

1 SB163  
2 126723-1  
3 By Senator Smitherman  
4 RFD: Small Business  
5 First Read: 08-MAR-11

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8 SYNOPSIS: Existing law does not require a business  
9 entity or public employer in the State of Alabama  
10 to verify the legal status of a new employee when  
11 hiring a new employee.

12 This bill would require a business entity or  
13 public employer in the State of Alabama to verify  
14 the legal status of a new employee through the  
15 federal E-Verify program and would provide for the  
16 suspension of the business licenses of a business  
17 entity who violates this act.

18  
19 A BILL  
20 TO BE ENTITLED  
21 AN ACT

22  
23 Relating to the employment of unauthorized aliens,  
24 to require a business entity or public employer located in the  
25 State of Alabama to verify the legal status of a new employee  
26 through the federal E-Verify program; and to provide for the

1 suspension of the business licenses of a business entity who  
2 violates the requirements of this act.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. (a) For the purposes of this act, the  
5 following words shall have the following meanings:

6 (1) ALIEN. Any person who is not a citizen or  
7 national of the United States, as described in 8 U.S.C. §1101,  
8 et seq., and any amendments thereto.

9 (2) BUSINESS ENTITY. Any person or group of persons  
10 performing or engaging in any activity, enterprise,  
11 profession, or occupation for gain, benefit, advantage, or  
12 livelihood, whether for profit or not-for-profit which is  
13 required to have a business license. "Business entity" shall  
14 include, but not be limited to, the following:

15 a. Self-employed individuals, business entities  
16 filing articles of incorporation, partnerships, limited  
17 partnerships, limited liability companies, foreign  
18 corporations, foreign limited partnerships, foreign limited  
19 liability companies authorized to transact business in this  
20 state, business trusts, and any business entity that registers  
21 with the Secretary of State.

22 b. Any business entity that possesses a business  
23 license, permit, certificate, approval, registration, charter,  
24 or similar form of authorization issued by a county or a  
25 municipality in the State of Alabama and any business entity  
26 that is operating unlawfully without a business license.

1           (3) EMPLOYEE. Any person directed, allowed, or  
2 permitted to perform labor or service of any kind by a  
3 business entity or public employer, with the exception of  
4 casual domestic labor hired to work in or around the personal  
5 abode of an individual. The employees of an independent  
6 contractor working for a business entity shall not be regarded  
7 as the employees of the business entity, for the purposes of  
8 this act.

9           (4) E-VERIFY. The electronic verification of federal  
10 employment authorization program of the Illegal Immigration  
11 Reform and Immigrant Responsibility Act of 1996, P.L. 104-208,  
12 Division C, Section 403(a); 8 U.S.C. §1324(a), and operated by  
13 the United States Department of Homeland Security, or its  
14 successor program.

15           (5) PUBLIC EMPLOYER. Every department, agency, or  
16 instrumentality of the state or a political subdivision of the  
17 state.

18           (6) UNAUTHORIZED ALIEN. An alien who is not  
19 authorized to work in the United States, as defined in 8  
20 U.S.C. §1324a(h) (3).

21           (b) It is unlawful for a business entity located in  
22 the State of Alabama to knowingly hire or to recruit for a fee  
23 for employment an unauthorized alien.

24           (c) A business entity located in the State of  
25 Alabama shall be required to verify the employment eligibility  
26 of every new employee hired through E-Verify, as defined by

1 this act, and shall be subject to the following provisions of  
2 this subsection.

3 (1) The business entity shall retain all  
4 documentation received in connection with its participation in  
5 E-Verify that verifies the employment authorization of every  
6 new employee verified through E-Verify for at least three  
7 years after the termination of the employment of the employee.  
8 This documentation shall be provided to the state upon  
9 request.

10 (2) Every public employer shall register with and  
11 utilize E-Verify to verify the employment authorization of a  
12 new employee.

13 (3) A public employer may not enter into a contract  
14 for the performance of services within the state unless the  
15 contractor is registered with and utilizing E-Verify to verify  
16 the employment authorization of a new employee of the  
17 contractor. This subdivision shall not apply to any contracts  
18 entered into prior to the effective date of this act even  
19 though the contracts may involve the performance of labor  
20 within the state after the effective date of this act.

21 (4) This section may be enforced in the courts of  
22 the State of Alabama by the district attorney for the county  
23 or the city attorney for a municipality in the county.

24 (5) On a finding of the first violation of this  
25 subsection by a business entity, the court shall order the  
26 suspension of all licenses issued by the state or a political

1 subdivision of the state that are held by the business entity  
2 for a minimum of one day and a maximum of 30 days.

3 (6) On a second or subsequent violation of this  
4 subsection by a business entity, the court shall order the  
5 permanent suspension of all licenses issued by the state or a  
6 political subdivision of the state that are held by the  
7 business entity.

8 (7) A business entity that has had its business  
9 license suspended shall not engage in any other form of  
10 business throughout the duration of the suspension, nor shall  
11 the business entity be allowed to open another business in any  
12 form.

13 (8) In enforcing this subsection, no state, county,  
14 or local official shall attempt to independently determine  
15 whether an individual is an unauthorized alien or an alien not  
16 lawfully present in the United States. The determination shall  
17 only be made by verifying the immigration status of the alien  
18 with the federal government, pursuant to 8 U.S.C. §1373(c).

19 (9) For the purposes of this subsection, when making  
20 a determination of whether an employee is an unauthorized  
21 alien, a court shall only consider the determination of the  
22 federal government pursuant to 8 U.S.C. §1373(c). The court  
23 shall take judicial notice of any verification of the  
24 immigration status previously provided by the federal  
25 government. The court may, and at the request of a party  
26 shall, request the federal government to provide, in  
27 automated, documentary, or testimonial form, a new

1 verification of the immigration status of the employee  
2 pursuant to 8 U.S.C. §1373(c). The most recent determination  
3 of the immigration status of an employee by the federal  
4 government shall create a rebuttable presumption as to the  
5 immigration status of the employee.

6 (10) For the purposes of this act, a business entity  
7 that has complied in good faith with the requirements of this  
8 act through enrollment in E-Verify and has utilized E-Verify  
9 to confirm the employment authorization of any employee in  
10 question will benefit from a rebuttable presumption that the  
11 business entity did not knowingly employ an unauthorized  
12 alien.

13 Section 2. This act shall become effective on  
14 January 1 of the year following its passage and approval by  
15 the Governor, or its otherwise becoming law.