

Security and Immigration Compliance

This Act provides for the comprehensive regulation of people in the state who are not lawfully present in the United States. Specifically, this Act:

- prohibits public employers and contractors and subcontractors from entering into certain labor contracts unless the contractor and subcontractors register and participate in a federal work authorization program to verify information about all new employees;
- provides that it shall be unlawful to traffic a person for labor or sexual servitude;
- directs the state commissioner of labor to negotiate a memorandum of understanding between the state and the United States Department of Justice or Department of Homeland Security about the enforcement of federal immigration and custom laws, detention and removals, and investigations in the state;
- directs jailers to make a reasonable effort verify that prisoners who are foreign nationals are lawfully admitted to the United States and if lawfully admitted, that such lawful status has not expired;
- establishes and enforce standards of ethics in the profession of immigration assistance by private people who are not licensed attorneys, and
- requires every agency or a political subdivision of the state to 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.

Submitted as:

Georgia

SB 529AP

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The Security and Immigration
2 Compliance Act.”

3

4

Section 2. [*Definitions.*]

5

(a) As used in this Act:

6

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

8

(2) ‘Coercion’ means:

9

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

11

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

14

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

17

(D) providing a controlled substance, as such term is defined by [insert
18 citation], to such person.

19

(3) ‘Commissioner’ means the [Commissioner of the Department of Labor].

20 (4) ‘Compensation’ means money, property, services, promise of payment, or
21 anything else of value.

22 (5) ‘Deception’ means:

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

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

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

34 (6) ‘Employed by’ means that a person is on the payroll of the employer and the
35 employer deducts from the employee’s paycheck social security and withholding taxes or that
36 a person receives compensation from the employer on a commission basis or as an independent
37 contractor.

38 (7) ‘Federal work authorization program’ means any of the electronic verification
39 of work authorization programs operated by the United States Department of Homeland Security
40 or any equivalent federal work authorization program operated by the United States Department
41 of Homeland Security to verify information of newly hired employees, pursuant to the
42 Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603.

43 (8) ‘Immigration assistance service’ means any information or action provided or
44 offered to customers or prospective customers related to immigration matters, excluding legal
45 advice, recommending a specific course of legal action or providing any other assistance that
46 requires legal analysis, legal judgment, or interpretation of the law.

47 (9) ‘Immigration matter’ means any proceeding, filing, or action affecting the
48 nonimmigrant, immigrant, or citizenship status of any person that arises under:

49 (A) Immigration and naturalization law, executive order, or presidential
50 proclamation of the United States or any foreign country; or

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

54 (10) ‘Labor services’ means the physical performance of services in this state.

55 (11) ‘Labor servitude’ means work or service of economic or financial value
56 which is performed or provided by another person and is induced or obtained by coercion or
57 deception.

58 (12) ‘Peace officer’ means peace officer as defined in [insert citation].

59 (13) ‘Public employer’ means every department, agency, or instrumentality of the
60 state or a political subdivision of the state.

61 (14) ‘Sexual servitude’ means:

62 (A) Any sexually explicit conduct as defined in [insert citation] for which
63 anything of value is directly or indirectly given, promised to, or received by any person, which
64 conduct is induced or obtained by coercion or deception or which conduct is induced or obtained
65 from a person under the age of [18 years]; or

66 (B) Any sexually explicit conduct as defined in [insert citation] which is
67 performed or provided by any person, which conduct is induced or obtained by coercion or
68 deception or which conduct is induced or obtained from a person under the age of [18 years].

69 (15) ‘Subcontractor’ includes a subcontractor, contract employee, staffing agency,
70 or any contractor regardless of its tier.

71
72 Section 3. [*Public Employer Participation in Federal Work Authorization Program.*]

73 (a) On or after [July 1, 2007], every public employer shall register and participate in the
74 Federal Work Authorization Program to verify information of all new employees.

75 (b) (1) No public employer shall enter into a contract for the physical performance of
76 services within this state unless the contractor registers and participates in the Federal Work
77 Authorization Program to verify information of all new employees.

78 (2) No contractor or subcontractor who enters a contract with a public employer
79 shall enter into such a contract or subcontract in connection with the physical performance of
80 services within this state unless the contractor or subcontractor registers and participates in the
81 Federal Work Authorization Program to verify information of all new employees.

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

83 (A) on or after [July 1, 2007], with respect to public employers,
84 contractors, or subcontractors of [500 or more] employees;

85 (B) on or after [July 1, 2008], with respect to public employers,
86 contractors, or subcontractors of [100 or more] employees; and

87 (C) on or after [July 1, 2009], with respect to all public employers,
88 contractors, or subcontractors.

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

91 (d) Except as provided in subsection (e) of this Code section, the [commissioner] shall
92 prescribe forms and promulgate rules and regulations deemed necessary in order to administer
93 and effectuate this section and publish such rules and regulations on the state [department of
94 labor’s] website.

95 (e) The [commissioner of the department of transportation] shall prescribe all forms and
96 promulgate rules and regulations deemed necessary for the application of this section to any
97 contract or agreement relating to [public transportation] and shall publish such rules and
98 regulations on the [department of transportation’s] website.

99
100 Section 4. [*Trafficking a Person for Labor Servitude or Trafficking a Person for Sexual*
101 *Servitude.*]

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

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

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

116 (d) Prosecuting attorneys and the [Attorney General] shall have concurrent authority to
117 prosecute any criminal cases arising under the provisions of this section and to perform any duty
118 that necessarily appertains thereto.

119 (e) Each violation of this section shall constitute a separate offense and shall not merge
120 with any other offense.

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

128

129 Section 5. [*Memorandum of Understanding about Enforcing Immigration Laws.*]

130 (a) The [commissioner] is authorized and directed to negotiate the terms of a
131 memorandum of understanding between this state and the United States Department of Justice or
132 Department of Homeland Security concerning the enforcement of federal immigration and
133 custom laws, detention and removals, and investigations in the this state.

134 (b) The memorandum of understanding negotiated pursuant to subsection (a) of this
135 section shall be signed on behalf of the state by the [commissioner] and the [governor] or as
136 otherwise required by the appropriate federal agency.

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

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

145

146 Section 6. [*Determining Nationality of Any Person Charged with Driving Under the*
147 *Influence.*]

148 (a) When any person charged with a felony or with driving under the influence pursuant to
149 [insert citation] is confined, for any period, in the jail of the county, any municipality or a jail
150 operated by a regional jail authority, a reasonable effort shall be made to determine the nationality
151 of the person so confined.

152 (b) If the prisoner is a foreign national, the keeper of the jail or other officer shall make a
153 reasonable effort to verify that the prisoner has been lawfully admitted to the United States and if
154 lawfully admitted, that such lawful status has not expired. If verification of lawful status can not
155 be made from documents in the possession of the prisoner, verification shall be made within [48
156 hours] through a query to the Law Enforcement Support Center (LESC) of the United States
157 Department of Homeland Security or other office or agency designated for that purpose by the
158 United States Department of Homeland Security. If the prisoner is determined not to be lawfully
159 admitted to the United States, the keeper of the jail or other officer shall notify the United States
160 Department of Homeland Security.

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

163 (d) The [state sheriffs association] shall prepare and issue guidelines and procedures used
164 to comply with the provisions of this section.

165

166 Section 7. [*Immigration Assistance.*]

167 (a) The purpose and intent of this section is to establish and enforce standards of ethics in
168 the profession of immigration assistance by private people who are not licensed attorneys
169 concerning:

170 (1) immigration and naturalization law, executive order, or presidential
171 proclamation of the United States or any foreign country; or

172 (2) action of the United States Department of Labor, the United States Department
173 of State, the United States Department of Homeland Security, or the United States Department of
174 Justice.

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

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

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

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

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

187 (5) translate documents from a foreign language into English;

188 (6) notarize signatures on government agency forms, if the person performing the
189 service is a notary public commissioned in this state and is lawfully present in the United States;

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

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

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

195 (10) conduct English language and civics courses; and

196 (11) perform such other services that the [office of the Secretary of State]
197 determines by rule may be appropriately performed by such people in light of the purposes of this
198 Act.

199 (b) The following people are exempt from this section of this Act:

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

203 (2) a legal intern, clerk, paralegal, or person in a similar position employed by and
204 under the direct supervision of a licensed attorney meeting the requirements in paragraph (1) of
205 this subsection and rendering immigration assistance service in the course of employment;

206 (3) a not for profit organization recognized by the [Board of Immigration Appeals]
207 under 8 C.F.R. 292.2(a) and employees, of those organizations accredited under 8 C.F.R.
208 292.2(d); and

209 (4) any organization employing or desiring to employ an alien or nonimmigrant
210 alien, where the organization, its employees, or its agents provide advice or assistance in
211 immigration matters to alien or nonimmigrant alien employees or potential employees without
212 compensation from the people to whom such advice or assistance is provided.

213 (c) Nothing in this section shall regulate any business to the extent that such regulation is
214 prohibited or preempted by federal law.

215 (d) Any person performing such services shall obtain business licenses from the [office of
216 the Secretary of State] and as may be required by a local governing authority.

217 (e) Any person who provides or offers immigration assistance service and is not exempted
218 under this Act shall post signs at his or her place of business setting forth information in English
219 and in every other language in which the person provides or offers to provide immigration
220 assistance service. Each language shall be on a separate sign. Signs shall be posted in a location
221 where the signs will be visible to customers. Each sign shall be at least [12 inches by 17 inches]
222 and shall contain the following statement:

223
224 ‘I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT
225 GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.’

226
227 (f) Every person engaged in immigration assistance service who is not an attorney who
228 advertises immigration assistance service in a language other than English, whether by radio,
229 television, signs, pamphlets, newspapers, or other written communication, with the exception of a
230 single desk plaque, shall include in the document, advertisement, stationery, letterhead, business
231 card, or other comparable written material the following notice in English and the language in
232 which the written communication appears. This notice shall be of a conspicuous size, if in
233 writing, and shall state:

234
235 ‘I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT
236 GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.’

237
238 If such advertisement is by radio or television, the statement may be modified but must
239 include substantially the same message.

240 (g) Any person who provides or offers immigration assistance service and is not exempted
241 under this section of this Act shall not, in any document, advertisement, stationery, letterhead,
242 business card, or other comparable written material, literally translate from English into another
243 language terms or titles including, but not limited to, notary public, notary, licensed, attorney,
244 lawyer, or any other term that implies the person is an attorney.

245 (h) Violations of this section of this Act may result in a fine of up to [\$1,000] per
246 violation. A fine charged pursuant to this section of this Act shall not preempt or preclude
247 additional appropriate civil or criminal penalties.

248 (i) No person engaged in providing immigration services who is not exempted under this
249 section of this Act shall do any of the following:

250 (1) accept payment in exchange for providing legal advice or any other assistance
251 that requires legal analysis, legal judgment, or interpretation of the law;

252 (2) refuse to return documents supplied by, prepared on behalf of, or paid for by
253 the customer upon the request of the customer. These documents must be returned upon request
254 even if there is a fee dispute between the immigration assistant and the customer;

255 (3) represent or advertise, in connection with the provision assistance in
256 immigration matters, other titles or credentials, including but not limited to ‘notary public’ or
257 ‘immigration consultant,’ that could cause a customer to believe that the person possesses special
258 professional skills or is authorized to provide advice on an immigration matter, provided that a
259 certified notary public may use the term ‘notary public’ if the use is accompanied by the
260 statement that the person is not an attorney; the term ‘notary public’ may not be translated to
261 another language;

262 (4) provide legal advice, recommend a specific course of legal action, or provide
263 any other assistance that requires legal analysis, legal judgment, or interpretation of the law; or

264 (5) make any misrepresentation or false statement, directly or indirectly, to
265 influence, persuade, or induce patronage.

266 (j) Any person who violates any provision of this Act shall be guilty of a [misdemeanor]
267 for a [first offense] and a [high and aggravated misdemeanor] for a [second or subsequent
268 offense] committed within [five years] of a previous conviction for the same offense.

269 (k) The [Secretary of State] shall issue rules not inconsistent with this Act for the
270 implementation, administration, and enforcement of this Act.

271
272 Section 8. [*Deducting Authorized Employee as Business Expense.*]

273 (a) On or after [January 1, 2008], no wages or remuneration for labor services to an
274 individual of [\$600] or more per annum may be claimed and allowed as a deductible business
275 expense for state income tax purposes by a taxpayer unless such individual is an authorized
276 employee. The provisions of this subsection shall apply whether or not an Internal Revenue
277 Service Form 1099 is issued in conjunction with the wages or remuneration.

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

281 (c) This section of this Act shall not apply to any individual hired by the taxpayer prior to
282 [January 1, 2008].

283 (d) This section of this Act shall not apply to any taxpayer where the individual being paid
284 is not directly compensated or employed by said taxpayer.

285 (e) This section of this Act shall not apply to wages or remuneration paid for labor
286 services to any individual who holds and presents to the taxpayer a valid license or identification
287 card issued by the [state Department of Driver Services].

288 (f) The [commissioner] is authorized to prescribe forms and promulgate rules and
289 regulations deemed necessary in order to administer and effectuate this section of this Act.

290
291 Section 9. [*Withholding and Reporting Income Tax.*]

292 (a) Form 1099 withholding and reporting.

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

- 296 (A) failed to provide a taxpayer identification number;
297 (B) failed to provide a correct taxpayer identification number; or
298 (C) provided an Internal Revenue Service issued taxpayer identification
299 number issued for nonresident aliens.

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

305
306 Section 10. [*Verifying Lawful Presence of People 18 Years or Older Who Apply for Public*
307 *Benefits.*]

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

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

316 (c) Verification of lawful presence under this section shall not be required:
317 (1) for any purpose for which lawful presence in the United States is not required
318 by law, ordinance, or regulation;
319 (2) for assistance for health care items and services that are necessary for the
320 treatment of an emergency medical condition, as defined in 42 U.S.C. Section 1396b(v)(3), of the
321 alien involved and are not related to an organ transplant procedure;
322 (3) for short-term, noncash, in-kind emergency disaster relief;
323 (4) for public health assistance for immunizations with respect to immunizable
324 diseases and for testing and treatment of symptoms of communicable diseases whether or not
325 such symptoms are caused by a communicable disease; or
326 (5) for programs, services, or assistance such as soup kitchens, crisis counseling
327 and intervention, and short-term shelter specified by the United States Attorney General, in the
328 United States Attorney General's sole and unreviewable discretion after consultation with
329 appropriate federal agencies and departments, which:
330 (A) deliver in-kind services at the community level, including through
331 public or private nonprofit agencies;
332 (B) do not condition the provision of assistance, the amount of assistance
333 provided, or the cost of assistance provided on the individual recipient's income or resources; and
334 (C) are necessary for the protection of life or safety.
335 (6) for prenatal care; or
336 (7) for postsecondary education, whereby the [Board of Regents of the University
337 System of this state] or the [State Board of Technical and Adult Education] shall set forth, or
338 cause to be set forth, policies regarding postsecondary benefits that comply with all federal law
339 including but not limited to public benefits as described in 8 U.S.C. Section 1611, 1621, or 1623.
340 (d) Verification of lawful presence in the United States by the agency or political
341 subdivision required to make such verification shall occur as follows:
342 (1) The applicant must execute an affidavit that he or she is a United States citizen
343 or legal permanent resident [18 years of age] or older; or
344 (2) The applicant must execute an affidavit that he or she is a qualified alien or
345 nonimmigrant under the federal Immigration and Nationality Act [18 years of age] or older
346 lawfully present in the United States.
347 (e) For any applicant who has executed an affidavit that he or she is an alien lawfully
348 present in the United States, eligibility for benefits shall be made through the Systematic Alien
349 Verification of Entitlement (SAVE) program operated by the United States Department of
350 Homeland Security or a successor program designated by the United States Department of
351 Homeland Security. Until such eligibility verification is made, the affidavit may be presumed to
352 be proof of lawful presence for the purposes of this Code section.
353 (f) Any person who knowingly and willfully makes a false, fictitious, or fraudulent
354 statement of representation in an affidavit executed pursuant to subsection (d) of this section shall
355 be guilty of a violation of [insert citation].
356 (g) Agencies or political subdivisions of this state may adopt variations to the
357 requirements of this section to improve efficiency or reduce delay in the verification process or to
358 provide for adjudication of unique individual circumstances where the verification procedures in
359 this section would impose unusual hardship on a legal resident of this state.
360 (h) It shall be unlawful for any agency or a political subdivision of this state to provide
361 any state, local, or federal benefit, as defined in 8 U.S.C. Section 1621 or 8 U.S.C. Section 1611,
362 in violation of this section. Each state agency or department which administers any program of
363 state or local public benefits shall provide an annual report with respect to its compliance with
364 this section.

365 (i) Any and all errors and significant delays by SAVE shall be reported to the United
366 States Department of Security and to the [Secretary of State] which will monitor SAVE and its
367 verification application errors and significant delays and report yearly on such errors and
368 significant delays to ensure that the application of SAVE is not wrongfully denying benefits to
369 legal residents of this state.

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

374

375 Section 11. [*Severability.*] [Insert severability clause.]

376

377 Section 12. [*Repealer.*] [Insert repealer clause.]

378

379 Section 13. [*Effective Date.*] [Insert effective date.]