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## PROFESSIONS AND BUSINESS Registration of Immigration Assistance: Enact the "Georgia Security and Immigration Compliance Act"; Provide that it shall be Unlawful to Traffic a Person for Labor or Sexual Servitude; Provide for Valid Identification Documents; Provide for the Comprehensive Regulation of Private Immigration Assistance Services; Specify Conditions Under Which Certain Compensation Paid by a Taxpayer shall be Disallowed as a Business Expense for State Income Tax Purposes; Provide for Verification of Lawful Presence Requirements, Procedures, and Conditions Regarding Applications for Certain

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# Benefits; Provide for Exceptions; Provide for the Promulgation of Regulations; Provide for Criminal and Other Penalties; Repeal Conflicting Laws; and for Other Purposes

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## PROFESSIONS AND BUSINESS

***Registration of Immigration Assistance: Enact the “Georgia Security and Immigration Compliance Act”; Provide that it shall be Unlawful to Traffic a Person for Labor or Sexual Servitude; Provide for Valid Identification Documents; Provide for the Comprehensive Regulation of Private Immigration Assistance Services; Specify Conditions Under Which Certain Compensation Paid by a Taxpayer shall be Disallowed as a Business Expense for State Income Tax Purposes; Provide for Verification of Lawful Presence Requirements, Procedures, and Conditions Regarding Applications for Certain Benefits; Provide for Exceptions; Provide for the Promulgation of Regulations; Provide for Criminal and Other Penalties; Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS:	O.C.G.A. §§ 13-10-90 to -91 (new), 16-5-46 (new), 35-2-14 (new), 42-4-14 (new), 43-20a-1 to -4 (new), 48-7-21.1 (new), 50-36-1 (new)
BILL NUMBER:	SB 529
ACT NUMBER:	457
GEORGIA LAWS:	2006 Ga. Laws 105
SUMMARY:	The Act requires the State and local governments to use the Systematic Alien Verification of Entitlement (SAVE) program operated by the U.S. Department of Homeland Security to verify the lawful presence of anyone 18 or older who applies for taxpayer-funded benefits. The Act requires the State and local governments to use the SAVE basic pilot program to verify the legal immigration status of every person that is hired by the government in the State of Georgia. The Act also requires any employer paying an individual more than \$600 per year, including contract workers, to verify

the worker is eligible to work before they claim that payment as a business deduction on their state income tax. Local law enforcement officials are required to verify the nationality and legal status of anyone arrested and booked into jail for a felony. If the person arrested is an illegal immigrant, the Act requires the local agency to report that person to federal immigration officials. It requires contractors and subcontractors with the state to participate in the verification program used by the state government. The Act also makes human trafficking a felony. The Act provides that property used in conjunction with producing false identification to be contraband and makes such property subject to seizure and to forfeiture. The Act places restrictions on individuals performing immigration assistance functions, but exempts individuals licensed to practice law in the State of Georgia. The Act requires that withholding agents withhold state income tax at a rate of six percent on compensation paid to workers who cannot provide a valid taxpayer identification number, or who provide a taxpayer identification number issued to a nonresident alien.

EFFECTIVE DATE:

July 1, 2007<sup>1</sup>

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1. See 2006 Ga. Laws 105, § 10, at 117.

## History

Illegal immigration is one of the most controversial issues in the United States today.<sup>2</sup> There are an estimated eleven million illegal immigrants currently living in the United States.<sup>3</sup> While the exact financial figures are unknown, it is estimated that states spend hundreds of millions of dollars each year providing services for illegal immigrants in areas such as health care and education.<sup>4</sup> Critics of illegal immigration also claim that illegal workers drive down wages and take jobs from Americans, and that illegal immigration poses a threat to national security.<sup>5</sup> However, others argue that industries such as agriculture and construction are dependent on the immigrant work force and that eliminating those workers would spell “economic disaster.”<sup>6</sup> According to recent national polls, almost ninety percent of Americans have said that illegal immigration is a serious problem.<sup>7</sup>

When President George W. Bush took office, immigration reform was relatively high on his agenda, but the issue was moved to the back burner following the events of September 11, 2001.<sup>8</sup> The issue reemerged during the first year of President Bush’s second term, and currently, Congress is debating how best to address the issue of illegal immigration.<sup>9</sup> Proposals have focused primarily on border enforcement and guest worker programs.<sup>10</sup> However, Congress’s

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2. See Editorial, *Time to Fix Immigration*, N.Y. TIMES, Oct. 14, 2005, at A24; see also Olivia Albrecht, *An Emergency That Demands Action; the Immigration Crisis*, BALT. SUN, Jan. 30, 2006, at 9A; Tom Baxter, *Pressure Mounts to Solve Illegal Immigration Mess*, ATLANTA J.-CONST., Nov. 11, 2005, at 1C; Robert Tanner, *Update 2: Govs. Press Illegal Immigration Worries*, FORBES, Feb. 27, 2006, available at

<http://www.forbes.com/business/manufacturing/feeds/ap/2006/02/27/ap2554997.html>.

3. See Tanner, *supra* note 2.

4. See Julianne Baron & Paula Fomby, *Guest Workers Will Strain State*, ATLANTA J.-CONST., Mar. 26, 2006, at 7B.

5. See Mary Lou Pickel & Matt Kempner, *Reliance on Illegals Props Up Economy; Law Would Hit Industry, Consumers*, ATLANTA J.-CONST., Mar. 23, 2006, at A1; see generally, James C. McKinley, Jr., *At Mexican Borders, Tunnels, Vile River, Rusty Fence*, N.Y. TIMES, Mar. 23, 2005, at A8.

6. See Pickel & Kempner, *supra* note 5.

7. See Chip Rogers, Op-Ed., *Gwinnett Opinions: Bill on Illegals First Step for State*, ATLANTA J.-CONST., Mar. 19, 2006, at J5 [hereinafter *First Step*].

8. See Paul Vitello, *As Illegal Workers Hit Suburbs, Politicians Scramble to Respond*, N.Y. TIMES, Oct. 6, 2005, at A1.

9. See *id.*; Baron & Fomby, *supra* note 4.

10. See Editorial, *Our Opinions: U.S. Foreign Legions; Illegal Immigration Is Too Complex an Issue to Be Handled by Georgia Legislators. It's a Federal Fight.*, ATLANTA J.-CONST., Mar. 2, 2006, at A14

current efforts will do little to deal with the massive costs of state services and benefits currently provided to illegal immigrants or to address other state concerns.<sup>11</sup>

Critics complain that the federal government has ignored illegal immigration and its effects for too long.<sup>12</sup> State and local governments, unhappy with federal efforts to deal with the issue, have begun to respond at a local level as their citizens have applied pressure.<sup>13</sup> In 2005, approximately 50 state legislative proposals addressed illegal immigration, and the number rose to almost 500 this year.<sup>14</sup> These bills address a wide variety of topics related to illegal immigration, including benefits, congressional action, education, employment, identification issues, and law enforcement.<sup>15</sup> Interestingly, not all proposals were designed to crack down on illegal immigration; some recent state actions actually help illegal immigrants.<sup>16</sup> However, the majority of state bills seek to discourage illegal immigration by limiting access to government-provided services and punishing employers who hire undocumented workers.<sup>17</sup> Some of the toughest state legislation includes an Arizona proposal to build a border wall and spend fifty million dollars on a radar system to track anyone who crosses the border from Mexico and a New Hampshire proposal to fine businesses up to \$2,500 for hiring unauthorized foreign workers.<sup>18</sup>

According to recent polls, more than eighty percent of Georgians have expressed a desire for the state legislature to deal with illegal

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[hereinafter *Federal Fight*]; Jay Bookman, Editorial, *Illegals Didn't Create Mess; Legislators Did*, ATLANTA J.-CONST., Mar. 23, 2006, at A15.

11. See *Federal Fight*, *supra* note 10; see also Editorial, *Ga. Legislature Struggles to Solve a Federal Problem*, MACON TELEGRAPH, Mar. 24, 2006 (on file with Georgia State University Law Review).

12. See *Federal Fight*, *supra* note 10.

13. See Baxter, *supra* note 2.

14. See *First Step*, *supra* note 7.

15. See generally ANNE MORSE, NCSL, OVERVIEW OF STATE LEGISLATION RELATED TO IMMIGRANTS INTRODUCED JAN-APRIL 2006 (May 3, 2006), available at <http://www.ncsl.org/programs/immig/statelegislationoverview0506.htm>.

16. See Robert Tanner, *Statehouses Take Up Immigration Legislation*, ASSOC. PRESS, Mar. 29, 2006, available at <http://www.breitbart.com/news/2006/03/29/D8GLH6H00.html> (noting that Illinois, New York, and Washington state extended benefits to illegal immigrants by law, executive order, and court decisions, and state leaders in Arizona interpreted sweeping restrictions passed by voters to scale back the impact on illegal immigrants) [hereinafter *Statehouses Take Up Immigration*].

17. *Id.*

18. *Id.*

immigration.<sup>19</sup> There are an estimated 250,000 to 800,000 illegal immigrants in the state of Georgia, and their impact on the state is a source of heated debate.<sup>20</sup> Some say they “sap vital resources from legal residents and state programs,” while others argue that they “provide needed labor to major state industries.”<sup>21</sup> While many legislators agree the issue of illegal immigration must be dealt with in some form, they disagree as to what role the state should play.<sup>22</sup> Opponents of state measures to curb illegal immigration argue it is a federal issue for Congress to address.<sup>23</sup> State legislation only “addresses symptoms of the problem, not the cause of the problem, which is a broken federal system.”<sup>24</sup>

In 2005, Senator Chip Rogers of the 21st district began to draw legislative attention to the issue, introducing a package of bills focused on reducing and eventually eliminating illegal immigration.<sup>25</sup> The five bills addressed areas including state contracts, higher education, driver’s licenses, employment, and public services.<sup>26</sup> Criticized as piecemeal, costly, and harsh, the bills were ultimately unsuccessful: not one made it out of committee.<sup>27</sup> However, they did serve the purpose of beginning a dialogue about the issue of illegal immigration, setting the stage for new proposals in the next legislative session.<sup>28</sup>

Against this background, Senator Rogers introduced SB 529, the “Georgia Security and Immigration Compliance Act,” a bill which some have called “the biggest crackdown on illegal immigration in

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19. See *Legislature 2006: House Passes Bill on Illegal Immigration*, ATLANTA J.-CONST., Mar. 24, 2006.

20. See Jim Tharpe, *Hard Line on Illegals; Legislation Takes Shape*, ATLANTA J.-CONST., Feb. 2, 2006, at A1.

21. *Id.*

22. Vicky Eckenrode, *House OKs Get-Tough Measures*, AUGUSTA CHRON., Mar. 24, 2006, at A1.

23. Editorial, *2006 Georgia Legislature: Posturing Won’t Keep Out Illegals; Industry Needs Them, So Forget Revoking Social Services; Only Federal Reforms Will Do*, ATLANTA J.-CONST., Jan. 8, 2006, at F8; Matthew S.L. Cate, *Georgia House Approves Illegal Immigration Bill*, CHATTANOOGA TIMES FREE PRESS, Mar. 24, 2006, at B2.

24. Cate, *supra* note 23 (quoting Representative Pedro Marin, D-Duluth, of the 96th district, one of two Hispanic members in the Georgia House of Representatives).

25. *Review of Selected 2005 Georgia Legislation*, 22 GA. ST. U. L. REV. (2005).

26. *Id.*

27. *Id.*

28. See generally *id.*

years,” and others have called “a misguided campaign against foreign workers seeking a better life.”<sup>29</sup>

### *Bill Tracking of SB 529*

#### *Consideration and Passage by the Senate*

Senators Chip Rogers, Bill Hamrick, John Douglas, Nancy Schaefer, and Mitch Seabaugh of the 21st, 30th, 17th, 50th, and 28th districts, respectively, sponsored SB 529.<sup>30</sup> On February 9, 2006, the Senate first read SB 529 and the bill was assigned to the Committee on Public Safety and Homeland Security.<sup>31</sup> The Committee favorably reported the bill by substitute on March 1, 2006.<sup>32</sup> The substitute amended the Georgia Racketeer Influenced and Corrupt Organizations (RICO) statute by allowing the statute to apply to human trafficking.<sup>33</sup> The bill was read for the second time on March 2, 2006.<sup>34</sup> The bill was read for the third time on March 8, 2006 and Senator Rogers introduced the bill on the Senate floor.<sup>35</sup>

Senator Rogers argued that the federal government was charged with border enforcement, and given the current problem of illegal immigration, it was up to the states to take action in the form of interior enforcement.<sup>36</sup> He called the bill the first comprehensive approach to the issue of illegal immigration and its affects on the State of Georgia.<sup>37</sup> The final bill was the result of compromise and collaboration with prosecutors, attorneys, builders, contractors,

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29. Jim Tharpe, Carlos Campos, and Mary Lou Pickel, *Senate Bill Reveals Rift on Illegals; Immigration Proposal Would Restrict Services*, ATLANTA J.-CONST., Feb. 26, 2006, at A1 [*hereinafter* Campos]. See also *First Step*, *supra* note 7.

30. See SB 529, as introduced, 2006 Ga. Gen. Assem.

31. See State of Georgia Final Composite Status Composite Sheet, SB 529, Feb. 9, 2006 (Mar. 30, 2006).

32. See State of Georgia Final Composite Status Composite Sheet, SB 529, Mar. 1, 2006 (Mar. 30, 2006).

33. See SB 529 (SCS), 2006 Ga. Gen. Assem.

34. See State of Georgia Final Composite Status Composite Sheet, SB 529, Mar. 2, 2006 (Mar. 30, 2006).

35. See State of Georgia Final Composite Status Composite Sheet, SB 529, Mar. 8, 2006 (Mar. 30, 2006); see also Audio Recording of Senate Proceedings, Mar. 8, 2006 (remarks by Sen. Chip Rogers), [http://www.georgia.gov/00/article/0,2086,4802\\_6107103\\_47120055,00.html](http://www.georgia.gov/00/article/0,2086,4802_6107103_47120055,00.html) [*hereinafter* Senate Audio].

36. See Senate Audio, *supra* note 35 (remarks by Sen. Chip Rogers).

37. See *id.*



manufacturers, law enforcement, healthcare officials, constituents, women's groups, and many others.<sup>38</sup>

Senator Eric Johnson of the 1st district also spoke on behalf of the bill and explained that America has changed from a land built on immigration and the ideals of freedom and opportunity, to a land where the goal is to "export a higher standard of living to other nations, not import a lower standard of living to ours."<sup>39</sup> With rapid growth in Georgia and the even more rapid influx of illegal immigrants to the United States and to Georgia, Georgia citizens "feel the squeeze" of rising healthcare costs and lower wages.<sup>40</sup> Even though "illegal immigration may be good for the bottom line of some businesses . . . it's not good for the taxpayers' bottom line."<sup>41</sup> Senator Johnson explained the bill would eliminate the tax incentive for hiring illegal workers, and would help to reduce the strain on the public health system caused by illegal immigrants infected with communicable diseases such as tuberculosis, leprosy, and dysentery.<sup>42</sup> Furthermore, local jails and state prisons are clogged, and approximately 30% of inmates are illegal aliens, costing Georgia taxpayers an estimated ten million dollars in 1999.<sup>43</sup> SB 529 was hailed as a reasonable attempt to deal with a serious issue, while maintaining respect for legal immigrants.<sup>44</sup>

Five separate floor amendments were proposed in addition to the committee substitute.<sup>45</sup> Senators Emanuel Jones and Ed Tarver of the 10th and 22nd districts, respectively, offered amendment one to ensure that equipment used for printing false identification shall be considered contraband: "to provide that certain property used in conjunction with producing a false identification document shall be contraband; to provide for seizure and forfeiture. . ."<sup>46</sup> During the floor debate, Senator Rogers declined to comment on amendment

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38. *See id.*

39. *See Senate Audio, supra* note 35 (remarks by Sen. Eric Johnson).

40. *See id.*

41. *See id.*

42. *See id.*

43. *See id.*

44. *See id.*

45. *See Senate Audio, supra* note 35 (remarks by Sen. Chip Rogers).

46. *See SB 529 (SCSFA), 2006 Ga. Gen. Assem.*

one.<sup>47</sup> Senator Jones explained that the amendment had strong support from the law enforcement community and would be beneficial not only in terms of immigration reform, but also in prosecuting identity theft and other crimes.<sup>48</sup>

Senator Sam Zamarripa of the 36th district offered amendment two, which would have created an immigration Board of Advisors to monitor the implementation of the bill and to report to the Governor and General Assembly on its progress.<sup>49</sup> During the floor debate, Senator Rogers did not support amendment two.<sup>50</sup> Senator Zamarripa spoke in favor of the amendment, although he planned to vote against the bill, because SB 529 “goes into territory where we’ve never been before.”<sup>51</sup> SB 529 substantively changed the way law enforcement and public services interact with illegal immigrants, and, according to Senator Zamarripa, warranted an oversight provision as the bill goes into effect.<sup>52</sup> Amendment 2 failed by a vote of 20 to 33.<sup>53</sup>

Senators John Bulloch and Ross Tolleson of the 11th and 20th districts, respectively, offered the third floor amendment, which attempted to change the effective date of the bill to July, 2008.<sup>54</sup> During the floor debate, Senator Rogers explicitly asked the Senate to vote against amendment three.<sup>55</sup> Senator Bulloch spoke on behalf of the amendment and explained that moving back the implementation date would reduce the burden on businesses of verifying the forms of identification provided by workers.<sup>56</sup> Further floor debate and questions from Senator Zamarripa helped to clarify that amendment three would reduce the burden on agricultural employers, who usually hire workers on a daily basis, and face difficulties in verifying documentation on such short notice.<sup>57</sup> Furthermore, the amendment would facilitate the implementation of federal legislation mandating a

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47. See Senate Audio, *supra* note 35 (remarks by Sen. Chip Rogers).

48. See Senate Audio, *supra* note 35 (remarks by Sen. Emanuel Jones).

49. See Failed Senate Floor Amendment to SB 529, introduced by Sen. Zamarripa, Mar. 8, 2006.

50. See Senate Audio, *supra* note 35 (remarks by Sen. Chip Rogers).

51. See Senate Audio, *supra* note 35 (remarks by Sen. Sam Zamarripa).

52. See *id.*

53. Georgia Senate Voting Record, SB 529 (Mar. 8, 2006).

54. See Failed Senate Floor Amendment to SB 529, introduced by Sen. Bulloch and Sen. Tolleson, Mar. 8, 2006.

55. See Senate Audio, *supra* note 35 (remarks by Sen. Chip Rogers).

56. See Senate Audio, *supra* note 35 (remarks by Sen. John Bulloch).

57. See Senate Audio, *supra* note 35 (remarks by Sen. John Bulloch and Sen. Sam Zamarripa).

tamper-proof form of identification.<sup>58</sup> Amendment three failed by a vote of 23 to 30.<sup>59</sup>

Senator Rogers of the 21st district proposed amendment four, a technical change to clarify the bill's meaning and had no impact on the bill other than changing its language.<sup>60</sup>

Senators Kasim Reed, Doug Stoner, and Jim Whitehead from the 35th, 6th, and 24th districts, respectively, proposed the fifth floor amendment.<sup>61</sup> This amendment would have punished individuals who apply for employment using fraudulent documents by making it a misdemeanor for a first offense.<sup>62</sup> The second offense, under this amendment, would result in a felony charge.<sup>63</sup> This amendment set forth the forms of identification that would be used during the employment process and required employers to retain a copy of those documents for three years.<sup>64</sup> This amendment also mandated that the Georgia Bureau of Investigation (GBI) create a special unit to investigate employers to ensure compliance with the legislation.<sup>65</sup> This amendment provided for a toll free number that citizens may call to report infractions of the legislation.<sup>66</sup> Finally, the amendment would have fined employers per infraction for each illegal alien employed, as well as provided whistleblower protection to anyone who reports an employer in the state.<sup>67</sup>

Senator Reed spoke on behalf of amendment five.<sup>68</sup> He explained that, despite spending billions of dollars to strengthen our borders, the problem of illegal immigration stops at the "employer level."<sup>69</sup> His amendment was designed to strengthen enforcement at the "employer level," while at the same time protecting the agricultural community,

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58. *See id.*

59. Georgia Senate Voting Record, SB 529 (Mar. 8, 2006).

60. *See* SB 529 (SCSFA), 2006 Ga. Gen. Assem.; *see also* Senate Audio, *supra* note 35 (remarks by Sen. Chip Rogers).

61. *See* Failed Senate Floor Amendment to SB 529, introduced by Sens. Reed, Stoner, and Whitehead, Mar. 8, 2006.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *See* Failed Senate Floor Amendment to SB 529, introduced by Sens. Reed, Stoner, and Whitehead, Mar. 8, 2006.

67. *Id.*

68. *See* Senate Audio, *supra* note 35 (remarks by Sen. Kasim Reed).

69. *See id.*

the largest economic industry in Georgia.<sup>70</sup> Amendment five failed by a vote of 13 to 40.<sup>71</sup>

Senators Gloria Butler, Sam Zamarripa, and Vincent Fort of the 55th, 36th, and 39th districts, respectively, spoke in opposition to the bill.<sup>72</sup> Senator Butler criticized the Senate for moving too quickly on the immigration problem, without fully considering a strategy for addressing the likely labor shortage that would result from the bill.<sup>73</sup> Senator Zamarripa criticized the far-reaching economic repercussions of the bill and argued the bill created “a class of people who are separate and unequal.”<sup>74</sup> Senator Fort called the bill a watershed moment in history and foresaw that the bill would not be popular due to changing state demographics.<sup>75</sup>

The Senate passed the committee substitute, as amended, on March 8, 2006, by a vote of 40 to 13.<sup>76</sup>

### *Consideration and Passage by the House*

The House read SB 529 for the first time on March 9, 2006.<sup>77</sup> The bill was assigned to the House Committee on Judiciary, Non-Civil.<sup>78</sup> The bill was read for the second time on March 13, 2006.<sup>79</sup> The committee favorably reported the bill by substitute to the House on March 23, 2006.<sup>80</sup>

The substitute made several substantive changes to the bill.<sup>81</sup> The House committee substitute created a state work authorization program that would enable the Georgia Department of Labor to electronically verify whether a person is authorized to work in the United States.<sup>82</sup> The substitute further required that every public

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70. *See id.*

71. Georgia Senate Voting Record, SB 529 (Mar. 8, 2006).

72. *See* Senate Audio, *supra* note 35 (remarks by Sen. Gloria Butler).

73. *See id.*

74. *See* Senate Audio, *supra* note 35 (remarks by Sen. Sam Zamarripa).

75. *See* Senate Audio, *supra* note 35 (remarks by Sen. Vincent Fort).

76. *See* State of Georgia Final Composite Status Composite Sheet, SB 529, Mar. 8, 2006 (Mar. 30, 2006); *see also* Georgia Senate Voting Record, SB 529 (Mar. 8, 2006).

77. *See* State of Georgia Final Composite Status Sheet, SB 529, Mar. 9, 2006 (Mar. 30, 2006).

78. *Id.*

79. *See* State of Georgia Final Composite Status Sheet, SB 529, Mar. 13, 2006 (Mar. 30, 2006).

80. *See* State of Georgia Final Composite Status Sheet, SB 529, Mar. 23, 2006 (Mar. 30, 2006).

81. *Compare* SB 529 (SCSFA), 2006 Ga. Gen. Assem., *with* SB 529 (HCS), 2006 Ga. Gen. Assem.

82. *See* SB 529 (HCS), 2006 Ga. Gen. Assem.

employer use the state work authorization program.<sup>83</sup> The substitute did not include the Senate amendment prohibiting equipment used to make false identification documents.<sup>84</sup> Perhaps most significantly, the substitute added a provision assessing a fee to all undocumented residents making money transfers to a foreign country.<sup>85</sup> The substituted bill was read for the third time on the House floor on March 23, 2006 and passed by a vote of 123 to 51.<sup>86</sup>

### *Conference Committee*

On March 24, 2006, the Senate voted to disagree with the House substitute to SB 529.<sup>87</sup> The House insisted on its position the same day.<sup>88</sup> A conference committee was appointed on March 27, 2006.<sup>89</sup>

The Conference Committee consisted of Senators Chip Rogers, Brian Kemp, and Mitch Seabaugh of the 21st, 46th, and 28th districts, respectively, and Representatives Tom Graves, John Lunsford, and Greg Morris of the 12th, 110th, and 155th districts, respectively.<sup>90</sup> The Committee recommended that both the Senate and the House recede from their positions and adopt the conference committee substitute to SB 529.<sup>91</sup> The substitute removed the House amendment providing for a fee on money transfers and the state work authorization program.<sup>92</sup> On March 27, 2006, the substitute passed the Senate by a vote of 39 to 16.<sup>93</sup> On March 28, 2006, the substitute

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83. *Id.*

84. *Id.*

85. *Id.* In addition to the above changes, the substitute also made some minor changes to clarify the bill's provisions and enforcement. *Id.*

86. See State of Georgia Final Composite Status Sheet, SB 529, Mar. 23, 2006 (Mar. 30, 2006); see also Georgia House of Representatives Voting Record, SB 529 (Mar. 23, 2006).

87. Georgia Senate Voting Record, SB 529 (Mar. 24, 2006); State of Georgia Final Composite Status Sheet, SB 529, Mar. 24, 2006 (Mar. 30, 2006).

88. State of Georgia Final Composite Status Sheet, SB 529, Mar. 24, 2006 (Mar. 30, 2006).

89. See State of Georgia Final Composite Status Sheet, SB 529, Mar. 27, 2006 (Mar. 30, 2006).

90. See COMMITTEE OF CONFERENCE REPORT ON SB 529 (Mar. 2006).

91. See *id.*

92. SB 529 (CCS), 2006 Ga. Gen. Assem.

93. Senate Voting Record, SB 529 (Mar. 27, 2006); State of Georgia Final Composite Status Sheet, SB 529, Mar. 27, 2006 (Mar. 30, 2006).

passed the House by a vote of 119 to 49.<sup>94</sup> The bill was signed by Governor Sonny Perdue on April 17, 2006.<sup>95</sup>

### *The Act*

The Act adds Code sections 13-10-90 and 13-10-91, requiring public employers to register and participate in the federal work authorization program to verify information of all new employees.<sup>96</sup>

The Act adds Code section 16-5-46, providing for punishment for the crime of human trafficking.<sup>97</sup> The Act defines the offense of trafficking a person as “knowingly subject[ing] or maintain[ing] another in labor servitude or knowingly recruit[ing], entic[ing], harbor[ing], transport[ing], provid[ing] or obtain[ing] by any means another person for the purpose of servitude.”<sup>98</sup> The Act identifies both labor and sexual trafficking as felonies and requires punishment of imprisonment of at least one and no more than 20 years.<sup>99</sup>

The Act adds Code section 35-2-14, authorizing the Commissioner of Public Safety to negotiate the terms of a memorandum of understanding concerning the enforcement of federal immigration between the State of Georgia and the United States Department of Justice or Department of Homeland Security.<sup>100</sup> This memorandum allows for implementation of a program to train and authorize local law enforcement officers to enforce federal immigration and customs laws while performing within the scope of their duties.<sup>101</sup> The Act provides that the commissioner shall appoint peace officers who shall be trained in accordance with the memorandum of understanding to enforce federal immigration and customs laws.<sup>102</sup>

The Act adds Code section 42-4-14, requiring a regional jail authority to make a reasonable effort to determine the nationality of

94. Georgia House of Representatives Voting Record, SB 529 (Mar. 28, 2006); State of Georgia Final Composite Status Sheet, SB 529, Mar. 28, 2006 (Mar. 30, 2006).

95. Georgia General Assembly, SB 529 Bill Tracking, *available at* [http://www.legis.state.ga.us/legis/2005\\_06/sum/sb529.htm](http://www.legis.state.ga.us/legis/2005_06/sum/sb529.htm).

96. O.C.G.A. § 13-10-90 to -91 (Supp. 2006).

97. O.C.G.A. § 16-5-46 (Supp. 2006).

98. *Id.*

99. *Id.*

100. O.C.G.A. § 35-2-14 (Supp. 2006).

101. *Id.*

102. *Id.*

any person charged with a felony or with driving under the influence.<sup>103</sup> The Act provides that, if the prisoner is a foreign national, the jail authority must make a reasonable effort to verify that the prisoner has been lawfully admitted into the United States and to ensure that such lawful status has not expired.<sup>104</sup> The Act requires the jail authority to notify the United States Department of Homeland Security if the prisoner is determined not to be lawfully admitted.<sup>105</sup>

The Act adds Code section 43-20A-1 to 43-20A-4 to establish and enforce standards of ethics in the profession of immigration assistance by private individuals who are not licensed attorneys.<sup>106</sup> The Act provides for eleven services that may be performed when providing immigration assistance.<sup>107</sup> The Act exempts the following people: (1) attorneys licensed to practice law, (2) legal interns, clerks, or paralegals employed by a licensed attorney, (3) not-for-profit organizations recognized by the Board of Immigration Appeals, and (4) any organization employing or attempting to employ an alien where the organization provides advice or assistance in immigration matters to alien employees without compensation.<sup>108</sup> The Act provides that any person who offers immigration assistance service shall post signs at his or her place of business in English and in every other language in which the person offers service.<sup>109</sup> The Act provides that each sign be at least 12 inches by 17 inches and state, "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."<sup>110</sup> The Act provides that every person engaged in immigration assistance service who is not an attorney but advertises the service must give the same notice.<sup>111</sup> The Act provides a fine of up to \$1000 per violation.<sup>112</sup> The Act also lists five prohibitions for

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103. O.C.G.A. § 42-4-14 (Supp. 2006).

104. *Id.*

105. *Id.*

106. O.C.G.A. § 43-20A-1 to -4 (Supp. 2006).

107. O.C.G.A. § 43-20A-4 (Supp. 2006).

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

any person engaged in immigration services not exempted under this chapter.<sup>113</sup> The Act provides that any person violating this Chapter shall be guilty of a misdemeanor.<sup>114</sup>

The Act adds Code section 48-7-21.1, which provides that no wages for labor services of \$600 or more per year may be allowed as a deductible business expense for state income tax purposes unless the individual receiving wages is an authorized employee.<sup>115</sup> The Act identifies several exemptions to this Code section, including the following: any individual hired by the taxpayer prior to January 1, 2008; any taxpayer where the individual being paid is not being directly compensated by the taxpayer; and any wages paid for labor services to an individual who holds and presents to the taxpayer a valid license or identification card issued by the Georgia Department of Driver Services.<sup>116</sup>

The Act adds a new subsection to Code section 48-7-101, relating to income tax withholding and 1099 reporting.<sup>117</sup> The new provision requires an employer to withhold state income taxes at the rate of six percent per annum of the amount of compensation paid to an individual who either has failed to provide a taxpayer identification number or has provided an Internal Revenue Service-issued taxpayer identification number issued for nonresident aliens.<sup>118</sup>

The Act adds Code section 50-36-1, which requires every agency or political subdivision of the State to verify the lawful presence in the United States of any person over the age of 18 who has applied for state or local public benefits administered by an agency of the state.<sup>119</sup> To verify lawful presence, the Act provides that the applicant must execute an affidavit that he is a citizen or legal permanent resident of the United States or that he or she is a qualified non-immigrant under the federal Immigration and Nationality Act.<sup>120</sup> The Act requires that in order for a lawful alien to be eligible for benefits,

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113. O.C.G.A. § 43-20A-4 (Supp. 2006).

114. *Id.*

115. O.C.G.A. § 48-7-21.1 (Supp. 2006).

116. *Id.*

117. O.C.G.A. § 48-7-101 (Supp. 2006).

118. *Id.*

119. O.C.G.A. § 50-36-1 (Supp. 2006).

120. *Id.*



the eligibility must be made through the Systematic Verification of Entitlement (SAVE) program, operated by the United States Department of Homeland Security.<sup>121</sup> The Act provides that verification of lawful presence under this Code section shall not be required if it is not otherwise required by law for the following services: emergency healthcare services; short term, non-cash emergency disaster relief services; public assistance for immunizations; programs, services, or assistance such as soup kitchens, crisis counseling, and short term shelter; prenatal care; post-secondary education.<sup>122</sup>

### *Analysis*

The main purpose of the Act is to address public concern with illegal immigration by enacting state legislation to enforce existing federal legislation.<sup>123</sup> The Act intends to send a message both to the federal government and to illegal aliens that the State of Georgia will ensure the enforcement of federal immigration laws in Georgia.<sup>124</sup> Because the federal government has failed to adequately confront the issue, the Act uses tools created by the federal government to take a hard stance against people who fail to comply with the federal immigration process, as well as those who benefit from illegal immigration.<sup>125</sup>

Section two of the Act deals with public employers and contracts.<sup>126</sup> Beginning July 1, 2007, state government employers in Georgia will be required to verify the legal status of all new hires using a federal work authorization program.<sup>127</sup> The purpose of this provision is to set a good example for all employers by ensuring that the State complies with federal law with regard to employment.<sup>128</sup> “Surely we should expect government to follow federal law as it

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121. *Id.*

122. *Id.*

123. See Telephone Interview with Sen. Chip Rogers, Sen. Dist. No. 21, Apr. 17, 2006 [*hereinafter* Rogers Interview].

124. *Id.*

125. See *id.*

126. See O.C.G.A. § 13-10-90 to -91 (Supp. 2006).

127. See O.C.G.A. § 13-10-91.

128. See Senate Audio, *supra* note 35 (remarks by Sen. Chip Rogers).

pertains to hiring.”<sup>129</sup> In addition, this section requires that contractors and subcontractors with the State participate in the work authorization program.<sup>130</sup> “You’re using taxpayer dollars, so it’s appropriate that the taxpayers would expect that the government would follow the law.”<sup>131</sup> Fighting back at claims that worker verification is too costly for many employers and concerns that verification policies will require employers to “play police officer,” Senator Chip Rogers noted that many private and public employers in Georgia already use the free federal basic pilot program to verify the legal status of their employees.<sup>132</sup>

Section three of the Act deals with the crime of human trafficking.<sup>133</sup> The key point of this section is to prohibit enslaving immigrant workers by supplementing federal law enforcement.<sup>134</sup> This section makes human trafficking, as well as contributing to human trafficking, a felony in the state of Georgia.<sup>135</sup> Providing penalties from one to 20 years for the crime, this section of the Act was designed to help “illegal aliens who are abused because of their illegal status.”<sup>136</sup> This provision is similar to the language of the federal Trafficking Victims Protection Act of 2000, which calls for penalties of up to 20 years for anyone who forces another to work against his will.<sup>137</sup> This section deals with immigrants, as well as any other person forced to work against his will.<sup>138</sup> When discussing the broad scope of this section and its application in the commercial sex trade, Senator Chip Rogers stated the following: “As a byproduct of

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129. See *First Step*, *supra* note 7.

130. See O.C.G.A. § 13-10-91 (Supp. 2006).

131. Campos, *supra* note 29.

132. See Senate Audio, *supra* note 35 (remarks by Sen. Chip Rogers) (noting that “almost every major poultry company in [the] state,” including Birchwood Foods, ConAgra, Gold Kist, Purdue Farms, and Tyson Foods, as well as city governments of Gainesville, Jonesboro, Kennesaw, McDonough, Smyrna, and Newnan, use the Basic Pilot program); Tharpe *supra* note 20. “[T]here has been a lot of concern about a business having to be put in the position of policing immigration.” *Id.* (quoting Georgia Chamber of Commerce President George Israel).

133. O.C.G.A. § 16-5-46 (Supp. 2006).

134. Mary Lou Pickel, *Parts of Bill Target ‘Human Trafficking,’* ATLANTA J.-CONST., Feb. 11, 2006, at D4 [hereinafter *Human Trafficking*].

135. O.C.G.A. § 16-5-46(d) (Supp. 2006); see also Gov. Perdue Signs Georgia Security and Immigration Compliance Act, U.S. ST. NEWS, Apr. 17, 2006 [hereinafter *Gov. Perdue Signs*].

136. O.C.G.A. § 16-5-46 (supp. 2006); see also *Human Trafficking*, *supra* note 134.

137. *Human Trafficking*, *supra* note 134.

138. Mary Lou Pickel, *State to Focus on Most Exploited*, ATLANTA J.-CONST., Apr. 15, 2006 at C1 [hereinafter *Most Exploited*].

this overall immigration legislation, if we can go after those people as well, I'm all for it.”<sup>139</sup> The Act does not address the issue of smuggling illegal immigrants into the country, but it does help punish those who exploit illegal immigrant workers.<sup>140</sup> This section enables local law enforcement agents to specifically address human trafficking cases and prosecute those persons committing this crime.<sup>141</sup>

Section four of the Act grants authority to the Public Safety Commissioner to enter into a memorandum of understanding with the United States Department of Homeland Security or the Department of Justice.<sup>142</sup> This agreement allows for implementation of a program to train and authorize local law enforcement officers to enforce federal immigration and customs laws while performing within the scope of their duties.<sup>143</sup> The provision is pursuant to section 287(g) of the Immigration and Nationality Act, which “provides the legal authority for state and local enforcement to investigate, detain, and arrest aliens on civil and criminal grounds.”<sup>144</sup> Section 287(g) allows the Department of Homeland Security and state or local governments to agree on the scope and intent of their individual program before it is implemented, and allows flexibility so that states and local communities may individually tailor their own programs.<sup>145</sup> States such as Alabama and Florida have used section 287(g) to implement programs that meet federal as well as state and local needs.<sup>146</sup> Until last year, the program was unfunded; however, federal budget money has now been allocated to encourage more states to participate.<sup>147</sup> Under section four, the Governor, county commissioners, sheriff's

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139. *Id.*

140. O.C.G.A. § 16-5-46 (supp. 2006); *see also Human Trafficking*, *supra* note 134.

141. *Human Trafficking*, *supra* note 134.

142. *See* O.C.G.A. § 35-2-14 (Supp. 2006).

143. *See id.*; *see also* Audio Recording of House Proceedings, Mar. 28, 2006 (remarks by Rep. John Lunsford), [http://www.georgia.gov/00/article/0,2086,4802\\_6107103\\_47120020,00.html](http://www.georgia.gov/00/article/0,2086,4802_6107103_47120020,00.html) [*hereinafter* House Audio].

144. *See* House Audio, *supra* note 143 (remarks by Rep. Lunsford); James Jay Carafano, *Section 287(g) Is the Right Answer for State and Local Immigration Enforcement*, HERITAGE FOUND., Mar. 2, 2006, available at <http://www.heritage.org/Research/HomelandDefense/em994.cfm>.

145. Carafano, *supra* note 144.

146. *See* Rogers Interview, *supra* note 123; Carafano, *supra* note 144.

147. Rogers Interview, *supra* note 123.

departments, city councils, or the state patrol can choose, but are not required, to “opt in” to the program.<sup>148</sup>

One concern with section four is that it could have the effect of putting the burden of enforcing federal immigration laws on local governments.<sup>149</sup> However, proponents of the section counter that it simply “gives law enforcement additional tools they need to do their job.”<sup>150</sup> For example, it could be used to train Highway Patrol Officers, allowing them to better address drug and human trafficking offenses.<sup>151</sup>

Section five of the Act deals with ensuring that individuals who are charged with a felony or a DUI are lawfully in the United States.<sup>152</sup> Requiring all law enforcement officials to verify the nationality and legal status of anyone arrested and booked in jail for a felony or DUI allows the state to identify illegal immigrants who might be wanted in other states for felony violations.<sup>153</sup> This requirement goes into effect July 1, 2007, but is already occurring in Georgia state prison systems.<sup>154</sup> Local law enforcement officials will utilize a 24-hour federal immigration enforcement hotline to verify the immigration status of prisoners.<sup>155</sup> Federal law already requires local law enforcement officers to notify immigration services when detaining an individual; however, the Act is designed to ensure that local law enforcement officers are aware of the requirement.<sup>156</sup> Opponents have expressed concerns about this provision because of the possibility of racial profiling.<sup>157</sup> Joel Alvarado, the assistant director of the Southern Center for Studies in Public Policy at Clark Atlanta University, said he “worries that his name and appearance would make him a potential target for officers – even though he was born in the United States.”<sup>158</sup>

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148. House Audio, *supra* note 143 (remarks by Rep. John Lunsford).

149. See House Audio, *supra* note 143 (remarks by Rep. Pedro Marin).

150. House Audio, *supra* note 143 (remarks by Rep. John Lunsford).

151. Rogers Interview, *supra* note 123.

152. O.C.G.A. § 42-4-14 (Supp. 2006).

153. Campos, *supra* note 29.

154. Gov. Perdue Signs, *supra* note 135.

155. Campos, *supra* note 29.

156. Rogers Interview, *supra* note 123.

157. Campos, *supra* note 29.

158. Campos, *supra* note 29.

Section six of the Act limits what services a for-profit immigration assistance company can provide.<sup>159</sup> The purpose of this provision is to enforce certain standards in immigration assistance by preventing persons who are not licensed attorneys from offering legal advice.<sup>160</sup> Throughout Latin American countries, *notarios*, or notaries, have legal standing to issue documents and provide assistance in document preparation.<sup>161</sup> However, American laws are very different regarding non-lawyers practicing law.<sup>162</sup> Because of this culture difference, *notarios* have developed a practice of advertising in Latino communities in the United States.<sup>163</sup> To prevent the unauthorized practice of law, the Act restricts the business of *notarios* by requiring them to post signs stating that they are not lawyers and cannot provide legal advice, as well as preventing them from using the terms notary, lawyer, or attorney unless licensed or certified.<sup>164</sup>

This section provides eleven separate services which a for-profit immigration assistance service may provide.<sup>165</sup> In exempting licensed attorneys, legal interns, clerks, paralegals, and not-for-profit organizations from falling under these provisions, the Act only allows *notarios* to provide services that do not require legal skills or experience.<sup>166</sup> Supporters of this provision argue that it will help prevent unauthorized persons from taking advantage of an illegal alien's status by impersonating a licensed attorney.<sup>167</sup> Senator Zamarripa, who did not support the Act, endorsed this provision because he believed it prevented individuals from taking advantage of the cultural differences between the United States and Latin America when dealing with illegal immigrants.<sup>168</sup> Senator Zamarripa said this provision was "aimed at dealing with . . . the state's biggest purveyors of fake documents: the unregulated immigration paperwork providers known as 'notarios'. . . who promise everything

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159. O.C.G.A. § 43-20A-1 to -4 (Supp. 2006).

160. *Id.*; see also Senate Audio, *supra* note 35 (remarks by Sen. Sam Zamarripa).

161. Senate Audio, *supra* note 35 (remarks by Sen. Sam Zamarripa).

162. See generally *id.*

163. *Id.*

164. O.C.G.A. § 43-20A-4 (Supp. 2006).

165. *Id.*

166. *Id.*; see also Gov. Perdue Signs, *supra* note 135.

167. Senate Audio, *supra* note 35 (remarks by Sen. Sam Zamarripa).

168. Senate Audio, *supra* note 35 (remarks by Sen. Sam Zamarripa).

from green cards to drivers' licenses to work permits for a steep fee, but in the end just hoodwink people seeking legal status."<sup>169</sup> However, opponents of this provision are concerned that allowing *notarios* to register with the state as a business legitimizes their practice and makes it more difficult to know who is illegally practicing law behind closed doors.<sup>170</sup> Class action lawsuits have been filed against *notarios* to prevent them from practicing in any type of legal activities, and opponents are concerned that Georgia is moving backwards in allowing them to register and continue to practice.<sup>171</sup> However, proponents of the Act argue that signs and notifications that *notarios* are not licensed attorneys will prevent the unauthorized practice of law.<sup>172</sup>

Section seven of the Act prevents private employers from receiving a state tax deduction for wages over \$600 paid to an employee who is not authorized to work in the United States.<sup>173</sup> Because businesses claim wages paid as a major tax deduction, the threat of losing that write-off will serve to discourage employers from hiring undocumented workers.<sup>174</sup> The provision also seeks to "level[] the playing field" by ensuring that employers who choose not to hire illegal immigrants will not be disadvantaged economically.<sup>175</sup> Senator Chip Rogers declared, "[a] business should not receive a tax break for breaking the law."<sup>176</sup>

The Act has been criticized for not being tough enough on employers who hire undocumented workers.<sup>177</sup> Employers will not be penalized for employees who provide fake documentation.<sup>178</sup> While an earlier version of the bill would have put the burden on employers

169. Teresa Borden, *Illegal Immigration Bill Stirs Anger*, ATLANTA J.-CONST., Feb. 3, 2006, at E1.

170. See Telephone Interview with Socheat Chea, Immigration Attorney, May 11, 2006 [*hereinafter* Chea Interview].

171. *Id.*

172. Senate Audio, *supra* note 35 (remarks by Sen. Sam Zamarripa).

173. See O.C.G.A. § 48-7-21.1 (Supp. 2006).

174. Jim Tharpe, *Legislature 2006: Bill on Illegals Set to Go; New Legislation Targets Employers' Tax Benefits*, ATLANTA J.-CONST., Feb. 10, 2006, at A1 [*hereinafter* *Tax Benefits*].

175. See Senate Audio, *supra* note 35 (remarks by Sen. Chip Rogers); Carlos Campos, *Opponents of Illegal Immigration Fire Back With Rallies of Their Own*, ATLANTA J.-CONST., Apr. 15, 2006, at C2. One protestor stated that her husband was forced to close down his remodeling and painting business because "he could not compete with cheap illegal immigrant labor." *Id.*

176. *First Step*, *supra* note 7; see also Senate Audio, *supra* note 35 (remarks by Sen. Chip Rogers).

177. See Eckenrode, *supra* note 22; see also Rogers Interview, *supra* note 123.

178. Campos, *supra* note 29.

to verify the legal status of their workers based on rules promulgated by the State, the Act only requires that employees provide documentation, and does not require employers to verify the document's authenticity.<sup>179</sup> Senator Chip Rogers acknowledged that false documents are a real problem not addressed by the Act and stated that he hopes to tackle this gap with future legislation.<sup>180</sup> However, federal law allows for the federal government to fine employers up to \$3,000 for hiring illegal aliens.<sup>181</sup> This provision prohibits the state from fining employers who hire illegal aliens; therefore the state must rely on licensing and tax regulation.<sup>182</sup> The Act provides an exception to the tax provision for employees who are not directly compensated by the business, which means some home builders, contractors, and landscape companies will not be affected by this provision, since subcontractors in those industries are typically responsible for hiring laborers.<sup>183</sup> The agricultural community successfully lobbied to delay the effective date of this provision to January 1, 2008.<sup>184</sup> Because of the late start date and because the Act only requires employers to verify the legal status of new, not current, employees, the section has been criticized as an "amnesty program."<sup>185</sup> Overall, Democrats claim that the light stance toward employers is hypocritical.<sup>186</sup>

While nothing in section seven requires employers to change their hiring practices, business interests still have voiced concerns.<sup>187</sup> State farmers worry that a crackdown on illegal immigrants could have the unintended consequence of scaring off both legal and illegal laborers,

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179. *Tax Benefits*, *supra* note 174.

180. See Rogers Interview, *supra* note 123; Jim Tharpe, *Perdue Signs Bill on Illegals; Crackdown Law Faces Challenges*, ATLANTA J.-CONST., Apr. 18, 2006, at A1 [hereinafter *Crackdown Law*].

181. 8 U.S.C. § 1324a(f)(1) (2007).

182. See 8 U.S.C. § 1324a(h)(2) (2007); E-mail from Chip Rogers, Senator, Georgia State Senate, to Lee M. Gillis, Jr., Legislation Co-Editor, Georgia State University Law Review (Dec. 20, 2006, 16:33:08 EST) (on file with Georgia State University Law Review).

183. O.C.G.A. § 48-7-21.1 (Supp. 2006); Campos, *supra* note 29.

184. Jim Tharpe, *Legislature 2006: Lobbyists Influence Bill on Illegals; Farmers Get Shield; Status Section Delayed*, ATLANTA J.-CONST., Mar. 23, 2006, at A10. Lobbyists from the Georgia Agribusiness Council, the Georgia Farm Bureau, the state's Fruit and Vegetable Growers Association, and the Georgia Cattlemen's Association requested that the date be pushed back as far as January 1, 2009. *Id.*

185. See House Audio, *supra* note 143 (remarks by Rep. Thomas).

186. Eckenrode, *supra* note 22.

187. See Senate Audio, *supra* note 35 (remarks by Sen. Chip Rogers).

thus crippling the agricultural industry.<sup>188</sup> Other industries have echoed that sentiment, claiming that there is a shortage of American laborers willing to perform jobs that require physical labor.<sup>189</sup> Employers in landscaping and home construction claim costs could double if illegal immigrants are removed from the workforce.<sup>190</sup> A partner from a Georgia landscaping company predicted, “No matter what anybody wants to say, if they all go home, the world shuts down.”<sup>191</sup>

Section eight of the Act requires employers to withhold taxes for all nonresident aliens.<sup>192</sup> Employers will be required to withhold state income tax at a rate of six percent from nonresident aliens for whom a 1099 has been filed when the nonresident alien has “failed to provide a taxpayer identification number; failed to provide a correct taxpayer identification number; or provided an Internal Revenue Service issued taxpayer identification number issued for nonresident aliens.”<sup>193</sup> Any employer who fails to comply with the withholding requirements is liable for the taxes that the employer should have withheld.<sup>194</sup>

This section replaced a previous provision of SB 529 that imposed a five percent surcharge on any customer transferring money who could not show legal status in the United States.<sup>195</sup> Estimating that Georgia’s immigrants transferred nearly one billion dollars to other countries in 2004, the wire transfer provision was designed to relieve Georgia of some of the financial burden of illegal immigrants.<sup>196</sup> However, critics of the wire transfer section argued that it violated the United States Constitution by infringing on the federal government’s power to regulate immigration law and commerce.<sup>197</sup> Proponents insisted that it was not designed to punish illegal

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188. See Senate Audio, *supra* note 35 (remarks by Sen. Sam Zamarripa).

189. Campos, *supra* note 29.

190. Pickel & Kempner, *supra* note 5.

191. Campos, *supra* note 29.

192. O.C.G.A. § 48-7-101 (Supp. 2006).

193. *Id.*

194. *Id.*

195. See SB 529 (HCS), 2006 Ga. Gen. Assem.

196. Carlos Campos, *Wire Fee Hits Wall of Criticism; Measure Would Charge Illegals to Send Money*, ATLANTA J.-CONST., Mar. 22, 2006, at B1.

197. *Id.* (noting that critics of this provision feared that it would cause the entire Act to fail).



immigrants, but merely to recoup some of the costs of providing health care to them.<sup>198</sup> Yet, even the Act's sponsor, Senator Chip Rogers, conceded that this point might pose constitutional challenges and felt that replacing the wire transfer provision with a six percent withholding tax was a more appropriate measure.<sup>199</sup> This section of the Act is similar to the federal requirement.<sup>200</sup>

Section nine addresses verification of legal status for the purpose of receiving public benefits.<sup>201</sup> This provision requires that state government entities verify that all people age 18 or over who are requesting public benefits are legally present in the United States.<sup>202</sup> To receive benefits, an individual must sign an affidavit stating that he or she is either a United States citizen or a legal alien under the federal Immigration and Nationality Act.<sup>203</sup> Eligibility verification is made through the Systematic Alien Verification of Enrollment program operated by the Department of Homeland Security.<sup>204</sup> The provision seeks to ensure "that adult illegal immigrants receive as few taxpayer-funded benefits as possible," reducing some of the costs imposed by illegal immigrants.<sup>205</sup>

However, individuals seeking benefits in areas such as emergency healthcare, disaster relief, prenatal care, and postsecondary education will not be required to prove their legal status.<sup>206</sup> "Rather than take the legally and morally dubious step of denying essential health services, such as prenatal care and childhood immunizations, to all illegal immigrants, [the legislature] agreed to apply the new rules to adults only," a move that was criticized by both supporters and opponents of immigration reform.<sup>207</sup>

Some critics argue that the provision "will spread fear and confusion through immigrant communities" as some illegal

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198. *Id.*

199. Rogers Interview, *supra* note 123.

200. *See Gov. Perdue Signs, supra* note 135.

201. O.C.G.A. § 50-36-1 (Supp. 2006).

202. *See id.*

203. *See* O.C.G.A. § 50-36-1(d) (Supp. 2006).

204. O.C.G.A. § 50-36-1(e) (Supp. 2006).

205. Campos, *supra* note 29.

206. *See* O.C.G.A. § 50-36-1(c).

207. Editorial, *Our Opinions: Not Mean or Extreme; Georgia Legislation Deals with Illegal Immigrants and Their Employers Without Exceedingly Harsh Measures*, ATLANTA J.-CONST., Apr. 19, 2006, at A14.

immigrants have expressed concern that their children will no longer be able to attend schools.<sup>208</sup> Physicians argue that the new law will deter illegal immigrants from seeking basic healthcare until they are severely ill, ultimately resulting in greater costs to taxpayers.<sup>209</sup> Other critics point out that the extent to which illegal immigrants take advantage of public benefits is largely unknown, arguing that illegal aliens come to the United State to work and not to take advantage of government-funded programs.<sup>210</sup> “They’re throwing out a fear that the ineligible immigrant community is greatly abusing the services, and that’s really a red herring.”<sup>211</sup> Finally, federal law already defines eligibility for public benefits for illegal immigrants, so some critics argue that the provision is preempted by federal law and, thus, unconstitutional.<sup>212</sup> However, Senator Chip Rogers believes that the Act merely uses the tools the federal government has given the states for interior enforcement.<sup>213</sup>

### *Conclusion*

The Georgia Security and Immigration Compliance Act is the most comprehensive immigration legislation in the country.<sup>214</sup> The Act has been criticized by advocates on both sides of the issue. Some argue that the legislation doesn’t go far enough to prevent illegal immigration, while others argue that it unfairly punishes hard workers seeking a better life.<sup>215</sup> Senator Rogers said: “Somebody once told me, you know you’ve got a bill just right when the people on both ends start complaining . . . [s]o maybe we hit just right for this year.”<sup>216</sup> Although the majority of states have launched proposals addressing illegal immigration, Georgia is the first to enact full-scale, comprehensive anti-immigration legislation.<sup>217</sup> Although the Act will

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208. Campos, *supra* note 29.

209. *Id.*

210. *Id.*

211. *Id.* (quoting Larry Pellegrini, spokesman for Coalition for a New Georgia).

212. See Carlos Campos, *Legislature 2006: State Immigration Bill Faces Legal Threat*, ATLANTA J.-CONST., Mar. 30, 2006, at D4; Chea Interview, *supra* note 170.

213. Rogers Interview, *supra* note 123.

214. *Crackdown Law*, *supra* note 180.

215. *Crackdown Law*, *supra* note 180.

216. *Crackdown Law*, *supra* note 180.

217. *Statehouses Take Up Immigration*, *supra* note 16.

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not solve all financial concerns related to illegal immigration nor prevent undocumented workers from coming to the State, it is a definitive first step in addressing the issue in Georgia.

*Valerie Barney, Katharine Field, Nichole Hair*