

The Georgia Security and Immigration Compliance Act:

Comprehensive Immigration Reform in Georgia—
“Think Globally....Act Locally”

by Mark J. Newman and Hon-Vinh Duong



Against a backdrop of a globalizing economy, heightened awareness of terrorism and security issues, and growing numbers of undocumented immigrants, immigration reform has become a hot topic. With Congress’s failed immigration reform efforts, state legislatures have passed a raft of bills addressing varied immigration-related topics from eligibility for employment and public benefits to human trafficking and law-enforcement guidelines. Thirty-two states now have immigration laws of their own.

In an effort to cope with the void left by the federal government and the surfeit of immigrants into the state, Georgia’s state legislature has enacted one of the strictest and most comprehensive bills, the Georgia Security and Immigration Compliance Act (GSICA).¹ Signed into law by Gov. Sonny Perdue in April 2006,

GSICA has been both a benchmark for other states' legislation and a focal point for political debate. GSICA, which took effect on July 1, 2007,² will have far-reaching effects because it requires all public employers, their contractors and subcontractors to participate in a Federal Work Authorization Program to verify the employment eligibility of all new employees.³

Traditionally a federal responsibility, immigration has recently become an important topic for the states because of their continuing responsibility for educating, caring for, punishing, and integrating the growing numbers of immigrants, particularly in light of the federal government's failure to provide any substantial immigration reform. Immigration legislation has raised some important issues of federalism as the states have begun to assert substantial authority in this area of law by introducing more than 1,150 immigration-related bills in 2007, doubling the number introduced in 2006.⁴ In a further twist, state laws such as GSICA mandate participation in and compliance with federal programs.

As one of the most comprehensive immigration reform laws, GSICA covers many disparate issues – some connected only by the overarching heading of immigration. Section 2 of GSICA mandates that all public employers, their contractors and subcontractors with 500 or more employees register and participate in the Federal Work Authorization Program by July 1, 2007.⁵ Smaller employers are phased in over the next two years.⁶ GSICA also has two tax provisions that are applicable to all employers. First, GSICA prohibits employers from deducting annual wages or remuneration of \$600 or more paid for labor services as allowable business expenses for state income tax purposes unless the employee is authorized to work under federal law.⁷ This tax provision applies only to employees hired on or after Jan. 1, 2008. Notably, the law does not apply to any Georgia business

exempt from compliance with federal employment verification procedures, any person not directly compensated or employed by the tax-paying employer, *and any individual who presents a valid Georgia driver's license or identification card issued by the Georgia Department of Driver Services*. Although federal work authorization requires an I-9 Employment Eligibility Verification Form, this driver's license "loop-hole" may allow a single fraudulent identification form to circumvent the tax deduction requirement. Second, Section 8 *requires* employers to withhold a 6 percent state income tax from the amount reported on IRS Form 1099 for compensation paid to workers who are unable to provide a valid taxpayer identification number or who have provided an incorrect taxpayer identification number or one issued to a nonresident alien.⁸ This provision took effect on July 1, 2007. Failure to withhold taxes in these circumstances renders an employer liable for the taxes unless exempt from federal withholding relative to that employee pursuant to a properly filed IRS Form 8233.⁹

With regard to public safety and law enforcement, GSICA Section 3 establishes penalties for human trafficking for labor and sexual servitude.¹⁰ Section 4 allows for appropriately trained Georgia peace officers to enforce immigration and customs laws.¹¹ For the requisite training, GSICA provides that the state of Georgia and the U.S. Department of Justice or Department of Homeland Security coordinate through a Memorandum of Understanding.¹² In a similar vein, Section 5 requires that all county, municipal, and regional jails determine the nationality of prisoners *charged with* a felony or DUI.¹³ Jail officials must then make a reasonable effort to verify the lawful presence of foreign nationals and shall report to the Department of Homeland Security those who have not been lawfully admitted into the United States.¹⁴

GSICA also addresses immigration assistance services and public

benefits. Section 6, referred to as the Registration of Immigration Assistance Act, establishes ethical standards for immigration assistance provided by private individuals who are not licensed attorneys, not-for-profit organizations recognized by the Board of Immigration Appeals and other organizations providing assistance without compensation.¹⁵ GSICA also limits the services that these organizations may provide and requires a license from the Secretary of State. Concerning public benefits, Section 9 of GSICA requires that state agencies and local governments verify the legal status of all applicants 18 or older before providing any state and local benefits.¹⁶ The bill does provide certain exemptions for emergency medical care and disaster relief, immunizations, prenatal care, treatment of communicable diseases and other assistance specified by the U.S. Attorney General as necessary for life and safety.¹⁷ GSICA excludes, however, organ transplants from emergency medical care. Consequently, immigration status verification will become a prerequisite for an organ transplant.¹⁸ To receive these public benefits, applicants must submit an affidavit that they are either a U.S. citizen or a legal alien; and eligibility of benefits for legal aliens must be confirmed through the Systematic Alien Verification of Entitlement (SAVE) program of the Department of Homeland Security (DHS).¹⁹

Aside from the tax provisions previously mentioned, GSICA's requirements for public employers and government contractors' participation in a Federal Work Authorization Program will have the greatest impact on employers in Georgia. Pursuant to GSICA, the Georgia Department of Labor (GADOL) has issued a set of rules requiring participation in the E-VERIFY program.²⁰ This requirement will additionally burden a government verification system already known to have a high rate of verification errors.

First, GSICA specifically requires all public employers to participate in the E-VERIFY program. GSICA defines a public employer inclusively as “every department, agency or instrumentality of the state or a political subdivision of the state.”²¹ Additionally, GSICA requires that contractors enroll in the E-VERIFY program before a public employer may enter into a contract with that contractor for the *physical performance of services* within Georgia:

No contractor or subcontractor who enters a contract with a public employer shall enter into such a contract or subcontract in connection with *the physical performance of services* within this state unless the contractor or subcontractor registers and participates in the federal work authorization program to verify information of all new employees.²²

It is important to note that this E-VERIFY program requirement also applies to any subsequent contractor’s or subcontractor’s entering into contracts related to an original contract with a public employer. For example, if ABC Co. contracts with the Department of Aviation, a public employer, to provide services at Hartsfield-Jackson Airport and also contracts with SUBK Co. to provide services related to that contract, then SUBK Co. will be required to participate in the E-VERIFY program. This requirement would also extend to any additional contracts related to the original contract that ABC or SUBK enter into with other subcontractors.

The timing of registration and participation in the E-VERIFY program is scheduled under GSICA according to a phased calendar that affects employers depending on their overall size.²³ Public employers and their contractors of 500 or more employees are subject to the law as of July 1, 2007, while those employers of 100 or more employees will be subject on July 1, 2008. Finally, the law will apply to all

such employers regardless of size on July 1, 2009. It is unclear from the text of the law, however, whether a smaller contractor or subcontractor would be subject to the earlier dates by virtue of a contract with a larger public employer or contractor. For example, if ABC Co., with 600 employees, contracts to perform services for a public employer, and XYZ Co., with 200 employees, contracts with ABC to work on that public employer contract, it is uncertain whether XYZ Co. must comply by 2007 or 2008. Similarly, it is unclear to which date a subcontractor with more than 500 employees would be subject if that company contracted to perform services for a contractor with only 200 employees that was not yet subject to GSICA. Also, the law does not provide any guidance for determining who counts as an employee or whether employees outside of Georgia count towards the total figure.

To satisfy the requirements of GSICA and the GADOL’s rules, public employers and their contractors and subcontractors must participate in the E-VERIFY program. Operated by the U.S. Citizenship and Immigration Services Bureau of DHS and the Social Security Administration (SSA), the E-VERIFY program was established under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and is an electronic verification system that compares Employment Eligibility I-9 forms with SSA and DHS databases to verify employment eligibility. The GADOL rules require the inclusion of certain provisions in the contracts between public employers and contractors, including the following: (1) provisions stating that compliance with GSICA and the rules are conditions of the contract and a provision outlining the phased employee number categories of GSICA for the contractor to indicate its applicable status; (2) a provision stating that the contractor will secure a subcontractor’s

status for any contracts in connection with the primary contract; and (3) a provision stating that compliance with GSICA will be attested to by an affidavit, a sample of which is provided.²⁴ Further, the GADOL rules state that the contractor “will secure from such subcontractor(s) attestation of the subcontractor’s compliance with O.C.G.A. 13-10-91 [GSICA] and Rule 300-10-1-.02 by the subcontractor’s execution of the subcontractor affidavit” provided in the rules.²⁵

The GADOL’s rules have not clarified uncertainties about the extent of an original contractor’s responsibility to oversee its subcontractors’ compliance with GSICA. Because the original contractor only has to secure an affidavit from the subcontractor attesting to compliance, it is unclear whether the contractor would have to take further steps to ensure the subcontractor’s compliance with GSICA.


To participate in the E-VERIFY program, an employer must enter into a Memorandum of Understanding (MOU) with the SSA and DHS stating that the employer will comply with all of the rules and requirements of the E-VERIFY program. As an alternative to actively participating in the registration and verification process, employers may also utilize a third party or designated agent to conduct the E-VERIFY program on the employer’s behalf. The DHS maintains a list of authorized designated agents, but does not endorse any of these agents. When using a designated agent, the employer signs a combined MOU with both the government and the designated agent, and the designated agent executes the E-VERIFY program registration and verification process. Two important considerations about the E-VERIFY program are that *registration in the E-VERIFY program is done on a state-by-state basis and that registration is worksite-specific*. Consequently, employers required to participate in the E-VERIFY program in Georgia will not be required to participate in other

states merely because of their participation in Georgia. Further, E-VERIFY program worksite specificity allows an employer to “opt out” of particular work sites that are not subject to GSICA’s requirements. For example, ABC Co. has two worksites in Georgia: one site involves a contract with a GSICA “public employer,” while the other site is covered by a contract with a private company. ABC Co. may opt out of participating at the private worksite while submitting to the employment verification process only at the public employer site. GSICA only requires employers to verify the status of “new employees.”²⁶ Therefore, employers with multiple worksites may be able to shift existing employees to a work site subject to GSICA and hire new employees for sites not subject to GSICA. The E-VERIFY program is only available to verify the status of new employees.

According to its published rules, the GADOL intends to implement a Random Audit Program to enforce compliance with GSICA.²⁷ Although the plan allows the GADOL to conduct investigations and inspections to determine an employer’s compliance, the program lacks the force of substantial penalties and it awaits funding from the General Assembly.²⁸

Employers also need to remain alert to the federal government’s increased enforcement efforts. As part of its Secure Border Initiative, ICE has begun conducting worksite raids that focus not only on identifying illegal immigrants but also on employers who knowingly continue to hire them. These raids and inspections could substantially affect labor supplies at worksites subject to the new Georgia law.

The full impact of GSICA remains uncertain. Several states have similar laws, including Colorado, where participation in the E-VERIFY program became mandatory at the beginning of this year; substantial data is not yet available. Arizona and Arkansas are the latest states to join the immi-

gration bandwagon. In addition, municipalities are joining the parade. In metro Atlanta, Gwinnett County has passed a far-reaching immigration ordinance covering all those who contract with the county—it covers goods and services and requires E-VERIFY compliance for all employees. Because E-VERIFY is only available for new hires, employers are in a catch-22. This ordinance also contains serious financial sanctions, including damages for breach of contract. Between DHS heightened enforcement and the one-two punch of new state and local immigration laws, employers are faced with a daunting compliance task and some difficult business decisions. 



Mark J. Newman heads the immigration law team at Troutman Sanders LLP and serves on the firm’s Diversity Committee. Newman’s

practice ranges from the transfers of international business executives to the defense of corporations charged with employer sanction violations. Newman received his undergraduate degree from Princeton University and his law degree from the University of Miami School of Law.



Hon-Vinh Duong is an attorney in the immigration practice group at Troutman Sanders LLP. He serves as a legal advisor in all

facets of business immigration law including analysis and processing of U.S. visas and immigration policy and guidance. Duong received his undergraduate degree with Phi Beta Kappa honors from Penn State University. He is a graduate of the American University, Washington College of Law.

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Endnotes

1. Georgia Security and Immigration Compliance Act, 2006 Ga. Laws 105 (codified as amended in scattered sections of O.C.G.A.).
2. *Id.*
3. O.C.G.A. §§ 13-10-90, 13-10-91 (Supp. 2006).
4. See <http://www.ncsl.org/programs/press/2007/pr070517santos.htm>.
5. O.C.G.A. § 13-10-91(b) (Supp. 2006).
6. *Id.* § 13-10-91(b)(3).
7. *Id.* § 48-7-21.1 (Supp. 2007).
8. *Id.* § 48-7-101(i) (Supp. 2007).
9. *Id.* § 48-7-101(i)(2). The deduction and withholding provisions in SB529 are similarly codified in the recently enacted O.C.G.A. § 48-7-21.1 (Supp. 2007), amending the state’s tax laws.
10. *Id.* § 16-5-46 (2007).
11. *Id.* § 35-2-14 (2006).
12. *Id.*
13. *Id.* § 42-4-14 (Supp. 2006).
14. *Id.*
15. *Id.* §§ 43-20A-1 to -20A-4 (Supp. 2006).
16. *Id.* § 50-36-1 (2006).
17. *Id.* § 50-36-1(c).
18. *Id.* § 50-36-1(c)(2).
19. *Id.* § 50-36-1(d), (e).
20. GA. COMP. R. & REGS. § 300-10-1 (2007). The Georgia Department of Transportation has also posted a notice on its website requiring contractor compliance with the DHS Image Program. See Special Notice to Contractors (Apr. 20, 2007) at N-7, available at http://tomcat2.dot.state.ga.us/ContractsAdministration/uploads/07May_NTC.pdf.
21. O.C.G.A. § 13-10-90(3) (Supp. 2006).
22. *Id.* § 13-10-91(b)(2) (Supp. 2006). GSICA does not appear to apply to contractors who only provide goods.
23. *Id.* § 13-10-91(b)(3).
24. GA. COMP. R. & REGS. § 300-10-1-.03(1) (2007).
25. *Id.* § 300-10-1-.03(2).
26. O.C.G.A. § 13-10-91(b)(1) (Supp. 2006).
27. GA. COMP. R. & REGS. § 300-10-1-.09 (2007).
28. *Id.* § 300-10-1-.09(1).

U.S. Immigration Alternatives for International Businesspersons, Employees and Investors Who Wish to Enter the United States

by Robert E. Banta

This article provides general information about U.S. immigration alternatives for persons who wish to enter the United States for business, investment or employment, on a temporary or permanent basis.

General Information About the U.S. Immigration Laws

Several branches of the U.S. federal government, including the Departments of Homeland Security,¹ State and Labor, administer U.S. immigration laws and policies. Normally, U.S. immigration laws are administered by the Department of Homeland Security (DHS), acting through three separate divisions.²

U.S. immigration laws classify persons who want to come to the United States either as immigrants or non-immigrants. A person who, at the time of entering the United States, intends to remain permanently in the United States, is classified as an immigrant, while a person who, at the time of entering the United States, intends to remain in the United States only for a temporary period of time, is classified as a non-immigrant. Persons who want to come to the United States are generally presumed to be immigrants unless they can

establish that they are entitled to non-immigrant visas.³ It is generally faster for a person to obtain a non-immigrant visa than an immigrant visa.

Entry Into the United States

A person seeking initial entry into the United States generally must first obtain a visa from a U.S. consulate. Certain persons entering the United States as tourists or business visitors can enter without visas under the Visa Waiver Program described on page 18. Moreover, Canadian citizens are exempt from this visa requirement.⁴

Obtaining a visa from a U.S. consulate does not guarantee a person's admission into the United States. When a person with a visa arrives at a U.S. port of entry, a DHS officer must decide that the person is admissible before he or she will be allowed to enter the United States. These officers have the authority to exclude from the United States persons whom they deem ineligible for entry. (DHS officers at U.S. ports of entry also determine the admissibility of applicants for entry under the Visa Waiver Program and Canadians applying for entry without visas.)

A DHS officer who admits a person with a non-immigrant visa annotates the person's Arrival-Departure Record (Form I-94) with the date of arrival and the date of required departure. Persons admitted as non-immigrants must leave the United States by the date of required departure noted on the I-94 card