



Association County Commissioners of Georgia
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MEMORANDUM

To: County Attorneys

From: Jim Grubiak, General Counsel

Re: Illegal Immigration Reform Act/Permanent Injunction of Section 7

Date: March 22, 2013

In 2011, the Georgia General Assembly passed HB 87, the Illegal Immigration Reform Act. This legislation was subsequently challenged in Federal Court. Two sections, Section 7 and Section 8, were enjoined by the Court. The Court eventually allowed Section 8, which authorizes law enforcement agencies to verify immigration status of criminal suspects, to take effect in December 2012.

However, on Wednesday, March 20, 2013, U.S. District Court Judge Thomas Thrash issued an order permanent enjoining Section 7 of HB 87 in that this section is preempted by federal law. Section 7 would have provided sanctions for knowingly harboring or transporting illegal aliens. Section 7 of HB 87 was codified at O.C.G.A. § 16-11-200 through O.C.G.A. § 16-11-203.

ACCG has been asked by the Court and the Attorney General to inform counties of the result of the litigation. To that end, please contact the law enforcement agency or agencies in your county to ensure they are aware of the permanent injunction. A copy of the order and the applicable Code section is attached.

JFG:mn



**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Georgia Latino Alliance for Human
Rights, *et al.*,

Plaintiffs,

v.

Governor Nathan Deal, *et al.*,

Defendants.

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) Case No. 1:11-cv-1804-TWT
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PERMANENT INJUNCTION

In light of the Court of Appeals' August 20, 2012 decision in this case, reported at 691 F.3d 1250, the parties agree that Section 7 of HB 87 has been held to be preempted by federal law. Accordingly, the Court orders that:

1. Section 7 of the Georgia Illegal Immigration Reform and Enforcement Act of 2011 ("HB 87"), codified at O.C.G.A. Title 16, Chapter 11, Article 5 (§§ 16-11-200-203), is permanently enjoined; and
2. Defendants shall take appropriate measures to inform state law enforcement agencies of the permanent injunction, and will disseminate this order to the Georgia Peace Officer Standards and Training Council, the Georgia Public Safety Training Center, the Georgia Prosecuting Attorneys' Council, the Georgia Sheriffs Association, the Georgia Association of Chiefs of Police,

the Association County Commissioners of Georgia, and the Georgia
Municipal Association.

SO ORDERED this 20th day of March, 2013.

/s/Thomas W. Thrash

Thomas W. Thrash, Jr.

UNITED STATES DISTRICT JUDGE

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*** Current Through the 2012 Regular Session ***

TITLE 16. CRIMES AND OFFENSES
CHAPTER 11. OFFENSES AGAINST PUBLIC ORDER AND SAFETY
ARTICLE 5. OFFENSES INVOLVING ILLEGAL ALIENS

O.C.G.A. § 16-11-200 (2012)

§ 16-11-200. Definitions; offense of transporting or moving illegal aliens; exceptions; penalties

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

(1) "Illegal alien" means a person who is verified by the federal government to be present in the United States in violation of federal immigration law.

(2) "Motor vehicle" shall have the same meaning as provided in Code Section 40-1-1.

(b) A person who, while committing another criminal offense, knowingly and intentionally transports or moves an illegal alien in a motor vehicle for the purpose of furthering the illegal presence of the alien in the United States shall be guilty of the offense of transporting or moving an illegal alien.

(c) Except as provided in this subsection, a person convicted for a first offense of transporting or moving an illegal alien who moves seven or fewer illegal aliens at the same time shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment not to exceed 12 months, a fine not to exceed \$1,000.00, or both. A person convicted for a second or subsequent offense of transporting or moving an illegal alien, and a person convicted on a first offense of transporting or moving an illegal alien who moves eight or more illegal aliens at the same time, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one or more than five years, a fine of not less than \$5,000.00 or more than \$20,000.00, or both. A person who commits the offense of transporting or moving an illegal alien who does so with the intent of making a profit or receiving anything of value shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one or more than five years, a fine of not less than \$5,000.00 or more than \$20,000.00, or both.

(d) This Code section shall not apply to:

(1) A government employee transporting or moving an illegal alien as a part of his or her official duties or to any person acting at the direction of such employee;

(2) A person who transports an illegal alien to or from a judicial or administrative proceeding when such illegal alien is required to appear pursuant to a summons, subpoena, court order, or other legal process;

(3) A person who transports an illegal alien to a law enforcement agency or a judicial officer for official government purposes;

(4) An employer transporting an employee who was lawfully hired; or

(5) A person providing privately funded social services.

HISTORY: Code 1981, § 16-11-200, enacted by Ga. L. 2011, p. 794, § 7/HB 87.

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ARTICLE 5. OFFENSES INVOLVING ILLEGAL ALIENS

O.C.G.A. § 16-11-201 (2012)

§ 16-11-201. Definitions; offense of concealing, harboring, or shielding an illegal alien; penalties; exceptions

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

(1) "Harboring" or "harbors" means any conduct that tends to substantially help an illegal alien to remain in the United States in violation of federal law but shall not include a person providing services to infants, children, or victims of a crime; a person providing privately funded social services; a person providing emergency medical service; or an attorney or his or her employees for the purpose of representing a criminal defendant.

(2) "Illegal alien" means a person who is verified by the federal government to be present in the United States in violation of federal immigration law.

(b) A person who is acting in violation of another criminal offense and who knowingly conceals, harbors, or shields an illegal alien from detection in any place in this state, including any building or means of transportation, when such person knows that the person being concealed, harbored, or shielded is an illegal alien, shall be guilty of the offense of concealing or harboring an illegal alien.

(c) Except as provided in this subsection, a person convicted of concealing or harboring an illegal alien who conceals or harbors seven or fewer illegal aliens at the same time in the same location shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment not to exceed 12 months, a fine not to exceed \$1,000.00, or both. A person convicted of concealing or harboring an illegal alien who conceals or harbors eight or more illegal aliens at the same time in the same location, or who conceals or harbors an illegal alien with the intent of making a profit or receiving anything of value, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one or more than five years, a fine of not less than \$5,000.00 or more than \$20,000.00, or both.

(d) This Code section shall not apply to a government employee or any person acting at the express direction of a government employee who conceals, harbors, or shelters an illegal alien when such illegal alien is or has been the victim of a criminal offense or is a witness in any civil or criminal proceeding or who holds an illegal alien in a jail, prison, or other detention facility.

HISTORY: Code 1981, § 16-11-201, enacted by Ga. L. 2011, p. 794, § 7/HB 87.

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TITLE 16. CRIMES AND OFFENSES
CHAPTER 11. OFFENSES AGAINST PUBLIC ORDER AND SAFETY
ARTICLE 5. OFFENSES INVOLVING ILLEGAL ALIENS

O.C.G.A. § 16-11-202 (2012)

§ 16-11-202. Illegal alien defined; offense of inducing an illegal alien to enter state; penalties

(a) As used in this Code section, the term "illegal alien" means a person who is verified by the federal government to be present in the United States in violation of federal immigration law.

(b) A person who is acting in violation of another criminal offense and who knowingly induces, entices, or assists an illegal alien to enter into this state, when such person knows that the person being induced, enticed, or assisted to enter into this state is an illegal alien, shall be guilty of the offense of inducing an illegal alien to enter into this state.

(c) Except as provided in subsection (d) of this Code section, for a first offense, a person convicted of inducing an illegal alien to enter into this state shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment not to exceed 12 months, a fine not to exceed \$1,000.00, or both. For a second or subsequent conviction of inducing an illegal alien to enter into this state, a person shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one or more than five years, a fine of not less than \$5,000.00 or more than \$20,000.00, or both.

(d) A person who commits the offense of inducing an illegal alien to enter into this state who does so with the intent of making a profit or receiving any thing of value shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one or more than five years, a fine of not less than \$5,000.00 or more than \$20,000.00, or both.

HISTORY: Code 1981, § 16-11-202, enacted by Ga. L. 2011, p. 794, § 7/HB 87.View [← O.C.G.A. § 16-11-202 →](#)[Return to Search Results](#)**O.C.G.A. § 16-11-202** (Copy w/ Cite)

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O.C.G.A. § 16-11-203 (2012)

§ 16-11-203. Authority of law enforcement officers to enforce federal immigration laws; documentation

The testimony of any officer, employee, or agent of the federal government having confirmed that a person is an illegal alien shall be admissible to prove that the federal government has verified such person to be present in the United States in violation of federal immigration law. Verification that a person is present in the United States in violation of federal immigration law may also be established by any document authorized by law to be recorded or filed and in fact recorded or filed in a public office where items of this nature are kept.

HISTORY: Code 1981, § 16-11-203, enacted by Ga. L. 2011, p. 794, § 7/HB 87.

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