



Georgia's Immigration Law/HB87

Governor Nathan Deal signed the "Illegal Immigration Reform and Enforcement Act of 2011" recently passed by The Georgia General Assembly. Certain provisions became effective on July 1, 2011. A lawsuit has been filed asking the Federal Court to strike down portions of the law, some of which have been enjoined while the lawsuit is pending. The following are key provisions of the law:

- All private employers in Georgia with more than 10 full-time employees (i.e., 35 hours/week) will have to register with and use E-Verify for all new hires only.
 - This provision becomes effective on a staggered basis starting January 1, 2012, for employers with 500 or more employees, July 1, 2012, for employers with 100 or more employees, and July 1, 2013, for employers with more than 10 employees.
- Counties and municipalities must obtain an affidavit regarding a business's E-Verify registration (or exemption from the E-Verify requirement) prior to issuing a business license, occupational tax certificate, or other document required to operate a business. This includes renewals as well as initial issuances.
 - The Attorney General must provide a standardized form affidavit no later than January 1, 2012.
 - Counties and municipalities must provide annual reports to the Department of Audits and Accounts regarding compliance with this provision. The Department will conduct audits of these agencies, if funding is later provided.
 - Providing a false or misleading evidence affidavit may result in a fine up to \$1,000 and possible imprisonment for 1 to 5 years.
- Companies who contract with a Georgia public employer for the physical performance of services within the state are already required to use E-Verify and ensure their subcontractors use E-Verify.
 - The new law clarifies that the requirement flows down to subcontractors and sub-subcontractors of all levels with privity of contract.
 - The law also requires that the contractor and subcontractor affidavits confirm that the company will obtain E-Verify affidavits from all subcontractors and sub-subcontractors. Affidavits must be forwarded to the contracting entity within five business days, who must then forward the affidavit up the line until reaching the primary contractor. The primary contractor must submit copies of all affidavits to the public employer within five business days of receipt.
 - Form affidavits will be published by the Department of Audits and Accounts by August 1, 2011.
 - A contractor, subcontractor or sub-subcontractor who does not have any employees must furnish a copy of an acceptable driver's license or identification card of each independent contractor utilized pursuant to the contract. A list of states issuing acceptable documents will be provided by the Attorney General by July 1, 2011.



- Public employers must submit annual compliance reports to the state auditor. The state auditor will conduct audits of these agencies, if funding is later provided. Public agencies risk losing status as a “qualified local government” and losing state funding if they are in violation of the E-Verify provisions.
- In addition to the existing penalties for providing a false affidavit (debarment from public contracts for 12 months, as well as a fine up to \$1,000.00 and imprisonment for 1 to 5 years), contractors, subcontractors and sub-subcontractors who are convicted of making a false statement in violation of these provisions will be listed on the www.open.georgia.gov or other official website. Further, those found to have violated the E-Verify provisions by the Commissioner of Labor will be debarred from public contracts for 12 months.
- Public agencies, officials and employees who violate the E-verify provisions will be subject to a fine of up to \$10,000, restitution, and removal from office or employment.
- The bill establishes an Immigration Enforcement Review Board to take complaints, investigate and enforce the provisions of the bill regarding public agency and employee requirements related to E-Verify and secure documentation verification. No requirements are established to qualify as a board member. A single board member is authorized to investigate and issue decisions.
- Local authorities that enter into agreements with the federal government under Section 287(g) regarding the detention of immigrants will receive additional state funding above what is normally received for the confinement of state inmates.
- The bill creates the offense of aggravated identity fraud for any person who willfully uses false identification to obtain employment. Punishment ranges from 1 to 15 years imprisonment and a fine up to \$250,000.
- Law enforcement officers who have probable cause to suspect a person of committing a criminal offense, including traffic offenses, are authorized to verify the immigration status of that person. Such officers are granted immunity from damages and liability. [CURRENTLY ENJOINED]
- The bill creates the offenses of transporting or moving an illegal alien, concealing or harboring an illegal alien, and inducing an illegal alien to enter the state, when the person is also committing another criminal offense. [CURRENTLY ENJOINED]

If you have any questions about the information in this advisory, please contact Mark J. Newman (mark.newman@troutmansanders.com or 404-885-3194) or Aimee Clark Todd (aimee.todd@troutmansanders.com 404-885-3697).