

1 SB175
2 116167-1
3 By Senator Marsh
4 RFD: Economic Expansion and Trade
5 First Read: 12-JAN-10

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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 or any other method that
16 reasonably determines the legal status of the new
17 employee and would provide for the suspension of
18 the business licenses of a business entity who
19 violates this act.
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21 A BILL

22 TO BE ENTITLED

23 AN ACT
24

25 Relating to the employment of unauthorized aliens,
26 to require a business entity or public employer located in the
27 State of Alabama to verify the legal status of a new employee

1 through the federal E-Verify program or any other method that
2 reasonably determines the legal status of the new employee;
3 and to provide for the suspension of the business licenses of
4 a business entity who violates the requirements of this act.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

8 (1) ALIEN. Any person who is not a citizen or
9 national of the United States, as described in Title 8, U.S.C.
10 §1101, et seq., and any amendments thereto.

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

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

24 b. Any business entity that possesses a business
25 license, permit, certificate, approval, registration, charter,
26 or similar form of authorization issued by a county or a

1 municipality in the State of Alabama and any business entity
2 that is operating unlawfully without a business license.

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

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

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

20 (6) UNAUTHORIZED ALIEN. An alien who is not
21 authorized to work in the United States, as defined in Title
22 8, U.S.C. §1324a(h) (3).

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

26 (c) A business entity located in the State of
27 Alabama shall be required to verify the employment eligibility

1 of every employee hired through E-Verify, as defined by this
2 act, or may use any other method that reasonably determines
3 the legal status of the new employee, and shall be subject to
4 the following provisions of this subsection.

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

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

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

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

25 (5) On a finding of the first violation of this
26 subsection by a business entity, the court shall order the
27 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 Title 8, U.S.C.
19 §1373(c).

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

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

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

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