penalties; to provide for related matters; to provide for effective dates; to provide for applicability; to repeal conflicting laws; and for other purposes.

S. B. 529

- 1 -

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Georgia Security and Immigration Compliance Act." All requirements of this Act concerning immigration or the classification of immigration status shall be construed in conformity with federal immigration law.

SECTION 2.

Title 13 of the Official Code of Georgia Annotated, relating to contracts, is amended by adding two new articles at the end of Chapter 10, to be designated Articles 3 and 4, to read as follows:

"ARTICLE 3

13-10-90.

As used in this article, the term:

- (1) 'Commissioner' means the Commissioner of the Georgia Department of Labor.
- (2) 'Federal work authorization program' means any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603.
- (3) 'Public employer' means every department, agency, or instrumentality of the state or a political subdivision of the state.
- (4) 'Subcontractor' includes a subcontractor, contract employee, staffing agency, or any contractor regardless of its tier.

13-10-91.

- (a) On or after July 1, 2007, every public employer shall register and participate in the federal work authorization program to verify information of all new employees.
- (b)(1) No public employer shall enter into a contract 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 employees.

(2) No contractor or subcontractor who enters a contract 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 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."

SECTION 3.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by adding a new Code section immediately following Code Section 16-5-45, to be designated Code Section 16-5-46, to read as follows:

"16-5-46.

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

(1) 'Coercion' means:

(A) Causing or threatening to cause bodily harm to any person, physically restraining or confining any person, or threatening to physically restrain or confine any person;

(B) Exposing or threatening to expose any fact or information that if revealed would tend to subject a person to criminal or immigration proceedings, hatred, contempt, or ridicule;

(C) Destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of any person; or

(D) Providing a controlled substance, as such term is defined by Code Section 16-13-21, to such person.

(2) 'Deception' means:

(A) Creating or confirming another's impression of an existing fact or past event which is false and which the accused knows or believes to be false;

(B) Maintaining the status or condition of a person arising from a pledge by that person of his or her personal services as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined, or preventing a person from acquiring information pertinent to the disposition of such debt; or

(C) Promising benefits or the performance of services which the accused does not intend to deliver or perform or knows will not be delivered or performed. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this Code section.

(3) 'Labor servitude' means work or service of economic or financial value which is performed or provided by another person and is induced or obtained by coercion or deception.

(4) 'Sexual servitude' means:

(A) Any sexually explicit conduct as defined in paragraph (4) of subsection (a) of Code Section 16-12-100 for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or

(B) Any sexually explicit conduct as defined in paragraph (4) of subsection (a) of Code Section 16-12-100 which is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.

(b) A person commits the offense of trafficking a person for labor servitude when that person knowingly subjects or maintains another in labor servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of labor servitude.

(c) A person commits the offense of trafficking a person for sexual servitude when that person knowingly subjects or maintains another in sexual servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of sexual servitude.

(d) Any person who commits the offense of trafficking a person for labor or sexual servitude shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years. Any person who commits the offense of trafficking a person for labor or sexual servitude against a person who is under the age of 18 years shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than ten nor more than 20 years.

(e) Prosecuting attorneys and the Attorney General shall have concurrent authority to prosecute any criminal cases arising under the provisions of this Code section and to perform any duty that necessarily appertains thereto.

(f) Each violation of this Code section shall constitute a separate offense and shall not merge with any other offense.

(g) A corporation may be prosecuted under this Code section for an act or omission constituting a crime under this Code section only if an agent of the corporation performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation and the commission of the crime was either authorized, requested, commanded, performed, or within the scope of his or her employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring."

SECTION 4.

Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and agencies, is amended by adding a new Code section immediately following Code Section 35-2-13, to be designated Code Section 35-2-14, to read as follows:

"35-2-14.

(a) As used in this Code section, the term 'peace officer' means peace officer as defined in subparagraph (A) of paragraph (8) of Code Section 35-8-2, as amended.

(b) The commissioner is authorized and directed to negotiate the terms of a memorandum of understanding between the State of Georgia and the United States Department of Justice or Department of Homeland Security concerning the enforcement of federal immigration and custom laws, detention and removals, and investigations in the State of Georgia.

(c) The memorandum of understanding negotiated pursuant to subsection (b) of this Code section shall be signed on behalf of the state by the commissioner and the Governor or as otherwise required by the appropriate federal agency.

(d) The commissioner shall designate appropriate peace officers to be trained pursuant to the memorandum of understanding provided for in subsections (b) and (c) of this Code section. Such training shall be funded pursuant to the federal Homeland Security Appropriation Act of 2006, Public Law 109-90, or any subsequent source of federal funding. The provisions of this subsection shall become effective upon such funding.

(e) A peace officer certified as trained in accordance with the memorandum of understanding as provided in this Code section is authorized to enforce federal immigration and customs laws while performing within the scope of his or her authorized duties."

SECTION 5.

Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended by adding a new Code section immediately following Code Section 42-4-13, to be designated Code Section 42-4-14, to read 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 is confined, for any period, in the jail of the county, any municipality or a jail operated by a regional jail authority, a reasonable effort shall be made to determine the nationality of the person so confined.

(b) If the prisoner is a foreign national, 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 6.

Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, is amended by adding a new chapter immediately following Chapter 20 to read as follows:

"CHAPTER 20A

43-20A-1.

This chapter shall be known and may be cited as the 'Registration of Immigration Assistance Act.'

43-20A-2.

The purpose and intent of this chapter is to establish and enforce standards of ethics in the profession of immigration assistance by private individuals who are not licensed attorneys.

43-20A-3.

As used in this chapter, the term:

- (1) 'Compensation' means money, property, services, promise of payment, or anything else of value.
- (2) 'Employed by' means that a person is on the payroll of the employer and the employer deducts from the employee's paycheck social security and withholding taxes or that a person receives compensation from the employer on a commission basis or as an independent contractor.
- (3) 'Immigration assistance service' means any information or action provided or offered to customers or prospective customers related to immigration matters, excluding legal advice, recommending a specific course of legal action or providing any other assistance that requires legal analysis, legal judgment, or interpretation of the law.
- (4) 'Immigration matter' means any proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person that arises under:
 - (A) Immigration and naturalization law, executive order, or presidential proclamation of the United States or any foreign country; or

(B) Action of the United States Department of Labor, the United States Department of State, the United States Department of Homeland Security, or the United States Department of Justice.

43-20A-4.

(a) Any person who provides or offers to provide immigration assistance service may perform only the following services:

(1) Completing a government agency form, requested by the customer and appropriate to the customer's needs only if the completion of that form does not involve a legal judgment for that particular matter;

(2) Transcribing responses to a government agency form which is related to an immigration matter but not advising a customer as to his or her answers on those forms;

(3) Translating information on forms to a customer and translating the customer's answers to questions posed on those forms;

(4) Securing for the customer supporting documents currently in existence, such as birth and marriage certificates, which may be needed to be submitted with government agency forms;

(5) Translating documents from a foreign language into English;

(6) Notarizing signatures on government agency forms, if the person performing the service is a notary public commissioned in the State of Georgia and is lawfully present in the United States;

(7) Making referrals, without fee, to attorneys who could undertake legal representation for a person in an immigration matter;

(8) Preparing or arranging for the preparation of photographs and fingerprints;

(9) Arranging for the performance of medical testing (including X-rays and AIDS tests) and the obtaining of reports of such test results;

(10) Conducting English language and civics courses; and

(11) Performing such other services that the office of the Secretary of State determines by rule may be appropriately performed by such persons in light of the purposes of this chapter.

(b) The following persons are exempt from this chapter:

(1) An attorney licensed to practice law in Georgia or an attorney licensed to practice law in any other state or territory of the United States or in any foreign country when acting with the approval of a judge having lawful jurisdiction over the matter;

- (2) A legal intern, clerk, paralegal, or person in a similar position employed by and under the direct supervision of a licensed attorney meeting the requirements in paragraph (1) of this subsection and rendering immigration assistance service in the course of employment;
- (3) A not for profit organization recognized by the Board of Immigration Appeals under 8 C.F.R. 292.2(a) and employees, of those organizations accredited under 8 C.F.R. 292.2(d); and
- (4) Any organization employing or desiring to employ an alien or nonimmigrant alien, where the organization, its employees, or its agents provide advice or assistance in immigration matters to alien or nonimmigrant alien employees or potential employees without compensation from the individuals to whom such advice or assistance is provided.
- (c) Nothing in this chapter shall regulate any business to the extent that such regulation is prohibited or preempted by federal law.
- (d) Any person performing such services shall obtain business licenses from the office of the Secretary of State and as may be required by a local governing authority.
- (e) Any person who provides or offers immigration assistance service and is not exempted under this chapter shall post signs at his or her place of business setting forth information in English and in every other language in which the person provides or offers to provide immigration assistance service. Each language shall be on a separate sign. Signs shall be posted in a location where the signs will be visible to customers. Each sign shall be at least 12 inches by 17 inches and shall contain the following statement:
- 'I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.'**
- (f) Every person engaged in immigration assistance service who is not an attorney who advertises immigration assistance service in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, shall include in the document, advertisement, stationery, letterhead, business card, or other comparable written material the following notice in English and the language in which the written communication appears. This notice shall be of a conspicuous size, if in writing, and shall state: 'I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.' If such advertisement is by radio or television, the statement may be modified but must include substantially the same message.

- (g) Any person who provides or offers immigration assistance service and is not exempted under this chapter shall not, in any document, advertisement, stationery, letterhead, business card, or other comparable written material, literally translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies the person is an attorney.
- (h) Violations of this chapter may result in a fine of up to \$1,000.00 per violation. A fine charged pursuant to this chapter shall not preempt or preclude additional appropriate civil or criminal penalties.
- (i) No person engaged in providing immigration services who is not exempted under this chapter shall do any of the following:
- (1) Accept payment in exchange for providing legal advice or any other assistance that requires legal analysis, legal judgment, or interpretation of the law;
 - (2) Refuse to return documents supplied by, prepared on behalf of, or paid for by the customer upon the request of the customer. These documents must be returned upon request even if there is a fee dispute between the immigration assistant and the customer;
 - (3) Represent or advertise, in connection with the provision assistance in immigration matters, other titles or credentials, including but not limited to 'notary public' or 'immigration consultant,' that could cause a customer to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter, provided that a certified notary public may use the term 'notary public' if the use is accompanied by the statement that the person is not an attorney; the term 'notary public' may not be translated to another language;
 - (4) Provide legal advice, recommend a specific course of legal action, or provide any other assistance that requires legal analysis, legal judgment, or interpretation of the law;
- or
- (5) Make any misrepresentation or false statement, directly or indirectly, to influence, persuade, or induce patronage.
- (j) Any person who violates any provision of this chapter shall be guilty of a misdemeanor for a first offense and a high and aggravated misdemeanor for a second or subsequent offense committed within five years of a previous conviction for the same offense.
- (k) The Secretary of State shall issue rules not inconsistent with this chapter for the implementation, administration, and enforcement of this chapter."

SECTION 7.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by adding a new Code section immediately following Code Section 48-7-21, to be designated Code Section 48-7-21.1, to read as follows:

"48-7-21.1.

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

(1) 'Authorized employee' means any individual authorized for employment in the United States as defined in paragraph (2) of subsection (a) of 8 U.S.C. Section 1324a.

(2) 'Labor services' means the physical performance of services in this state.

(b) On or after January 1, 2008, no wages or remuneration for labor services to an individual of \$600.00 or more per annum may be claimed and allowed as a deductible business expense for state income tax purposes by a taxpayer unless such individual is an authorized employee. The provisions of this subsection shall apply whether or not an Internal Revenue Service Form 1099 is issued in conjunction with the wages or remuneration.

(c) This Code section shall not apply to any business domiciled in this state which is exempt from compliance with federal employment verification procedures under federal law which makes the employment of unauthorized aliens unlawful.

(d) This Code section shall not apply to any individual hired by the taxpayer prior to January 1, 2008.

(e) This Code section shall not apply to any taxpayer where the individual being paid is not directly compensated or employed by said taxpayer.

(f) This Code section shall not apply to wages or remuneration paid for labor services to any individual who holds and presents to the taxpayer a valid license or identification card issued by the Georgia Department of Driver Services.

(g) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section."

SECTION 8.

Said title is further amended in Code Section 48-7-101, relating to income tax withholding, by adding a new subsection at the end thereof, to be designated subsection (i), to read as follows:

"(i) *Form 1099 withholding and reporting.*

(1) A withholding agent shall be required to withhold state income tax at the rate of 6 percent of the amount of compensation paid to an individual which compensation is reported on Form 1099 and with respect to which the individual has:

- (A) Failed to provide a taxpayer identification number;
- (B) Failed to provide a correct taxpayer identification number; or
- (C) Provided an Internal Revenue Service issued taxpayer identification number issued for nonresident aliens.

(2) Any withholding agent who fails to comply with the withholding requirements of this subsection shall be liable for the taxes required to have been withheld unless such withholding agent is exempt from federal withholding with respect to such individual pursuant to a properly filed Internal Revenue Service Form 8233 and has provided a copy of such form to the commissioner."

SECTION 9.

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended by adding a new chapter at the end thereof, to be designated Chapter 36, to read as follows:

"CHAPTER 36

50-36-1.

(a) Except as provided in subsection (c) 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 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) This Code section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(c) 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; or
 - (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) 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 18 years of age or older lawfully present in the United States.
- (e) For any applicant who has executed an affidavit that he or she is an alien lawfully present in the United States, eligibility for 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) 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) It shall be unlawful for any agency or a political subdivision of this state to provide any state, local, or federal 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 agency or department which administers any program of state or local public benefits shall provide an annual report with respect to its compliance with this Code section.

(i) Any and all errors and significant delays by SAVE shall be reported to the United States Department of 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) Notwithstanding subsection (f) of this Code section any applicant for 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."

SECTION 10.

(a) Except as otherwise provided in this section, this Act shall become effective on July 1, 2007.

(b) Section 3 of this Act shall become effective on July 1, 2007, and shall not apply to any offense committed prior to July 1, 2007.

SECTION 11.

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