

1 SB256
2 129607-5
3 By Senators Beason, Orr, Scofield, Brewbaker, Williams,
4 Sanford, Holley, Allen, McGill, Holtzclaw, Bedford, Bussman,
5 Glover, Ward, Waggoner, Pittman and Reed
6 RFD: Job Creation and Economic Development
7 First Read: 22-MAR-11

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to illegal immigration; to define terms; to
12 require the Attorney General to attempt to negotiate a
13 Memorandum of Understanding under certain conditions; to
14 require a person to present proof of citizenship or residency
15 before voting; to preclude any state or local government or
16 official from refusing to enforce federal immigration laws or
17 state immigration laws; to prohibit an alien unlawfully
18 present in the United States from receiving any state or local
19 public benefits; to prohibit a person not lawfully present
20 from being eligible on the basis of residence for education
21 benefits; to require business entities or employers seeking
22 economic incentives to verify the employment eligibility of
23 their employees and to provide penalties; to prohibit an
24 unauthorized alien from being present in this state and to
25 provide penalties; to prohibit an unauthorized alien from
26 seeking employment in this state and to provide penalties; to
27 require the verification of the legal status of persons by law

1 enforcement officers under certain circumstances; to
2 criminalize certain behavior relating to concealing,
3 harboring, shielding, or attempting to conceal, harbor, or
4 shield unauthorized aliens and to provide penalties; to create
5 the crime of dealing in false identification documents and the
6 crime of vital records identity fraud and to provide
7 penalties; to prohibit a business entity, employer, or public
8 employer from knowingly employing an unauthorized alien and to
9 provide penalties; to prohibit certain deductible business
10 expenses; to make it a discriminatory practice for a business
11 entity or employer to fail to hire a legally present job
12 applicant or discharge an employee while retaining an employee
13 who is an unauthorized alien under certain conditions; to
14 require the verification of legal status of every person
15 charged with a crime for which bail is required; to amend
16 Section 32-6-9 of the Code of Alabama 1975, relating to
17 driver's licenses; to require law enforcement to detain any
18 person whose lawful immigration status cannot be verified
19 under certain conditions; to require notification of the
20 United States Bureau of Immigration and Customs Enforcement
21 and the Alabama Department of Homeland Security when an
22 unlawfully present alien is convicted of state law; to provide
23 for a stay of the provisions of this act when an alien
24 unlawfully present is a victim or critical witness of a crime
25 under certain conditions; to provide for restitution under
26 certain conditions; to authorize the Alabama Department of
27 Homeland Security to hire state police officers and give the

1 department enforcement power with an expiration on the police
2 power under certain conditions; to provide penalties for
3 solicitation, attempt, or conspiracy to violate this act; to
4 require the Alabama Department of Homeland Security to file a
5 quarterly report with the Legislature under certain
6 conditions; and in connection therewith would have as its
7 purpose or effect the requirement of a new or increased
8 expenditure of local funds within the meaning of Amendment 621
9 of the Constitution of Alabama of 1901, now appearing as
10 Section 111.05 of the Official Recompilation of the
11 Constitution of Alabama of 1901, as amended.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. This act shall be known and may be cited
14 as the Beason-Hammon Alabama Taxpayer and Citizen Protection
15 Act.

16 Section 2. The State of Alabama finds that illegal
17 immigration is causing economic hardship and lawlessness in
18 this state and that illegal immigration is encouraged when
19 public agencies within this state provide public benefits
20 without verifying immigration status. The State of Alabama
21 further finds that certain practices currently allowed in this
22 state impede and obstruct the enforcement of federal
23 immigration law, undermine the security of our borders, and
24 impermissibly restrict the privileges and immunities of the
25 citizens of Alabama. Therefore, the people of the State of
26 Alabama declare that it is a compelling public interest to
27 discourage illegal immigration by requiring all agencies

1 within this state to fully cooperate with federal immigration
2 authorities in the enforcement of federal immigration laws.
3 The State of Alabama also finds that other measures are
4 necessary to ensure the integrity of various governmental
5 programs and services.

6 Section 3. 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 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. "Business
15 entity" shall include, but not be limited to the following:

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

23 b. Any business entity that possesses a business
24 license, permit, certificate, approval, registration, charter,
25 or similar form of authorization issued by the state, any
26 business entity that is exempt by law from obtaining such a

1 business license, and any business entity that is operating
2 unlawfully without a business license.

3 (3) CONTRACTOR. A person, employer, or business
4 entity that enters into an agreement to perform any service or
5 work or to provide a certain product in exchange for valuable
6 consideration. This definition shall include, but not be
7 limited to, a general contractor, subcontractor, independent
8 contractor, contract employee, project manager, or a
9 recruiting or staffing entity.

10 (4) EMPLOYEE. Any person directed, allowed, or
11 permitted to perform labor or service of any kind by an
12 employer. The employees of an independent contractor working
13 for a business entity shall not be regarded as the employees
14 of the business entity, for the purposes of this act.

15 (5) EMPLOYER. Any person, firm, corporation,
16 partnership, joint stock association, agent, manager,
17 representative, foreman, or other person having control or
18 custody of any employment, place of employment, or of any
19 employee, including any person or entity employing any person
20 for hire within the State of Alabama, including a public
21 employer.

22 (6) EMPLOYMENT. The act of employing or state of
23 being employed, engaged, or hired to perform work or service
24 of any kind or character within the State of Alabama.

25 (7) E-VERIFY. The electronic verification of federal
26 employment authorization program of the Illegal Immigration
27 Reform and Immigrant Responsibility Act of 1996, P.L. 104-208,

1 Division C, Section 403(a); 8 U.S.C. 1324(a), and operated by
2 the United States Department of Homeland Security, or its
3 successor program.

4 (8) FEDERAL WORK AUTHORIZATION PROGRAM. Any of the
5 electronic verification of work authorization programs
6 operated by the United States Department of Homeland Security
7 or an equivalent federal work authorization program operated
8 by the United States Department of Homeland Security to verify
9 information of newly hired employees, under the Immigration
10 Reform and Control Act of 1986 (IRCA), P.L. 99-603.

11 (9) KNOWS or KNOWINGLY. A person acts knowingly or
12 with knowledge with respect to either of the following:

13 a. The person's conduct or to attendant
14 circumstances when the person is aware of the nature of the
15 person's conduct or that those circumstances exist.

16 b. A result of the person's conduct when the person
17 is reasonably aware that the person's conduct is likely to
18 cause that result.

19 (10) LAWFUL PRESENCE or LAWFULLY PRESENT. A person
20 is presumed to have lawful presence and not to be an alien who
21 is unlawfully present in the United States or in the State of
22 Alabama. A person shall be regarded as an alien unlawfully
23 present in the United States if the person's unlawful
24 immigration status has been verified by the federal government
25 pursuant to 8 U.S.C. § 1373(c) or if the person does not
26 possess proof of self-identification in any of the following
27 forms:

1 a. A valid, unexpired Alabama driver's license.

2 b. A valid, unexpired Alabama nondriver
3 identification card.

4 c. A valid tribal enrollment card or other form of
5 tribal identification.

6 d. Any valid United States federal, state, or local
7 government issued identification document if issued by an
8 entity that requires proof of lawful presence in the United
9 States before issuance.

10 e. A foreign passport with a United States Visa.

11 f. A foreign passport issued by a visa waiver
12 country with the corresponding entry stamp and duration of
13 stay annotation or an I-94W form.

14 (11) POLICY OR PRACTICE. A guiding principle or rule
15 that may be written or adopted through repeated actions or
16 customs, which must be sanctioned by an agency or the head of
17 an agency.

18 (12) PROTECTIVE SERVICES PROVIDER. A protective
19 service provider or provider of services to victims of
20 domestic violence, stalking, sexual assault, or human
21 trafficking that receives federal grants under the Victim of
22 Crimes Act, the Violence Against Women Act, or the Family
23 Violence Prevention and Services Act.

24 (13) PUBLIC EMPLOYER. Every department, agency, or
25 instrumentality of the state or a political subdivision of the
26 state including counties and municipalities.

1 (14) STATE-FUNDED ENTITY. Any governmental entity of
2 the state or a political subdivision thereof or any other
3 entity that receives any state monies.

4 (15) SUBCONTRACTOR. A subcontractor, contract
5 employee, staffing agency, or any contractor, regardless of
6 its tier.

7 (16) UNAUTHORIZED ALIEN. An alien who is not
8 authorized to work in the United States as defined in 8 U.S.C.
9 § 1324a(h) (3).

10 (17) WORK. Any job, task, employment, labor,
11 personal services, or any other activity for which
12 compensation is provided, expected, or due, including, but not
13 limited to, all activities conducted by a business entity.

14 Section 4. (a) The Attorney General shall attempt to
15 negotiate the terms of a Memorandum of Understanding between
16 the State of Alabama and the United States Department of
17 Homeland Security, as provided in 8 U.S.C. Section 1357(g),
18 concerning the enforcement of federal immigration and customs
19 laws, detention and removals, and investigations in the State
20 of Alabama.

21 (b) The Memorandum of Understanding negotiated
22 pursuant to subsection (a) shall be signed on behalf of this
23 state by the Attorney General and the Governor or as otherwise
24 required by the appropriate federal agency.

25 (c) A report of the results of the attempt of the
26 Attorney General to enter into a Memorandum of Understanding

1 shall be submitted to the Legislature within six months of the
2 effective date of this act.

3 Section 5. (a) No official or agency of this state
4 or any political subdivision thereof, including, but not
5 limited to, an officer of a court in this state, may adopt a
6 policy or practice that limits or restricts the enforcement of
7 federal immigration laws to less than the full extent
8 permitted by federal law or that in any way limits
9 communication between its officers and federal immigration
10 officials in violation of 8 U.S.C. § 1373. If, in the judgment
11 of the Attorney General of Alabama, an official or agency of
12 this state or any political subdivision thereof, including,
13 but not limited to, an officer of a court in this state, is in
14 violation of this subsection, the Attorney General shall
15 report any violation of this subsection to the Governor and
16 the state Comptroller and that agency or political subdivision
17 shall not be eligible to receive any funds, grants, or
18 appropriations from the State of Alabama until such violation
19 has ceased and the Attorney General has so certified. Any
20 appeal of the determination of the Attorney General as
21 considered in this section shall be first appealed to the
22 circuit court of the respective jurisdiction in which the
23 alleged offending agency resides.

24 (b) All state officials, agencies, and personnel,
25 including, but not limited to, an officer of a court in this
26 state, shall fully comply with and, to the full extent
27 permitted by law, support the enforcement of federal law

1 prohibiting the entry into, presence, or residence in the
2 United States of aliens in violation of federal immigration
3 law.

4 (c) Except as provided by federal law, officials or
5 agencies of this state or any political subdivision thereof,
6 including, but not limited to, an officer of a court in this
7 state, may not be prohibited or in any way be restricted from
8 sending, receiving, or maintaining information relating to the
9 immigration status, lawful or unlawful, of any individual or
10 exchanging that information with any other federal, state, or
11 local governmental entity for any of the following official
12 purposes:

13 (1) Determining the eligibility for any public
14 benefit, service, or license provided by any federal, state,
15 local, or other political subdivision of this state.

16 (2) Verifying any claim of residence or domicile if
17 determination of residence or domicile is required under the
18 laws of this state or a judicial order issued pursuant to a
19 civil or criminal proceeding of this state.

20 (3) If the person is an alien, determining whether
21 the person is in compliance with the federal registration laws
22 prescribed by Title II, Chapter 7 of the Federal Immigration
23 and Nationality Act.

24 (4) Pursuant to 8 U.S.C. § 1373 and 8 U.S.C. § 1644.

25 (d) A person who is a United States citizen or
26 lawfully present alien and is a resident of this state may
27 bring an action in circuit court to challenge any official or

1 head of an agency of this state or political subdivision
2 thereof, including, but not limited to, an officer of a court
3 in this state, that adopts or implements a policy or practice
4 that is in violation of 8 U.S.C. § 1373 or 8 U.S.C. § 1644. If
5 there is a judicial finding that an official or head of an
6 agency, including, but not limited to, an officer of a court
7 in this state, has violated this section, the court shall
8 order that the officer, official, or head of an agency pay a
9 civil penalty of not less than one thousand dollars (\$1,000)
10 and not more than five thousand dollars (\$5,000) for each day
11 that the policy or practice has remained in effect after the
12 filing of an action pursuant to this section.

13 (e) A court shall collect the civil penalty
14 prescribed in subsection (d) and remit one half of the civil
15 penalty to the State Treasurer for deposit in the State
16 General Fund and the second half shall be awarded to the party
17 that brought the action.

18 (f) Every person working for the State of Alabama or
19 a political subdivision thereof, including, but not limited
20 to, a law enforcement agency in the State of Alabama or a
21 political subdivision thereof, is to report violations of this
22 act. Any person who willfully fails to report any violation of
23 this act when the person knows that this act is being violated
24 shall be guilty of obstructing governmental operations as
25 defined in Section 13A-10-2 of the Code of Alabama 1975.

26 (g) For the purposes of this section, the term
27 "official or head of an agency of this state" shall not

1 include a law enforcement officer or other personnel employed
2 in a jail who is acting within the line and scope of his or
3 her duty.

4 (h) For the purposes of this act, any proceedings
5 against an official shall be only in his or her official
6 capacity. Each side on any litigation considered within this
7 act shall bear their own costs and fees associated with the
8 litigation unless otherwise ordered by the court. For the
9 purposes of this act, the relevant statute of repose for
10 assessing penalties shall be no more than 30 days prior to the
11 initial allegation of the violations of this act.

12 Section 6. (a) No official or agency of this state
13 or any political subdivision thereof, including, but not
14 limited to, an officer of a court in this state, may adopt a
15 policy or practice that limits or restricts the enforcement of
16 this act to less than the full extent permitted by this act or
17 that in any way limits communication between its officers or
18 officials in furtherance of the enforcement of this act. If,
19 in the judgment of the Attorney General of Alabama, an
20 official or agency of this state or any political subdivision
21 thereof, including, but not limited to, an officer of a court
22 in this state, is in violation of this subsection, the
23 Attorney General shall report any violation of this subsection
24 to the Governor and the state Comptroller and that agency or
25 political subdivision shall not be eligible to receive any
26 funds, grants, or appropriations from the State of Alabama

1 until such violation has ceased and the Attorney General has
2 so certified.

3 (b) All state officials, agencies, and personnel,
4 including, but not limited to, an officer of a court in this
5 state, shall fully comply with and, to the full extent
6 permitted by law, support the enforcement of this act
7 prohibiting the entry into, presence, or residence in the
8 United States of aliens in violation of this act.

9 (c) Except as provided by this act, officials or
10 agencies of this state or any political subdivision thereof,
11 including, but not limited to, an officer of a court in this
12 state, may not be prohibited or in any way be restricted from
13 sending, receiving, or maintaining information relating to the
14 immigration status, lawful or unlawful, of any individual or
15 exchanging that information with any other federal, state, or
16 local governmental entity for any of the following official
17 purposes:

18 (1) Determining the eligibility for any public
19 benefit, service, or license provided by any federal, state,
20 local, or other political subdivision of this state.

21 (2) Verifying any claim of residence or domicile if
22 determination of residence or domicile is required under the
23 laws of this state or a judicial order issued pursuant to a
24 civil or criminal proceeding of this state.

25 (3) If the person is an alien, determining whether
26 the person is in compliance with the federal registration laws

1 prescribed by Title II, Chapter 7 of the Federal Immigration
2 and Nationality Act.

3 (4) Pursuant to 8 U.S.C. § 1373 and 8 U.S.C. § 1644.

4 (d) A person who is a legal resident of this state
5 may bring an action in circuit court to challenge any official
6 or head of an agency of this state or political subdivision
7 thereof, including, but not limited to, an officer of a court
8 in this state, that adopts or implements a policy or practice
9 that limits or restricts the enforcement of this act to less
10 than the full extent permitted by this act. Such person shall
11 have actual knowledge that any official or head of an agency
12 of this state or political subdivision thereof, including, but
13 not limited to, an officer of a court in this state, has
14 adopted or implemented a policy or practice that limits or
15 restricts the enforcement of this act to less than the full
16 extent permitted by this act. If there is a judicial finding
17 that an official or head of an agency, including, but not
18 limited to, an officer of a court in this state, has violated
19 this section, the court shall order that the officer,
20 official, or head of an agency pay a civil penalty of not less
21 than one thousand dollars (\$1,000) and not more than five
22 thousand dollars (\$5,000) for each day that the policy or
23 practice has remained in effect after the filing of an action
24 pursuant to this section.

25 (e) A court shall collect the civil penalty
26 prescribed in subsection (d) and remit one half of the civil
27 penalty to the State Treasurer for deposit in the State

1 General Fund and the second half shall be awarded to the party
2 that brought the action.

3 (f) Every person working for the State of Alabama or
4 a political subdivision thereof, including, but not limited
5 to, a law enforcement agency in the State of Alabama or a
6 political subdivision thereof, is to report violations of this
7 act. Failure to report any violation of this act when there is
8 reasonable cause to believe that this act is being violated is
9 guilty of obstructing governmental operations as defined in
10 Section 13A-10-2, Code of Alabama, 1975, and shall be
11 punishable pursuant to state law.

12 (g) For the purposes of this section, the term
13 "official or head of an agency of this state" shall not
14 include a law enforcement officer or other personnel employed
15 in a jail who is acting within the line and scope of his or
16 her duty.

17 Section 7. (a) No alien who is unlawfully present in
18 the United States shall receive any state or local public
19 benefit, except for family planning services, primary or
20 secondary school education, and state or local public benefits
21 that are referenced in 8 U.S.C. § 1621(b).

22 (b) In addition to providing proof of other
23 eligibility requirements, at the time of application for any
24 state or local public benefit, an individual applicant who is
25 18 years of age or older shall provide proof that the
26 individual applicant is a United States citizen or a lawful
27 permanent resident of the United States or is an alien who is

1 lawfully present in the United States. Such affirmative proof
2 shall include documentary evidence issued by the Department of
3 Public Safety as well as any document issued by the federal
4 government that confirms an alien's lawful presence in the
5 United States, or electronic or telephonic confirmation of the
6 person's lawful immigration status by the federal government
7 pursuant to 8 U.S.C. § 1373.

8 (c) No state, county, or local agency shall provide
9 any state or local public benefit to any alien without first
10 verifying that the alien is lawfully present in the United
11 States and is a qualified alien, as described by 8 U.S.C. §
12 1621, and 8 U.S.C. § 1641. Such verification shall occur
13 through the Systematic Alien Verification for Entitlements
14 program operated by the United States Department of Homeland
15 Security, or its successor program.

16 (d) State and local agencies administering public
17 benefits in this state shall cooperate with the United States
18 Department of Homeland Security or the Alabama Department of
19 Homeland Security in achieving verification of the lawful
20 presence of an alien in the United States in furtherance of
21 this section.

22 (e) As used in this section, "public benefit" means
23 any grant, contract, loan, tag, permit, or license of any kind
24 provided by an agency or any licensing authority of the State
25 of Alabama or a political subdivision thereof, or any
26 retirement, welfare, health, disability, housing, food

1 assistance, or unemployment benefit under which payments,
2 assistance, credits, or reduced rates or fees are provided.

3 (f) For the purposes of administering the Alabama
4 Child Health Insurance Program, verification and documentation
5 of citizenship, permanent residence, or lawful presence
6 through means authorized by federal law shall satisfy the
7 requirements of this section.

8 (g) The requirements of this section related to the
9 verification and documentation of United States citizenship,
10 lawful permanent residence, and lawful presence shall not
11 apply with respect to family planning services, the Special
12 Supplemental Nutrition Program for Women, Infants, and
13 Children, and any federal public benefit referenced in 8
14 U.S.C. §1641(b).

15 Section 8. Except as otherwise provided by law, an
16 alien who is not lawfully present in the United States shall
17 not be eligible for any of the following:

18 (1) Any postsecondary education benefit, including,
19 but not limited to, scholarships or financial aid.

20 (2) Resident or reduced tuition rates at a public
21 postsecondary institution.

22 (3) Participation in any extracurricular activity
23 outside of the basic course of study in any primary,
24 secondary, or postsecondary educational program.

25 Section 9. (a) As a condition for the award of any
26 contract, grant, or incentive by the state, any political
27 subdivision thereof, or any state-funded entity to a business

1 entity or employer that employs one or more employees, the
2 business entity or employer shall not knowingly employ, hire
3 for employment, or continue to employ an unauthorized alien
4 and shall attest to such, by sworn affidavit signed before a
5 notary.

6 (b) As a condition for the award of any contract,
7 grant, or incentive by the state, any political subdivision
8 thereof, or any state-funded entity to a business entity or
9 employer that employs one or more employees, the business
10 entity or employer shall provide documentation establishing
11 that the business entity is a registered participant in the
12 E-Verify program.

13 (c) No subcontractor on a project paid for by
14 contract, grant, or incentive by the state, any political
15 subdivision thereof, or any state-funded entity shall
16 knowingly employ, hire for employment, or continue to employ
17 an unauthorized alien and shall attest to such by sworn
18 affidavit signed before a notary.

19 (d) A contractor of any tier shall not be liable
20 under this section when such contractor contracts with its
21 direct subcontractor who violates subsection (a), if the
22 contract binding the contractor and subcontractor
23 affirmatively states that the direct subcontractor is not
24 knowingly in violation of subsection (a) and shall not
25 henceforth be in such violation and the contractor receives a
26 sworn affidavit from the subcontractor signed before a notary
27 attesting to the fact that the direct subcontractor, in good

1 faith, has complied with subsection (a) with respect to
2 verifying each of its employee's eligibility for employment,
3 unless the contractor knows the direct subcontractor is
4 violating subsection (a).

5 (e) All of the following penalties shall be in
6 addition to any other penalties as prescribed by law:

7 (1) Upon the first violation of subsection (a) by
8 any business entity or employer awarded a contract by the
9 state, any political subdivision thereof, or any state-funded
10 entity the business entity or employer shall be deemed in
11 breach of contract and the state, political subdivision
12 thereof, or state-funded entity may terminate the contract
13 and, upon notice and opportunity to be heard, the state or
14 political subdivision thereof may suspend or bar the business
15 entity or employer from doing business with the state, any
16 political subdivision thereof, or any state-funded entity for
17 a period of one year. Also, upon the first violation of
18 subsection (a), in addition to such other remedies as may be
19 provided by law, the court shall withhold from amounts due or
20 recover as liquidated damages five percent of the total amount
21 of the contract with the business entity or employer. A court
22 shall collect the damages prescribed in this subdivision and
23 shall remit 50 percent of the damages to the person or entity
24 who reported the violation and 50 percent of the damages to
25 the general fund of the contracting entity.

26 (2) Upon a second or subsequent violation of
27 subsection (a) by any business entity or employer awarded a

1 contract by the state, any political subdivision thereof, or
2 any state-funded entity the business entity or employer shall
3 be deemed in breach of contract and the state, any political
4 subdivision thereof, or any state-funded entity shall
5 terminate the contract and, upon notice and opportunity to be
6 heard, the state or political subdivision thereof shall
7 permanently suspend or bar the business entity or employer
8 from doing business with the state, any political subdivision
9 thereof, or any state-funded entity. Upon such termination, in
10 addition to such other remedies as may be provided by law, the
11 court shall withhold from amounts due or recoverable as
12 liquidated damages 25 percent of the total amount of the
13 contract with the business entity or employer.

14 (3) Upon the first violation of subsection (c) by a
15 subcontractor, the state or political subdivision thereof may
16 suspend or bar the subcontractor from doing business with the
17 state, any political subdivision thereof, any state-funded
18 entity, or with any contractor who contracts with the state,
19 any political subdivision thereof, or any state-funded entity.
20 Also, upon the first violation of subsection (c) by a
21 subcontractor, the subcontractor shall be subject to a penalty
22 of five percent of the total amount of the subcontractor's
23 contract. A court shall collect the penalties prescribed in
24 this subdivision and shall remit 50 percent of the damages to
25 the person or entity who reported the violation and 50 percent
26 of the damages to the general fund of the state or political
27 subdivision thereof where the contract occurred.

1 (4) Upon a second or subsequent violation of
2 subsection (c) by a subcontractor, the state or political
3 subdivision thereof shall permanently suspend or bar the
4 subcontractor from doing business with the state, any
5 political subdivision thereof, any state-funded entity, or
6 with any contractor who contracts with the state, any
7 political subdivision thereof, or any state-funded entity. The
8 subcontractor shall be subject to a penalty of 25 percent of
9 the total amount of the subcontractor's contract. A court
10 shall collect the penalties prescribed in this subdivision and
11 shall remit 50 percent of the damages to the person or entity
12 who reported the violation and 50 percent of the damages to
13 the general fund of the state or political subdivision thereof
14 where the contract occurred.

15 (f) A business entity or employer that complies with
16 subsection (b) shall not be in violation of subsection (a).

17 (g) In any civil action undertaken by the state, any
18 political subdivision thereof, or any state-funded entity or
19 by any business entity or employer to enforce rights and
20 remedies under this section, the state, any political
21 subdivision thereof, or any state-funded entity, if it is the
22 prevailing party, shall be awarded its costs to include
23 reasonable attorney fees associated with such action.

24 (h) The Secretary of State shall adopt rules to
25 administer this section and shall report any rules adopted to
26 the Legislature.

1 (i) Compliance with this section may be verified by
2 the state authorities or law enforcement at any time to ensure
3 a contractual agreement as provided for in this section is
4 being met.

5 Section 10. (a) In addition to any violation of
6 federal law, a person is guilty of willful failure to complete
7 or carry an alien registration document if the person is in
8 violation of 8 U.S.C. § 1304(e) or 8 U.S.C. § 1306(a), and the
9 person is an alien unlawfully present in the United States.

10 (b) In the enforcement of this section, an alien's
11 immigration status shall be determined by verification of the
12 alien's immigration status with the federal government
13 pursuant to 8 U.S.C. § 1373(c). At no point shall any law
14 enforcement officer attempt to independently verify the
15 immigration status of any alien.

16 (c) A law enforcement official or agency of this
17 state or a county, city, or other political subdivision of
18 this state may not consider race, color, or national origin in
19 the enforcement of this section except to the extent permitted
20 by the United States Constitution and the Constitution of
21 Alabama of 1901.

22 (d) This section does not apply to a person who
23 maintains authorization from the federal government to be
24 present in the United States.

25 (e) Any record that relates to the immigration
26 status of a person is admissible in any court of this state
27 without further foundation or testimony from a custodian of

1 records if the record is certified as authentic by the federal
2 government agency that is responsible for maintaining the
3 record. A verification of an alien's immigration status
4 received from the federal government pursuant to 8 U.S.C. §
5 1373(c) shall constitute proof of that alien's status.

6 (f) An alien unlawfully present in the United States
7 who is in violation of this section shall be guilty of a Class
8 C misdemeanor and subject to a fine of not more than one
9 hundred dollars (\$100) and not more than 30 days in jail.

10 (g) A person who is sentenced pursuant to this
11 section is not eligible for suspension or commutation of
12 sentence or release on any basis until the sentence imposed is
13 served.

14 (h) A court shall collect the assessments prescribed
15 in subsection (f) and remit the assessments to the general
16 fund of the local government where the person was apprehended
17 to be earmarked for law enforcement purposes.

18 Section 11. (a) It is unlawful for a person who is
19 an unauthorized alien to knowingly apply for work, solicit
20 work in a public or private place, or perform work as an
21 employee or independent contractor in this state.

22 (b) In the enforcement of this section, an alien's
23 immigration status shall be determined by verification of the
24 alien's immigration status with the federal government
25 pursuant to 8 U.S.C. § 1373(c). At no point shall any law
26 enforcement officer attempt to independently verify the
27 immigration status of any alien.

1 (c) A law enforcement official or agency of this
2 state or a county, city, or other political subdivision of
3 this state may not consider race, color, or national origin in
4 the enforcement of this section except to the extent permitted
5 by the United States Constitution and the Constitution of
6 Alabama of 1901.

7 (d) This section does not apply to a person who
8 maintains authorization from the federal government to be
9 present and employed in the United States.

10 (e) Any record that relates to the immigration
11 status of a person is admissible in any court of this state
12 without further foundation or testimony from a custodian of
13 records if the record is certified as authentic by the
14 government agency that is responsible for maintaining the
15 record. A verification of an alien's immigration status
16 received from the federal government pursuant to 8 U.S.C. §
17 1373(c) shall constitute proof of that alien's status.

18 (f) An unauthorized alien who is in violation of
19 this section shall be guilty of a Class C misdemeanor and
20 subject to a fine of not more than five hundred dollars
21 (\$500).

22 (g) A person who is sentenced pursuant to this
23 section is not eligible for suspension or commutation of
24 sentence or release on any basis until the sentence imposed is
25 served.

26 (h) A court shall collect the assessments prescribed
27 in subsection (f) and remit the assessments to the general

1 fund of the local government where the person was apprehended
2 to be earmarked for law enforcement purposes.

3 Section 12. (a) Upon any lawful stop, detention, or
4 arrest made by a state, county, or municipal law enforcement
5 officer of this state in the enforcement of any state law or
6 ordinance of any political subdivision thereof, where
7 reasonable suspicion exists that the person is an alien and is
8 unlawfully present in the United States, a reasonable attempt
9 shall be made, when practicable, to determine the citizenship
10 and immigration status of the person, except if the
11 determination may hinder or obstruct an investigation. Such
12 determination shall be made by contacting the federal
13 government pursuant to 8 U.S.C. § 1373(c) and relying upon any
14 verification provided by the federal government. Any alien who
15 is arrested and booked into custody shall have his or her
16 immigration status determined before the alien is released.
17 The alien's immigration status shall be verified by contacting
18 the federal government pursuant to 8 U.S.C. § 1373(c). At no
19 point shall any law enforcement officer attempt to
20 independently verify the immigration status of any alien. A
21 law enforcement officer may not consider race, color, or
22 national origin in implementing the requirements of this
23 section except to the extent permitted by the United States
24 Constitution or the Constitution of Alabama of 1901. A person
25 is presumed to not be an alien who is unlawfully present in
26 the United States if the person provides to the law
27 enforcement officer any of the following:

1 (1) A valid, unexpired Alabama driver's license.

2 (2) A valid, unexpired Alabama nondriver
3 identification card.

4 (3) A valid tribal enrollment card or other form of
5 tribal identification.

6 (4) Any valid United States federal, state, or local
7 government issued identification document if issued by an
8 entity that requires proof of lawful presence in the United
9 States before issuance.

10 (5) A foreign passport with a United States Visa.

11 (6) A foreign passport issued by a visa waiver
12 country with the corresponding entry stamp and duration of
13 stay annotation or an I-94W form.

14 (b) If an alien is determined by the federal
15 government to be an alien unlawfully present in the United
16 States pursuant to 8 U.S.C. § 1373(c), the law enforcement
17 agency shall cooperate in the transfer of the alien to the
18 custody of the federal government, if the federal government
19 so requests.

20 Section 13. (a) It shall be unlawful for a person to
21 do any of the following:

22 (1) Conceal, harbor, or shield or attempt to
23 conceal, harbor, or shield or conspire to conceal, harbor, or
24 shield an alien from detection in any place in this state,
25 including any building or any means of transportation, if the
26 person knows or reasonably should have known that the alien

1 has come to, has entered, or remains in the United States in
2 violation of federal law or any applicable state law.

3 (2) Encourage or induce an alien to come to or
4 reside in this state if the person knows or recklessly
5 disregards the fact that such coming to, entering, or residing
6 in this state is or will be in violation of federal law or any
7 applicable state law.

8 (3) Transport, or attempt to transport, or conspire
9 to transport in this state an alien in furtherance of the
10 illegal presence of the alien in the United States, knowingly,
11 or in reckless disregard of the fact, that the alien has come
12 to, entered, or remained in the United States in violation of
13 federal law or any applicable state law. Nothing in this
14 subdivision shall be construed to prevent a bona fide
15 religious organization from transporting persons to and from
16 church functions.

17 (4) Enter into a rental agreement, as defined by
18 Section 35-9A-141 of the Code of Alabama 1975, with an alien
19 if the person knows or recklessly disregards the fact that the
20 alien has come to, has entered, or remains in the United
21 States in violation of federal law or any applicable state
22 law.

23 (5) Otherwise knowingly facilitate or aid an alien
24 unlawfully present in this state, including entering into
25 commercial transactions with an unlawfully present alien.

26 (b) Any person violating the provisions of this
27 section is guilty of a Class A misdemeanor for each unlawfully

1 present alien, the illegal presence of which in the United
2 States and the State of Alabama, he or she is facilitating or
3 is attempting to facilitate.

4 (c) A person violating the provisions of this
5 section is guilty of a Class C felony when the violation
6 involves 10 or more aliens, the illegal presence of which in
7 the United States and the State of Alabama, he or she is
8 facilitating or is attempting to facilitate.

9 (d) Notwithstanding any other law, a law enforcement
10 agency may securely transport an alien whom the agency has
11 received verification is unlawfully present in the United
12 States and who is in the agency's custody to a state approved
13 facility, to a federal facility in this state, or to any other
14 point of transfer into federal custody that is outside the
15 jurisdiction of the law enforcement agency. A law enforcement
16 agency shall obtain judicial or executive authorization from
17 the Governor before securely transporting an alien who is
18 unlawfully present in the United States to a point of transfer
19 that is outside this state.

20 (e) Notwithstanding any other law, any person acting
21 in his or her official capacity as a first responder or
22 protective services provider may harbor, shelter, move, or
23 transport an unauthorized alien pursuant to state law.

24 Section 14. (a) A person commits the crime of
25 dealing in false identification documents if he or she
26 knowingly reproduces, manufactures, sells, or offers for sale
27 any identification document which does both of the following:

1 (1) Simulates, purports to be, or is designed so as
2 to cause others reasonably to believe it to be an
3 identification document.

4 (2) Bears a fictitious name or other false
5 information.

6 (b) A person commits the crime of vital records
7 identity fraud related to birth, death, marriage, and divorce
8 certificates if he or she does any of the following:

9 (1) Supplies false information intending that the
10 information be used to obtain a certified copy of a vital
11 record.

12 (2) Makes, counterfeits, alters, amends, or
13 mutilates any certified copy of a vital record without lawful
14 authority and with the intent to deceive.

15 (3) Obtains, possesses, uses, sells, or furnishes,
16 or attempts to obtain, possess, or furnish to another a
17 certified copy of a vital record, with the intent to deceive.

18 (c) (1) Dealing in false identification documents is
19 a Class C felony.

20 (2) Vital records identity fraud is a Class C
21 felony.

22 (d) The provisions of this section shall not apply
23 to any of the following:

24 (1) A person less than 21 years of age who uses the
25 identification document of another person to acquire an
26 alcoholic beverage.

1 (2) A person less than 18 years of age who uses the
2 identification documents of another person to acquire any of
3 the following:

4 a. Cigarettes or tobacco products.

5 b. A periodical, videotape, or other communication
6 medium that contains or depicts nudity.

7 c. Admittance to a performance, live or film, that
8 prohibits the attendance of the person based on age.

9 d. An item that is prohibited by law for use or
10 consumption by such person.

11 (e) As used in this section, "identification
12 document" means any card, certificate, or document or banking
13 instrument, including, but not limited to, a credit or debit
14 card, which identifies or purports to identify the bearer of
15 such document, whether or not intended for use as
16 identification, and includes, but is not limited to, documents
17 purporting to be drivers' licenses, nondriver identification
18 cards, certified copies of birth, death, marriage, and divorce
19 certificates, Social Security cards, and employee
20 identification cards.

21 (f) Any person convicted of dealing in false
22 identification documents as defined in this section shall be
23 fined up to one thousand dollars (\$1,000) for every card or
24 document he or she creates or possesses and be subject to any
25 and all other state laws that may apply. A court shall collect
26 the fines prescribed by this subsection and shall remit 50
27 percent of the fines to the general fund of the local

1 government that apprehended the person to be earmarked for law
2 enforcement purposes and 50 percent to the prosecuting agency.

3 Section 15. (a) No business entity, employer, or
4 public employer shall knowingly employ, hire for employment,
5 or continue to employ an unauthorized alien to perform work
6 within the State of Alabama.

7 (b) (1) A business entity, employer, or public
8 employer that uses E-Verify or any valid and lawful government
9 issued document that establishes that the person is not an
10 unauthorized alien to verify the work authorization of an
11 employee shall not be deemed to have violated this section
12 with respect to the employment of that employee.

13 (2) A business entity, employer, or public employer
14 that uses any valid and lawful government issued document
15 under subsection (b) to verify the work authorization of an
16 employee shall keep a copy of the front and back of the
17 document on file for the duration of the employment of the
18 employee and for one year after the employee is no longer
19 employed.

20 (c) If the court finds that a business entity or
21 employer knowingly violated subsection (a), the court shall
22 direct the applicable state, county, or municipal governing
23 body to suspend the business permit, if such exists, and any
24 applicable licenses or exemptions of such business entity or
25 employer for 14 days.

26 (d) The suspension of a business license or licenses
27 under subsection (c) shall terminate one business day after a

1 legal representative of the business entity or employer
2 submits a signed, sworn affidavit stating that the business
3 entity or employer is in compliance with the provisions of
4 this act to the court.

5 (e) For a business entity or employer that violates
6 subsection (a) for a second time, the court shall direct the
7 applicable state, county, or municipal governing body to
8 suspend, for one year, the business permit, if such exists,
9 and any applicable licenses or exemptions of the business
10 entity or employer. For a subsequent violation, the court
11 shall direct the applicable governing bodies to forever
12 suspend the business permit, if such exists, and any
13 applicable licenses or exemptions of the business entity or
14 employer.

15 (f) This section shall not be construed to deny any
16 procedural mechanisms or legal defenses included in a federal
17 work authorization program.

18 (g) In proceedings of the court, the determination
19 of whether a worker is an unauthorized alien shall be made by
20 the federal government, pursuant to 8 U.S.C. § 1373(c). A
21 determination of such status of an individual by the federal
22 government shall create a rebuttable presumption as to that
23 individual's status as provided in subsection (b), which is
24 based on information in any judicial proceedings brought under
25 this section. The court may take judicial notice of any
26 verification of an individual's status previously provided by

1 the federal government and may request the federal government
2 to provide further automated or testimonial verification.

3 (h) Any business entity or employer which terminates
4 an employee to comply with this section shall not be liable
5 for any claims made against the business entity or employer by
6 the terminated employee.

7 (i) If any agency of the state or any political
8 subdivision thereof fails to suspend the business permit or
9 licenses, if such exists, as a result of a violation of this
10 section, the agency shall be deemed to have violated
11 subsection (a) of Section 5 and shall be subject to the
12 penalties thereunder.

13 Section 16. (a) No wage, compensation, whether in
14 money or in kind or in services, or remuneration of any kind
15 for the performance of services paid to an unauthorized alien
16 shall be allowed as a deductible business expense for any
17 state income or business tax purposes in this state. This
18 subsection shall apply whether or not an Internal Revenue
19 Service Form 1099 is issued in conjunction with the wages or
20 remuneration.

21 (b) Any business entity or employer who knowingly
22 fails to comply with the requirements of this section shall be
23 liable for a penalty equal to 10 times the business expense
24 deduction claimed in violation of subsection (a). The penalty
25 provided in this subsection shall be payable to the Alabama
26 Department of Revenue.

1 Section 17. (a) It shall be a discriminatory
2 practice for a business entity or employer to fail to hire a
3 job applicant who is a United States citizen or an alien who
4 is not an unauthorized alien or discharge an employee working
5 in Alabama who is a United States citizen or an alien who is
6 not an unauthorized alien while retaining or hiring an
7 employee who the business entity or employer knows, or
8 reasonably should have known, is an unauthorized alien.

9 (b) A violation of subsection (a) may be the basis
10 of a civil action in the state courts of this state and the
11 losing party in any civil action shall pay the court costs and
12 reasonable attorneys fees for the prevailing party; however,
13 the losing party shall only pay the attorneys fees of the
14 prevailing party up to the amount paid by the losing party for
15 his or her own attorneys fees.

16 (c) The amount of the attorneys fees spent by each
17 party shall be reported to the court before the verdict is
18 rendered.

19 Section 18. Section 32-6-9, Code of Alabama 1975, is
20 amended to read as follows:

21 "§32-6-9.

22 "(a) Every licensee shall have his or her license in
23 his or her immediate possession at all times when driving a
24 motor vehicle and shall display the same, upon demand of a
25 judge of any court, a peace officer or a state trooper.
26 However, no person charged with violating this section shall
27 be convicted if he or she produces in court or the office of

1 the arresting officer a driver's license theretofore issued to
2 him or her and valid at the time of his or her arrest.

3 "(b) Notwithstanding the provisions of Section
4 32-1-4, if a law officer arrests a person for a violation of
5 this section and the officer is unable to determine by any
6 other means that the person has a valid driver's license, the
7 officer shall transport the person to the nearest or most
8 accessible magistrate.

9 "(c) A reasonable effort shall be made to determine
10 if the person is lawfully present in the United States.

11 (d) A verification inquiry, pursuant to 8 U.S.C. §
12 1373(c), shall be made within 48 hours to the Law Enforcement
13 Support Center of the United States Department of Homeland
14 Security or other office or agency designated for that purpose
15 by the United States Department of Homeland Security. If the
16 alien is determined to be unlawfully present in the United
17 States, the person shall be considered a flight risk and shall
18 be detained until prosecution or until handed over to federal
19 immigration authorities."

20 Section 19. (a) When a person is charged with a
21 crime for which bail is required, or is confined for any
22 period in a state, county, or municipal jail, a reasonable
23 effort shall be made to determine if the person is lawfully
24 present in the United States and the State of Alabama.

25 (b) A verification inquiry, pursuant to 8 U.S.C. §
26 1373(c), shall be made within 48 hours to the Law Enforcement
27 Support Center of the United States Department of Homeland

1 Security or other office or agency designated for that purpose
2 by the United States Department of Homeland Security. If the
3 alien is determined to be unlawfully present in the United
4 States, the person shall be considered a flight risk and shall
5 be detained until prosecution or until handed over to federal
6 immigration authorities.

7 Section 20. If an alien who is unlawfully present in
8 the United States is convicted of a violation of state or
9 local law and is within 30 days of release or has paid any
10 fine as required by operation of law, the agency responsible
11 for his or her incarceration shall notify the United States
12 Bureau of Immigration and Customs Enforcement and the Alabama
13 Department of Homeland Security, and upon release, shall
14 remand the prisoner to the custody of the Alabama Department
15 of Homeland Security to manage the transfer of the prisoner to
16 federal immigration authorities.

17 Section 21. If a person is an alien who is
18 unlawfully present in the United States and is a victim of a
19 criminal act, is the child of a victim of a criminal act, is a
20 critical witness in any prosecution, or is the child of a
21 critical witness in any prosecution of a state or federal
22 crime, all provisions of this act shall be stayed until all of
23 the related legal proceedings are concluded.

24 Section 22. Any individual, business entity,
25 employer, or other legal entity convicted of violating this
26 act shall be ordered to pay restitution to any law enforcement
27 agency, district attorney, and the Attorney General for any

1 costs or expenses incurred in the investigation and
2 prosecution of the violation of this act.

3 Section 23. (a) The Alabama Department of Homeland
4 Security is authorized to hire, appoint, and maintain APOST
5 certified state police officers to assist with the
6 implementation and enforcement of this act including, but not
7 limited to, investigations, spot checks, and arresting
8 authority. Such officers shall also have the powers and
9 authority as those prescribed to officers employed by the
10 Department of Public Safety only for the purposes of enforcing
11 this act. The Director of the Alabama Department of Homeland
12 Security shall have the authority to promulgate rules for the
13 enforcement of this act.

14 (b) The police powers provided for by this section
15 shall terminate on January 1, 2015, unless the Legislature
16 extends the police powers as provided for by this section
17 prior to that date.

18 Section 24. The Alabama Department of Homeland
19 Security shall have the authority to coordinate with state and
20 local law enforcement the practice and methods required to
21 enforce this act in cooperation with federal immigration laws.

22 Section 25. The Alabama Department of Homeland
23 Security shall file a quarterly report to the Legislature on
24 the progress being made regarding the enforcement of this act
25 and the status of the progress being made in the effort to
26 reduce the number of illegal aliens in the State of Alabama.
27 The report shall include, but is not limited to, the total

1 number of illegal aliens officially deported from Alabama, the
2 statistics and results from the enforcement of the sections of
3 this act, and suggestions on what can be done including
4 additional legislation to further advance the effort to remove
5 illegal aliens from the State of Alabama. At the start of the
6 2013 fiscal year, the report shall be filed twice a year. At
7 the start of the 2015 fiscal year, the report is required
8 annually. This report shall also be made available to the
9 public and shall be announced through a press release from the
10 Attorney General's office.

11 Section 26. (a) A solicitation to violate this act,
12 an attempt to violate this act, or a conspiracy to violate
13 this act shall have the same penalty as a violation of this
14 act.

15 (b) For the purposes of this section, solicitation
16 shall have the same principles of liability and defenses as
17 criminal solicitation under subsections (b) through (e) of
18 Section 13A-4-1, Code of Alabama 1975, and Section 13A-4-5,
19 Code of Alabama 1975.

20 (c) For the purposes of this section, attempt shall
21 have the same principles of liability and defenses as attempt
22 under subsections (b) and (c) of Section 13A-4-2, Code of
23 Alabama 1975, and Section 13A-4-5, Code of Alabama 1975.

24 (d) For the purposes of this section, conspiracy
25 shall have the same principles of liability and defenses as
26 criminal conspiracy under subsections (b) through (f) of

1 Section 13A-4-3, Code of Alabama 1975, and Sections 13A-4-4
2 and 13A-4-5, Code of Alabama 1975.

3 Section 27. Any sentence for a violation of this act
4 shall be served with the Department of Corrections, and not in
5 any county, city, or community facility.

6 Section 28. Nothing in this act is in any way meant
7 to implement, authorize, or establish the Real ID Act of 2005
8 (P.L. 109-13, Division D; 119 Stat. 302).

9 Section 29. Although this bill would have as its
10 purpose or effect the requirement of a new or increased
11 expenditure of local funds, the bill is excluded from further
12 requirements and application under Amendment 621, now
13 appearing as Section 111.05 of the Official Recompilation of
14 the Constitution of Alabama of 1901, as amended, because the
15 bill defines a new crime or amends the definition of an
16 existing crime.

17 Section 30. The provisions of this act are
18 severable. If any part of this act is declared invalid or
19 unconstitutional, that declaration shall not affect the part
20 which remains.

21 Section 31. This act shall become effective January
22 1, 2012, following its passage and approval by the Governor,
23 or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Job Creation and Economic Develop-
ment..... 22-MAR-11

Read for the second time and placed on the calen-
dar with 1 substitute and..... 07-APR-11

Read for the third time and passed as amended 21-APR-11

Patrick Harris
Secretary