

O.C.G.A. Title 50, Ch. 36

Current through the 2022 Regular Session of the General Assembly.

***Official Code of Georgia Annotated > TITLE 50 State Government (Chs. 1 — 40) > CHAPTER 36
Verification of Lawful Presence Within United States (§§ 50-36-1 — 50-36-4)***

CHAPTER 36 Verification of Lawful Presence Within United States

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O.C.G.A. § 50-36-1

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Verification of Lawful Presence Within United States (§§ 50-36-1 — 50-36-4)**

50-36-1. Verification requirements, procedures, and conditions; exceptions; regulations; criminal and other penalties for violations.

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

- (1) “Agency head” means a director, commissioner, chairperson, mayor, councilmember, board member, sheriff, or other executive official, whether appointed or elected, responsible for establishing policy for a public employer.
- (2) “Agency or political subdivision” means any department, agency, authority, commission, or government entity of this state or any subdivision of this state.
- (3) “Applicant” means any natural person, 18 years of age or older, who has made application for access to public benefits on behalf of an individual, business, corporation, partnership, or other private entity.
- (4) “Public benefit” means a federal, a state, or local benefit which shall include the following:
 - (A) Adult education;
 - (B) Authorization to conduct a commercial enterprise or business;
 - (C) Business certificate, license, or registration;
 - (D) Business loan;
 - (E) Cash allowance;
 - (F) Disability assistance or insurance;
 - (G) Down payment assistance;
 - (H) Energy assistance;
 - (I) Food stamps;
 - (J) Gaming license;
 - (K) Grants;
 - (L) Health benefits;
 - (M) Housing allowance, grant, guarantee, or loan;
 - (N) Loan guarantee;
 - (O) Medicaid;
 - (P) Occupational license;
 - (Q) Professional license;
 - (R) Public and assisted housing;
 - (S) Registration of a regulated business;

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- (T) Rent assistance or subsidy;
- (U) Retirement benefits;
- (V) State grant or loan;
- (W) State issued driver's license and identification card;
- (X) Tax certificate required to conduct a commercial business;
- (Y) Temporary assistance for needy families (TANF);
- (Z) Unemployment insurance; and
- (AA) Welfare to work.

(5) "SAVE program" means the federal Systematic Alien Verification for Entitlements program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security for the same purpose.

(b) Except as provided in subsection (d) of this Code section or where exempted by federal law, every agency or political subdivision shall verify the lawful presence in the United States under federal immigration law of any applicant for public benefits.

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

(d) Verification of lawful presence in the United States under federal immigration law under this Code section shall not be required:

(1) For any purpose for which lawful presence in the United States under federal immigration law is not required by law, ordinance, or regulation;

(2) For assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. Section 1396b(v) (3), of the alien involved and are not related to an organ transplant procedure;

(3) For short-term, noncash, in-kind emergency disaster relief;

(4) For public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;

(5) For programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United States Attorney General, in the United States Attorney General's sole and unreviewable discretion after consultation with appropriate federal agencies and departments, which:

(A) Deliver in-kind services at the community level, including through public or private nonprofit agencies;

(B) Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(C) Are necessary for the protection of life or safety;

(6) For prenatal care; or

(7) For postsecondary education, whereby the Board of Regents of the University System of Georgia, the State Board of the Technical College System of Georgia, the board of commissioners of the Georgia Student Finance Commission, and the board of directors of the Georgia Student Finance Authority shall set forth, or cause to be set forth, policies or regulations, or both, regarding postsecondary benefits that comply with all federal law including but not limited to public benefits as described in 8 U.S.C. Section 1611, 1621, or 1623.

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(e) All policies of agencies or political subdivisions regarding public benefits for postsecondary education shall comply with federal law as provided in 8 U.S.C. Section 1623.

(f)

(1) Except as provided in subsection (g) of this Code section, an agency or political subdivision providing or administering a public benefit shall require every applicant for such benefit to:

(A) Provide at least one secure and verifiable document, as defined in Code Section 50-36-2, or a copy or facsimile of such document. Any document required by this subparagraph may be submitted by or on behalf of the applicant at any time within nine months prior to the date of application so long as the document remains valid through the licensing or approval period or such other period for which the applicant is applying to receive a public benefit; and

(B) Execute a signed and sworn affidavit verifying the applicant's lawful presence in the United States under federal immigration law; provided, however, that if the applicant is younger than 18 years of age at the time of the application, he or she shall execute the affidavit required by this subparagraph within 30 days after his or her eighteenth birthday. Such affidavit shall affirm that:

(i) The applicant is a United States citizen or legal permanent resident 18 years of age or older; or

(ii) The applicant is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act, Title 8 U.S.C., 18 years of age or older lawfully present in the United States and provide the applicant's alien number issued by the Department of Homeland Security or other federal immigration agency.

(2) The state auditor shall create affidavits for use under this subsection and shall keep a current version of such affidavits on the Department of Audits and Accounts' official website.

(3) Documents and copies of documents required by this subsection may be submitted in person, by mail, or electronically, provided the submission complies with Chapter 12 of Title 10. Copies of documents submitted in person, by mail, or electronically shall satisfy the requirements of this Code section. For purposes of this paragraph, electronic submission shall include a submission via facsimile, Internet, electronic texting, or any other electronically assisted transmitted method approved by the agency or political subdivision.

(4) The requirements of this subsection shall not apply to any applicant applying for or renewing an application for a public benefit within the same agency or political subdivision if the applicant has previously complied with the requirements of this subsection by submission of a secure and verifiable document, as defined in Code Section 50-36-2, and a signed and sworn affidavit affirming that such applicant is a United States citizen.

(g)

(1) The Department of Driver Services shall require every applicant for a state issued driver's license or state identification card to submit, in person, 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.

(2) The requirements of this subsection shall not apply to any applicant renewing a state issued driver's license or state identification card when such applicant has previously complied with the requirements of this subsection by submission of a secure and verifiable document, as defined in Code Section 50-36-2, and a signed and sworn affidavit affirming that such applicant is a United States citizen.

(h) For any applicant who has executed an affidavit that he or she is an alien lawfully present in the United States, eligibility for public benefits shall be made through the SAVE program. Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence in the United States under federal immigration law for the purposes of this Code section.

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- (i)** Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to this Code section shall be guilty of a violation of Code Section 16-10-20.
- (j)** Verification of citizenship through means required by federal law shall satisfy the requirements of this Code section.
- (k)** It shall be unlawful for any agency or political subdivision to provide or administer any public benefit in violation of this Code section. Agencies and political subdivisions subject to the requirements of this subsection shall provide an annual report to the Department of Audits and Accounts pursuant to Code Section 50-36-4 as proof of compliance with this subsection. Any agency or political subdivision failing to provide a report as required by this subsection shall not be entitled to any financial assistance, funds, or grants from the Department of Community Affairs.
- (l)** Any and all errors and significant delays by the SAVE program shall be reported to the United States Department of Homeland Security.
- (m)** Notwithstanding subsection (i) of this Code section, any applicant for public benefits shall not be guilty of any crime for executing an affidavit attesting to his or her lawful presence in the United States under federal immigration law that contains a false statement if such affidavit is not required by this Code section.
- (n)** In the event a legal action is filed against any agency or political subdivision alleging improper denial of a public benefit arising out of an effort to comply with this Code section, the Attorney General shall be served with a copy of the proceeding and shall be entitled to be heard.
- (o)** Compliance with this Code section by an agency or political subdivision shall include taking all reasonable, necessary steps required by a federal agency to receive authorization to utilize the SAVE program or any successor program designated by the United States Department of Homeland Security or other federal agency, including providing copies of statutory authorization for the agency or political subdivision to provide public benefits and other affidavits, letters of memorandum of understanding, or other required documents or information needed to receive authority to utilize the SAVE program or any successor program for each public benefit provided by such agency or political subdivision. An agency or political subdivision that takes all reasonable, necessary steps and submits all requested documents and information as required in this subsection but either has not been given access to use such programs by such federal agencies or has not completed the process of obtaining access to use such programs shall not be liable for failing to use the SAVE program or any such successor program to verify eligibility for public benefits.
- (p)** In the case of noncompliance with the provisions of this Code section by an agency or political subdivision, the appropriations committee of each house of the General Assembly may consider such noncompliance in setting the budget and appropriations.
- (q)** No employer, agency, or political subdivision shall be subject to lawsuit or liability arising from any act to comply with the requirements of this chapter; provided, however, that the intentional and knowing failure of any agency head to abide by the provisions of this chapter shall:
- (1)** Be a violation of the code of ethics for government service established in Code Section 45-10-1 and subject such agency head to the penalties provided for in Code Section 45-10-28, including removal from office and a fine not to exceed \$10,000.00; and
 - (2)** Be a high and aggravated misdemeanor offense where such agency head acts to willfully violate the provisions of this Code section or acts so as to intentionally and deliberately interfere with the implementation of the requirements of this Code section.

The Attorney General shall have the authority to conduct a criminal and civil investigation of an alleged violation of this chapter by an agency or agency head and to bring a prosecution or civil action against an agency or agency head for all cases of violations under this chapter. In the event that an order is entered against an employer, the state shall be awarded attorney's fees and expenses of litigation incurred in bringing such an action and investigating such violation.

History

Code 1981, § 50-36-1, enacted by Ga. L. 2006, p. 105, § 9/SB 529; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2009, p. 970, § 3/HB 2; Ga. L. 2011, p. 632, § 3/HB 49; Ga. L. 2011, p. 794, §§ 16, 17, 18/HB 87; Ga. L. 2012, p. 775, § 50/HB 942; Ga. L. 2013, p. 111, § 6/SB 160; Ga. L. 2013, p. 125, § 1/HB 324.

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O.C.G.A. § 50-36-2

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50-36-2. Secure and verifiable identity document; applicability.

- (a) This Code section shall be known and may be cited as the “Secure and Verifiable Identity Document Act.”
- (b) As used in this Code section, the term:
- (1) “Agency or political subdivision” means any department, agency, authority, commission, or government entity of this state or any subdivision of this state.
 - (2) “Public official” means an elected or appointed official or an employee or an agent of an agency or political subdivision.
 - (3)
 - (A) “Secure and verifiable document” means a document issued by a state or federal jurisdiction or recognized by the United States government and that is verifiable by federal or state law enforcement, intelligence, or homeland security agencies and shall include:
 - (i) An original or certified birth certificate issued by a state, county, municipal authority, or territory of the United States bearing an official seal;
 - (ii) A certification of report of birth issued by the United States Department of State;
 - (iii) A certification of birth abroad issued by the United States Department of State; or
 - (iv) A consular report of birth abroad issued by the United States Department of State.
 - (B) The term “secure and verifiable document” shall not include any foreign passport unless the passport is submitted with a valid United States Homeland Security Form I-94, I-94A, or I-94W, or other federal document specifying an alien’s lawful immigration status, or other proof of lawful presence in the United States under federal immigration law, or a Matricula Consular de Alta Seguridad, matricula consular card, consular matriculation card, consular identification card, or similar identification card issued by a foreign government regardless of the holder’s immigration status. Only those documents approved and posted by the Attorney General pursuant to subsection (g) of this Code section shall be considered secure and verifiable documents.
- (c) Unless required by federal law, on or after January 1, 2012, no agency or political subdivision shall accept, rely upon, or utilize an identification document for any official purpose that requires the presentation of identification by such agency or political subdivision or by federal or state law unless it is a secure and verifiable document.
- (d) Copies of secure and verifiable documents submitted in person, by mail, or electronically shall satisfy the requirements of this Code section. For purposes of this subsection, electronic submission shall include, but shall not be limited to, submission via facsimile, Internet, or any other electronically assisted transmitted method approved by the agency or political subdivision.
- (e) Any person acting in willful violation of this Code section by knowingly accepting identification documents that are not secure and verifiable documents shall be guilty of a misdemeanor and, upon

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conviction thereof, shall be punished by imprisonment not to exceed 12 months, a fine not to exceed \$1,000.00, or both.

(f) This Code section shall not apply to:

- (1)** A person reporting a crime;
- (2)** An agency official accepting a crime report, conducting a criminal investigation, or assisting a foreign national to obtain a temporary protective order;
- (3)** A person providing services to infants, children, or victims of a crime;
- (4)** A person providing emergency medical service;
- (5)** A peace officer in the performance of the officer's official duties and within the scope of his or her employment;
- (6)** Instances when a federal law mandates acceptance of a document;
- (7)** A court, court official, or traffic violation bureau for the purpose of enforcing a citation, accusation, or indictment;
- (8)** Paragraph (2) of subsection (a) of Code Section 40-5-21 or paragraph (2) of subsection (a) of Code Section 40-5-21.1;
- (9)** An attorney or his or her employees for the purpose of representing a criminal defendant; or
- (10)** The provision of utility services related to basic human necessities, including water, sewer, electrical power, communications, and gas.

(g) Not later than August 1, 2011, the Attorney General shall provide and make public on the Department of Law's website a list of acceptable secure and verifiable documents. The list shall be reviewed and updated annually by the Attorney General.

History

Code 1981, § 50-36-2, enacted by Ga. L. 2011, p. 794, § 19/HB 87; Ga. L. 2013, p. 111, § 7/SB 160.

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50-36-3. [Reserved] Immigration Enforcement Review Board; membership; duties; sanctions; civil actions.

History

Repealed by Ga. L. 2019, p. 919, § 17-1/HB 553, effective July 1, 2019.

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O.C.G.A. § 50-36-4

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50-36-4. Definitions; requiring agencies to submit annual immigration compliance reports.

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

- (1) “Agency or political subdivision” means any department, agency, authority, commission, or governmental entity of this state or any subdivision of this state.
- (2) “Annual reporting period” means from December 1 of the preceding year through November 30 of the year in which the report is due.
- (3) “Contractor” shall have the same meaning as set forth in Code Section 13-10-90.
- (4) “Department” means the Department of Audits and Accounts.
- (5) “Physical performance of services” shall have the same meaning as set forth in Code Section 13-10-90.
- (6) “Public employer” shall have the same meaning as set forth in Code Section 13-10-90.

(b) Each agency or political subdivision subject to any of the requirements provided in Code Sections 13-10-91, 36-60-6, 36-80-23, and 50-36-1 shall submit an annual immigration compliance report to the department by December 31 that includes the information required under subsection (d) of this Code section for the annual reporting period. If an agency or political subdivision is exempt from any, but not all, of the provisions of subsection (d) of this Code section, it shall still be required to submit the annual report but shall indicate in the report which requirements from which it is exempt.

(c) The department shall create an immigration compliance reporting system and shall provide technical support for the submission of such reports. The department shall further provide annual notification of such reports with submission instructions to all agencies and political subdivisions subject to such requirements. The department shall be authorized to implement policy as is needed to carry out the requirements of this subsection.

(d) The immigration compliance report provided for in subsection (b) of this Code section shall contain the following:

- (1) The agency or political subdivision’s federal work authorization program verification user number and date of authorization;
- (2) The legal name, address, and federal work authorization program user number of every contractor that has entered into a contract for the physical performance of services with a public employer as required under Code Section 13-10-91 during the annual reporting period;
- (3) The date of the contract for the physical performance of services between the contractor and public employer as required under Code Section 13-10-91;
- (4) A listing of each license or certificate issued by a county or municipal corporation to private employers that are required to utilize the federal work authorization program under the provisions of Code Section 36-60-6 during the annual reporting period, including the name of the person and

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business issued 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;

(5)

(A) A listing of each public benefit administered by the agency or political subdivision and a listing of each public benefit for which SAVE program authorization for verification has not been received.

(B) As used in this paragraph, the terms “public benefit” and “SAVE program” shall have the same meanings as set forth in Code Section 50-36-1; and

(6) The agency or political subdivision’s certificate of compliance with Code Section 36-80-23.

(e) In the event that the immigration compliance report submitted by an agency or political subdivision is found to be deficient by the department, so long as a new immigration compliance report is submitted with the prior deficiencies corrected and fully complies with this Code section, such agency or political subdivision shall be deemed to have satisfied the requirements of this Code section.

(f) Any action taken by an agency or a political subdivision for the purpose of complying with the requirements of this Code section shall not subject such agency or political subdivision to any civil liability arising from such action.

(g) The department shall not find an agency or a political subdivision to be in violation of this Code section as a result of any actions or omissions by a county constitutional officer.

History

Code 1981, § 50-36-4, enacted by Ga. L. 2013, p. 111, § 8/SB 160; Ga. L. 2016, p. 244, § 2/SB 269.

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