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Expansion of Immigration Reform SB 160

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IMMIGRATION

Expansion of Immigration Reform: Amend Article 3 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated, Relating to Security and Immigration Compliance, so as to Modify Provisions Relating to Penalties for the Failure of a Public Employer to Utilize the Federal Work Authorization Program and Modify Provisions Relating to Requiring Private Employers to Utilize the Federal Work Authorization Program; Provide Legislative Intent Relative Thereto; Amend Article 6 of Chapter 60 of Title 36 of the Official Code of Georgia Annotated, Relating to Utilization of the Federal Work Authorization Program, so as to Modify Provisions Relating to Private Businesses Participating in the Employment Eligibility Verification System Prior to the Issuance of a Business License or Other Document and Provisions Related to Evidence of State Licensure, Annual Reporting, and Violations; Amend Article 23 of Chapter 80 of Title 36 of the Official Code of Georgia Annotated, Relating to Prohibition on Immigration Sanctuary Policies by Local Government Entities, so as to Correct a Cross-Reference; Amend Chapter 36 of Title 50 of the Official Code of Georgia Annotated, Relating to Verification of Lawful Presence Within the United States, so as to Modify Provisions Relating to the "Secure and Verifiable Identity Document Act" and the Provision of Public Benefits to Illegal Aliens and to Add New Provisions Relating to Requiring Agencies to Submit Annual Immigration Compliance Reports; Provide for Exceptions; Provide for Related Matters; Provide an Effective Date; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 13-10-90, -91 (amended); 36-60-6 (amended); 36-80-23 (amended); 50-36-1 (amended); 50-36-2 (amended); 50-36-4 (new)
BILL NUMBER:	SB 160
ACT NUMBER:	27
GEORGIA LAWS:	2013 Ga. Laws 111
SUMMARY:	The Act expands Georgia's

immigration policy by modifying the requirements to receive public benefits and the use of identification documents. Further, the Act allows applicants for the renewal of business licenses and occupational tax certificates to demonstrate they are authorized to use the federal work authorization program by submitting their federal work authorization number to the county or municipality issuing the license. Previously, renewal applicants were required to submit an affidavit. Additionally, the Act prevents individuals from using a foreign passport to obtain public benefits.

EFFECTIVE DATE: July 1, 2013

History

Laws affecting undocumented immigrants are undeniably rife with controversy and surrounded by heated debate throughout the United States. Senate Bill (SB) 160 is no exception. On April 10, 2013, roughly 1,500 people protested in the streets surrounding Capitol Square in Atlanta and called for Governor Nathan Deal (R) to veto the bill.[1]

Georgia spends an estimated $2.4 billion annually on undocumented immigrants.[2] In fact, the Department of Homeland Security estimated that there were over 440,000 undocumented

1. Jeremy Redmon, *Deal Signs Bill Expanding Immigration Crackdown*, ATLANTA J.-CONST., Apr. 25, 2013, *available at* http://www.ajc.com/news/news/state-regional-govt-politics/deal-signs-bill-expanding-immigration-crackdown/nXXYg/.

2. *See* Interview with Sen. Frank Ginn (R-47th) (May 21, 2013) [hereinafter Ginn Interview]; *Georgia Pols Use Report to Push for Immigration Reform*, ATLANTA J.-CONST., http://www.politifact.com/georgia/statements/2011/feb/18/federation-american-immigration-reform/georgia-pols-use-report-push-immigration-reform/ (last visited May 25, 2013) [hereinafter Political Fact Check] (noting that, according to Federation for American Immigration Reform (FAIR), Georgia spends $2.399 billion a year to assist illegal immigrants).

immigrants living in Georgia in 2011.[3] During that year, Georgia reported roughly $17.5 billion in total revenue available.[4]

In 2011, the Georgia legislature passed House Bill (HB) 87 which required, among other things, applicants for the renewal of a business license, occupational tax certificate, or any other document required to operate a business submit "evidence that he or she is authorized to use the federal work authorization program."[5] Moreover, the Act required the "evidence" to be in the form of an affidavit.[6] According to Senator Frank Ginn (R-47th), this process caused extreme delays and a backlog of worthy applicants, not to mention it prevented businesses from operating.[7] License renewals that were supposed to take a couple days were taking up to several months.[8]

During the 2013 legislative session, Senator Ginn introduced SB 160 to facilitate and streamline professional license renewals[9] and curb the flow of taxpayer money spent on undocumented immigrants in Georgia.[10]

Though SB 160's stated purpose is well intentioned, the bill sparked significant controversy. Jerry Gonzalez, the Executive Director of the Georgia Association of Latino Elected Officials (GALEO), characterized SB 160 as "mean-spirited and anti-

3. MICHAEL HOEFER, NANCY RYTINA & BRYAN BAKER, ESTIMATES OF UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITED STATES: JANUARY 2011, DEP'T OF HOMELAND SEC. 5 (2012), *available at* http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf.

4. GOVERNOR NATHAN DEAL, THE GOVERNOR'S BUDGET REPORT FISCAL YEAR 2013–14 (2013), *available at* http://opb.georgia.gov/sites/opb.georgia.gov/files/imported/vgn/images/portal/cit_1210/23/26/180289834State%20of%20Georgia%20Budget%20Report%20FY%202013%20-%20Jan%2011%20A.pdf.

5. Illegal Immigration Reform and Enforcement Act of 2011, 2011 Ga. Laws 252, § 12 (codified at O.C.G.A. § 36-60-6(d) (2011)).

6. *Id.*

7. *See* Ginn Interview, *supra* note 2.

8. Kim Severson, *Georgia Law Requiring Proof of Legal Residency Creates Licensing Backlog*, N.Y. TIMES, Oct. 8, 2012, *available at* http://www.nytimes.com/2012/10/09/us/georgia-law-requiring-proof-of-legal-residency-creates-licensing-backlog.html?_r=0.

9. *Id.*; Redmon, *supra* note 1 (noting that SB 160 is intended to clean up several unintended consequences of HB 87, including massive backlogs for business license renewals).

10. *See* Ginn Interview, *supra* note 2; Redmon, *supra* note 1 ("Gov. Nathan Deal has quietly signed into law a measure that will expand Georgia's sweeping crackdown on illegal immigration.").

immigration in intent."[11] GALEO opposed SB 160 and contends it will have significant negative legal effects on foreigners.[12]

Bill Tracking of SB 160

Consideration and Passage by the Senate

Senators Frank Ginn (R-47th), Butch Miller (R-49th), Burt Jones (R-25th), Bill Cowsert (R-46th), Jeff Mullis (R-53rd), and John Wilkinson (R-50th) sponsored SB 160.[13] The Senate read the bill for the first time on February 13, 2013.[14] Lieutenant Governor Casey Cagle (R) then assigned SB 160 to the State and Local Governmental Operations Committee, which favorably reported the bill by Committee substitute on February 28, 2013.[15] The bill was read for the second and third times on March 1, 2013 and March 4, 2013, respectively.[16] After the third reading, Senator John Albers (R-56th) offered a floor amendment to the bill. According to Senator Albers, SB 160 needed slight modification to further streamline the business license renewal process.[17] To do this, Senator Albers proposed that business owners no longer be required to submit affidavits stating compliance with Georgia and federal laws when renewing their business licenses.[18] Rather, the amendment allows renewal to be accomplished by fax, mail, or in person if the business owner provides his or her federal work authorization user number.[19] The

11. Electronic Mail Interview with Jerry Gonzalez, Executive Director of GALEO, (June 21, 2013) [hereinafter Gonzalez interview].

12. *Id.*

13. SB 160, as introduced, 2013 Ga. Gen. Assem.

14. State of Georgia Final Composite Status Sheet, SB 160, May 9, 2013.

15. *Id.*

16. *Id.*

17. Video Recording of Senate Proceedings, Mar. 4, 2013 at 2 hr., 21 min., 22 sec. (remarks by Sen. John Albers (R-56th)), http://www.gpb.org/lawmakers/2013/day-28 [hereinafter Senate Video]. As introduced, SB 160 would have required a business owner seeking to renew her business license to submit a signed and sworn affidavit setting forth her federal work authorization user number and stating that she is in compliance with Code sections 50-36-1 and 50-36-2. SB 160, as introduced, 2013 Ga. Gen Assem.

18. Senate Video, *supra* note 17, at 2 hr., 21 min., 22 sec. (remarks by Sen. John Albers (R-56th)).

19. *Compare* SB 160, as introduced, § 2, 2013 Ga. Gen Assem., *with* O.C.G.A. § 36-60-6(d)(2) (Supp. 2013); *see* Ginn Interview, *supra* note 2; Senate Video, *supra* note 17, at 3 hr., 18 min., 46 sec. (remarks by Sen. John Albers (R-56th)).

Senate passed this amendment without objection.[20] After reading SB 160 a third time, the Senate passed the bill on March 4, 2013 by a vote of 51 to 0.[21]

Consideration and Passage by the House

Representative Dustin Hightower (R-68th) sponsored SB 160 in the House of Representatives, and the bill was first read on March 5, 2013.[22] The bill was read a second time on March 7, 2013,[23] and Speaker of the House David Ralston (R-7th) assigned it to the House Judiciary Non-Civil Committee.[24] The Committee added a provision requiring applicants for a state issued driver's license to submit an original secure and verifiable document, as defined in Code section 50-36-2.[25] The Committee favorably reported the bill by substitute on March 21, 2013.[26] On March 25, 2013, the House read and adopted the Committee substitute by a vote of 111 to 58.[27]

Further Consideration and Passage by the House and Senate

On March 26, 2013, the Senate disagreed to the House Committee substitute.[28] When the House insisted, a Conference Committee was appointed.[29] Among other things, the two chambers disagreed on whether applicants for homestead tax exemptions should be required to provide additional documentation proving citizenship.[30] In the end, the Conference Committee removed homestead tax exemptions from

20. Senate Video, *supra* note 17, at 3 hr., 20 min., 04 sec. (remarks by Lt. Gov. Casey Cagle (R)).
21. State of Georgia Final Composite Status Sheet, SB 160, May 9, 2013.
22. *Id.*
23. *Id.*
24. *Id.*
25. SB 160 (HCS), § 6, p. 8, ln. 242–77, 2013 Ga. Gen. Assem.
26. State of Georgia Final Composite Status Sheet, SB 160, May 9, 2013.
27. *Id.*
28. Video Recording of House Proceedings, Mar. 26, 2013 at 1 hr., 25 min., 39 sec. (remarks by Rep. Dustin Hightower (R-68th)), http://www.gpb.org/lawmakers/2013/day-39 [hereinafter House Video]; Senate Video, *supra* note 17, at 1 hr., 58 min., 52 sec. (remarks by Lt. Gov. Casey Cagle (R)).
29. House Video, *supra* note 28, at 1 hr., 25 min., 39 sec. (remarks by Rep. Dustin Hightower (R-68th)); Senate Video, *supra* note 17, at 1 hr., 58 min., 52 sec. (remarks by Lt. Gov. Casey Cagle (R)).
30. Jeremy Redmon, *Georgia House Approves Expansion of Crackdown on Illegal Immigration*, ATLANTA J.-CONST., Mar. 25, 2013, *available at* http://www.ajc.com/news/news/state-regional-govt-politics/georgia-house-approves-expansion-of-crackdown-on-i/nW3rm/.

the list of public benefits affected by the Act.[31] On March 28, 2013, the Senate and House adopted the Conference Committee substitute by votes of 43 to 9 and 113 to 54, respectively.[32]

The Act

The Act amends Title 13 of the Official Code of Georgia Annotated for the purpose of revising and strengthening the immigration policies set forth by the legislature in HB 87. Section 1 of the Act revises Code section 13-10-90 to expand the applicability of the federal work authorization program to all state subcontractors "wherein the labor or services exceed $2,499.99."[33] Section 2 of the Act states the General Assembly's intent that all contractors working for public employers use the federal work authorization program and ensure the workforce on each project is "legal and eligible."[34]

Further, Section 3 amends Code section 13-10-91 by requiring all public employers to provide an annual report to the Department of Audits and Accounts as proof that the public employer is ensuring its contractors are registering with the federal work authorization program.[35] The requirements for the annual report are provided in the new Code section 50-36-4.[36] The Department of Audits and Accounts must then conduct a compliance audit of at least half of the submitted reports and publish the results on its website by September 30 of each year.[37]

Section 4 of the Act amends Code section 36-60-6 to allow renewal applicants for business licenses, occupational tax certificates, and other documents required to operate a business to submit their federal work authorization number to the county or municipality issuing the license.[38] Under prior Georgia law, renewal applicants

31. House Video, *supra* note 28, at 1 hr., 27 min., 13 sec. (remarks by Rep. Dustin Hightower (R-68th)).

32. Georgia Senate Voting Record, SB 160 (Mar. 28, 2013); Georgia House of Representatives Voting Record, SB 160 (Mar. 28, 2013).

33. O.C.G.A. § 13-10-90(4) (Supp. 2013).

34. 2013 Ga. Laws 111, § 2.

35. O.C.G.A. § 13-10-91(b)(7)(A) (Supp. 2013).

36. *Id.*; *see* O.C.G.A. § 56-36-4 (Supp. 2013).

37. O.C.G.A. § 13-10-91(b)(7)(A) (Supp. 2013).

38. O.C.G.A. § 36-60-6(d)(2) (Supp. 2013).

were required to submit an affidavit.[39] The counties and municipalities issuing those licenses are required to submit an annual report to the Department of Audits and Accounts as provided in the new Code section 50-36-4.[40] Section 5 amends Code section 36-80-23 by revising an internal citation to Code section 50-36-1.[41]

Section 6 amends Code section 50-36-1, which sets forth Georgia's verification requirements and procedures to receive public benefits.[42] The Act adds grants, public and assisted housing, retirement benefits, and driver's licenses to the list of public benefits for which an individual must show a secure and verifiable document to obtain.[43] Further, section 6 allows an applicant seeking public benefits to provide valid documentation of residency at any time within nine months prior to the date of the application.[44] This can be done by mail, electronically, or in person.[45] Additionally, the Act requires every applicant for a driver's license or state identification card, in person, to provide the Department of Driver Services with "an original secure and verifiable document, as defined in Code Section 50-36-2, and execute a signed and sworn affidavit verifying the applicant's lawful presence in the United States under federal immigration law."[46] The verification requirements and procedures in Code section 50-36-1 do not apply to persons renewing an application for a public benefit if he or she has previously complied with the requirements of that provision.[47] The entity providing the public benefit is subject to submitting an annual report to the Department of Audits and Accounts as provided in the new Code section 50-36-4.[48]

Section 7 of the Act amends Code section 50-36-2 by revising the list of documents the State considers "secure and verifiable." In order

39. Illegal Immigration Reform and Enforcement Act of 2011, 2011 Ga. Laws 252, § 12 (formerly found at O.C.G.A. § 36-60-6(e) (2011)).
40. O.C.G.A. § 36-60-6(e) (Supp. 2013).
41. O.C.G.A. § 36-80-23(c) (Supp. 2013).
42. O.C.G.A. § 50-36-1 (Supp. 2013).
43. O.C.G.A. § 50-36-1(a)(4) (Supp. 2013). The Act later mandates the Department of Driver's Services to require proof of residency for an individual to obtain a state identification card. O.C.G.A. § 50-36-1 (Supp. 2013).
44. O.C.G.A. § 50-36-1(f)(1)(A) (Supp. 2013).
45. O.C.G.A. § 50-36-1(f)(3) (Supp. 2013).
46. O.C.G.A. § 50-36-1(g)(1) (Supp. 2013).
47. O.C.G.A. § 50-36-1(f)(4), (g)(2) (Supp. 2013).
48. O.C.G.A. § 50-36-1(g)(2)(k) (Supp. 2013).

to be eligible for public benefits, an applicant must present one of the secure and verifiable documents listed in that Code section.[49] Notably, the Act excludes foreign passports from that list "unless the passport is submitted with a valid United States Homeland Security Form I-94, 1-94A, or I-94W, or other federal document specifying an alien's lawful immigration status."[50]

Section 8 creates a new Code section, 50-36-4, which establishes the requirements for annual immigration compliance reports that public employers and any public agency complying with Code sections 50-36-1, 36-60-6, and 13-10-91 must submit to the Department of Audits and Accounts.[51] Further, Code section 50-36-4 requires the Department of Audits and Accounts to create a compliance reporting system and provide technical support for the entities submitting the reports.[52] Every immigration compliance report must include: (1) the submitting entity's authorization number and date of authorization; (2) the name, address, and federal work authorization number of every contractor that entered into a contract for the physical performance of services with the public employer during the reporting period; (3) the date of the contract between the contractor and public employer; (4) a listing of each business license or occupational tax certificate issued by a county or municipality to private employers required to utilize the federal work authorization program during the reporting period "including the name of the person and business [who received] a license and his or her federally assigned employment eligibility verification system user number as provided in the private employer affidavit submitted at the time of application;" and (5) a listing of each benefit provided by the agency or political subdivision.[53] If the Department of Audits and Accounts determines an immigration compliance report is deficient, the submitting entity will not be in violation of Code section 50-36-4 if the deficiencies are corrected in a new report.[54]

49. O.C.G.A. § 50-36-1(f)(1)(A) (Supp. 2013).
50. O.C.G.A. § 50-36-2(b)(3)(B) (Supp. 2013).
51. O.C.G.A. § 50-36-4(b) (Supp. 2013).
52. O.C.G.A. § 50-36-4(c) (Supp. 2013).
53. O.C.G.A. § 50-36-4(d) (Supp. 2013).
54. O.C.G.A. § 50-36-4(e) (Supp. 2013).

Analysis

Like its predecessor HB 87, SB 160 sparked intense discussions about Georgia's immigration policies. However, laws affecting undocumented immigrants often have unintended consequences that are larger than ideological differences, as demonstrated by the backlog of business license renewals created by HB 87.

Unintended Consequences of SB 160

Though the stated purpose of SB 160 is to streamline the business license renewal process, the bill could potentially cause a backlog among contractors performing labor or services for the government. The bill expands the applicability of the E-Verify system to include persons, other than attorneys, performing *services* for a public employer.[55] Some commentators suggest that requiring a broader scope of businesses to comply with the E-Verify system could cause a significant increase in paperwork and potentially create a backlog similar to the one caused by HB 87.[56]

Possibly the most controversial aspect of SB 160 is that it prevents undocumented immigrants from obtaining a driver's license and other public benefits using a foreign passport.[57] According to Senator Frank Ginn (R-47th), a foreign passport alone does not indicate a person is in Georgia legally.[58] Now, an applicant for public benefits must have documentation issued by the United States.[59]

Constitutionality

As evidenced by the United States Supreme Court's holding in *Arizona v. United States*, Congress may pre-empt states from enacting stringent immigration laws.[60] However, SB 160 aims simply

55. *See* O.C.G.A. § 13-10-3 (Supp. 2013).

56. Charles Kuck, *Why Governor Deal Must Veto SB 160*, MUSINGS ON IMMIGRATION, http://musingsonimmigration.blogspot.com/2013/04/why-governor-deal-must-veto-sb-160.html (last visited Aug. 28, 2013).

57. *See* O.C.G.A. § 50-36-2 (Supp. 2013).

58. *See* Ginn Interview, *supra* note 2.

59. O.C.G.A. § 50-36-2(b)(3)(A) (Supp. 2013).

60. *See generally* Arizona v. United States, 132 S. Ct. 2492 (2012) (holding portions of Arizona's

to maximize the efficiency of the federal work authorization program, which requires companies to employ either U.S. citizens or foreign citizens who have the necessary authorization.[61] Accordingly, states have latitude to enact legislation enforcing federal prerogatives. The author of SB 160, Senator Ginn, feels the Act is unlikely to be challenged on constitutional grounds.[62]

On the other hand, opponents of the Act contend there are potential constitutional issues the legislature did not consider when drafting SB 160. Significantly, SB 160 prevents immigrants from using a foreign passport to obtain a state driver's license. Aside from being able to drive legally, a driver's license is necessary for many other activities. Jerry Gonzalez, Executive Director of GALEO, even expressed concern that legal immigrants will be unable to enter state and federal buildings, including courthouses and the State Capitol, if they are unable to obtain a driver's license using a foreign passport.[63] If SB 160 literally prevents access to the courts, it could potentially be challenged as unconstitutional on the ground that it violates the Privileges and Immunities Clause of the United States Constitution.[64] However, it seems highly unlikely that this argument would carry much weight.

Other Concerns

In addition, the new driver's license requirements may prevent the children of illegal immigrants from enrolling in public schools.[65] According to several sources, a recently enacted Alabama law, which required school officials to verify the citizenship status of both

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immigration laws to be pre-empted by federal law).

61. *See generally* U.S. CITIZENSHIP AND IMMIGRATION SERVICES: E-VERIFY, http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=75bce2e261405110VgnVCM1000004718190aRCRD&vgnextchannel=75bce2e261405110VgnVCM1000004718190aRCRD (last visited May 25, 2013) (stating "U.S. law requires companies to employ only individuals who may legally work in the United States—either U.S. citizens, or foreign citizens who have the necessary authorization.").

62. *See* Ginn Interview, *supra* note 2.

63. *See* Gonzalez Interview, *supra* note 11.

64. Christopher v. Harbury, 536 U.S. 403, 423 n.12 (2002) (recognizing that there is a right to access courts and that the right stems from the Privileges and Immunities clause in Article IV of the United States Constitution).

65. *See* Gonzalez Interview, *supra* note 11.

children and their parents, caused similar problems in that state.[66] Although SB 160 does not require school officials to check the citizenship status of a child's parents, GALEO believes there could still be issues because individual schools may require parents to show a driver's license to enroll a child.[67]

Despite the potentially adverse effects of SB 160, the Georgia Legislature has taken important steps to correct issues created by HB 87. Legislating is not a science, but Georgians can take comfort in the fact that the General Assembly is making an effort to improve upon prior legislation.

Joe Brock & Jon Schleicher

66. *Id.*; *see also Crisis in Alabama: Immigration Law Causes Chaos*, AM. CIVIL LIBERTIES UNION, http://www.aclu.org/crisis-alabama-immigration-law-causes-chaos (last visited June 30, 2013).

67. *See* Gonzalez Interview, *supra* note 11.