

ALABAMA BILL TEXT

TITLE: Illegal immigrants, presence, employment, and benefits regulated, concealing, or protecting illegal aliens, prohibited, verification of legal status, penalties, Alabama Department of Homeland Security to establish E-Verify employer agent service,

VERSION: Enrolled

June 02, 2011

Hammon, Williams (D), Nordgren, Gaston, Johnson (K), Chesteen, Wren, Moore (B), Long, Hubbard (M), Collins, Johnson (R), Williams (J), Williams (P), Patterson, Rich, Treadaway, Roberts, Henry, Merrill, McClendon, Baughn, Bridges, Sanderford, Canfield

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SUMMARY: An Act, Relating to illegal **immigration**; to define terms; to require the Attorney General to attempt to negotiate a Memorandum of Agreement under certain conditions; to require a person to present proof of citizenship and residency before voting; to preclude any state or local government or official from refusing to assist the federal government in the enforcement of federal **immigration** laws; to prohibit an alien unlawfully present in the United States from receiving any state or local public benefits; to prohibit a person not lawfully present from being eligible on the basis of residence for education benefits; to require business entities or employers seeking economic incentives to verify the employment eligibility of their employees and to provide penalties; to require an illegal alien to possess certain documents already required by federal law and to provide penalties; to prohibit an unauthorized alien from seeking employment in this state and to provide penalties; to require the verification of the legal status of persons by law enforcement officers under certain circumstances; to criminalize certain behavior relating to concealing, harboring, shielding, or attempting to conceal, harbor, or shield unauthorized aliens and to provide penalties; to create the crime of dealing in false identification documents and the crime of vital records Page HB identity fraud and to provide penalties; to prohibit a business entity, employer, or public employer from knowingly employing an unauthorized alien and to provide penalties; to prohibit certain deductible business expenses; to make it a discriminatory practice for a business entity or employer to fail to hire a legally present job applicant or discharge an employee while retaining an employee who is an unauthorized alien under certain conditions; to require the verification of legal status of every alien charged with a crime for which bail is required; to amend Section 32-6-9 of the Code of Alabama 1975, relating to driver's licenses; to require law enforcement to detain any alien whose lawful **immigration** status cannot be verified under certain conditions; to require notification of the United States Bureau of **Immigration** and Customs Enforcement and the Alabama Department of Homeland Security when an unlawfully present alien is convicted of state law; to provide for a stay of the provisions of this act when an alien unlawfully present is a victim or critical witness of a crime under certain conditions; to authorize the Alabama Department of Homeland Security to hire state police officers and give the department enforcement power under certain conditions; to provide penalties for solicitation, attempt, or conspiracy to violate this act; to require the Alabama Department of Homeland Security to file a quarterly report with the Legislature under certain conditions; to Page HB require the Alabama Department of Homeland Security to establish and maintain an E-Verify employer agent service under certain.

TEXT:

HB56

132433-8

By Representatives Hammon, Collins, Patterson, Rich, Nordgren, Merrill, Treadaway, Johnson (R), Roberts, Henry, Bridges, Gaston, Johnson (K), Chesteen, Sanderford, Williams (D), McClendon, Wren, Williams (J), Hubbard (M), Williams (P), Baughn, Moore (B), Long and Canfield

RFD: Public Safety and Homeland Security

First Read: 01-MAR-11

PFD: 02/25/2011

ENROLLED, An Act,

Relating to illegal **immigration**; to define terms; to require the Attorney General to attempt to negotiate a Memorandum of Agreement under certain conditions; to require a person to present proof of citizenship and residency before voting; to preclude any state or local government or official from refusing to assist the federal government in the enforcement of federal **immigration** laws; to prohibit an alien unlawfully present in the United States from receiving any state or local public benefits; to prohibit a person not lawfully present from being eligible on the basis of residence for education benefits; to require business entities or employers seeking economic incentives to verify the employment eligibility of their employees and to provide penalties; to require an illegal alien to possess certain documents already required by federal law and to provide penalties; to prohibit an unauthorized alien from seeking employment in this state and to provide penalties; to require the verification of the legal status of persons by law enforcement officers under certain circumstances; to criminalize certain behavior relating to concealing, harboring, shielding, or attempting to conceal, harbor, or shield unauthorized aliens and to provide penalties; to create the crime of dealing in false identification documents and the crime of vital records identity fraud and to provide penalties; to prohibit a business entity, employer, or public employer from knowingly employing an unauthorized alien and to provide penalties; to prohibit certain deductible business expenses; to make it a discriminatory practice for a business entity or employer to fail to hire a legally present job applicant or discharge an employee while retaining an employee who is an unauthorized alien under certain conditions; to require the verification of legal status of every alien charged with a crime for which bail is required; to amend Section 32-6-9 of the Code of Alabama 1975, relating to driver's licenses; to require law enforcement to detain any alien whose lawful **immigration** status cannot be verified under certain conditions; to require notification of the United States Bureau of **Immigration** and Customs Enforcement and the Alabama Department of Homeland Security when an unlawfully present alien is convicted of state law; to provide for a stay of the provisions of this act when an alien unlawfully present is a victim or critical witness of a crime under certain conditions; to authorize the Alabama Department of Homeland Security to hire state police officers and give the department enforcement power under certain conditions; to provide penalties for solicitation, attempt, or conspiracy to violate this act; to require the Alabama Department of Homeland Security to file a quarterly report with the Legislature under certain conditions; to require the Alabama Department of Homeland Security to establish and maintain an E-Verify employer agent service under certain conditions; to prohibit the enforcement of certain contracts under certain conditions; to require public schools to determine the citizenship and **immigration** status of students enrolling; to require school districts to compile certain data and submit reports to the State Board of Education; to require the State Board of Education to submit an annual report to the Legislature; to further provide for eligibility and requirements for voter registration; to establish a state election board; to provide duties of the board; to provide that a person may obtain a certified copy of a birth certificate from the Department of Public Health free of charge under certain conditions; to prohibit an alien not lawfully present from entering into a business transaction under certain conditions and provide penalties; to prohibit a landlord from knowingly entering into a rental agreement to harbor an illegal alien and provide penalties; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Compilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

Section 2. The State of Alabama finds that illegal **immigration** is causing economic hardship and lawlessness in this state and that illegal **immigration** is encouraged when public agencies within this state provide public benefits without verifying **immigration** status. Because the costs incurred by school districts for the public elementary and secondary education of children who are aliens not lawfully present in the United States can adversely affect the availability of public education resources to students who are United States citizens or are aliens lawfully present in the United States, the State of Alabama determines that there is a compelling need for the State Board of Education to accurately measure and assess the population of students who are aliens not lawfully present in the United States, in order to forecast and plan for any impact that the presence such population may have on publicly funded education in this state. The State of Alabama further finds that certain practices currently allowed in this state impede and obstruct the enforcement of federal **immigration** law, undermine the security of our borders, and impermissibly restrict the privileges and immunities of the citizens of Alabama. Therefore, the people of the State of Alabama declare that it is a compelling public interest to discourage illegal **immigration** by requiring all agencies within this state to fully cooperate with federal **immigration** authorities in the enforcement of federal **immigration** laws. The State of Alabama also finds that other measures are necessary to ensure the integrity of various governmental programs and services.

Section 3. For the purposes of this act, the following words shall have the following meanings:

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

(2) **BUSINESS ENTITY**. Any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit. "Business entity" shall include, but not be limited to the following:

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

b. Any business entity that possesses a business license, permit, certificate, approval, registration, charter, or similar form of authorization issued by the state, any business entity that is exempt by law from obtaining such a business license, and any business entity that is operating unlawfully without a business license.

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

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

(5) **EMPLOYER**. Any person, firm, corporation, partnership, joint stock association, agent, manager, representative,

foreman, or other person having control or custody of any employment, place of employment, or of any employee, including any person or entity employing any person for hire within the State of Alabama, including a public employer. This term shall not include the occupant of a household contracting with another person to perform casual domestic labor within the household.

(6) **EMPLOYMENT.** The act of employing or state of being employed, engaged, or hired to perform work or service of any kind or character within the State of Alabama, including any job, task, work, labor, personal services, or any other activity for which compensation is provided, expected, or due, including, but not limited to, all activities conducted by a business entity or employer. This term shall not include casual domestic labor performed in a household on behalf of the occupant of the household or the relationship between a contractor and the employees of a subcontractor performing work for the contractor.

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

(8) **FEDERAL WORK AUTHORIZATION PROGRAM.** Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the **Immigration** Reform and Control Act of 1986 (IRCA), P.L. 99-603 or the Illegal **Immigration** Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, Division C, Section 403(a); 8 U.S.C. §1324(a).

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

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

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

(10) **LAWFUL PRESENCE or LAWFULLY PRESENT.** A person shall be regarded as an alien unlawfully present in the United States only if the person's unlawful **immigration** status has been verified by the federal government pursuant to 8 U.S.C. § 1373(c). No officer of this state or any political subdivision of this state shall attempt to independently make a final determination of an alien's **immigration** status. An alien possessing self-identification in any of the following forms is entitled to the presumption that he or she is an alien lawfully present in the United States:

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

b. A valid, unexpired Alabama nondriver identification card.

c. A valid tribal enrollment card or other form of tribal identification bearing a photograph or other biometric identifier.

d. Any valid United States federal or state government issued identification document bearing a photograph or other biometric identifier, if issued by an entity that requires proof of lawful presence in the United States before issuance.

e. A foreign passport with an unexpired United States Visa and a corresponding stamp or notation by the United States Department of Homeland Security indicating the bearer's admission to the United States.

f. A foreign passport issued by a visa waiver country with the corresponding entry stamp and unexpired duration of stay annotation or an I-94W form by the United States Department of Homeland Security indicating the bearer's admission to the United States.

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

(12) **PROTECTIVE SERVICES PROVIDER.** A child protective services worker; adult protective services worker; protective services provider; or provider of services to victims of domestic violence, stalking, sexual assault, or human trafficking that receives federal grants under the Victim of Crimes Act, the Violence Against Women Act, or the Family Violence Prevention and Services Act.

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

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

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

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

Section 4. (a) The Attorney General shall attempt to negotiate the terms of a Memorandum of Agreement between the State of Alabama and the United States Department of Homeland Security, as provided in 8 U.S.C. Section 1357(g), concerning the enforcement of federal **immigration** laws, detentions and removals, and related investigations in the State of Alabama by certain state law enforcement officers designated by the Attorney General.

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

(c) A report of the results of the attempt of the Attorney General to enter into a Memorandum of Agreement shall be submitted to the Legislature within six months of the effective date of this act.

Section 5. (a) No official or agency of this state or any political subdivision thereof, including, but not limited to, an officer of a court of this state, may adopt a policy or practice that limits or restricts the enforcement of federal **immigration** laws by limiting communication between its officers and federal **immigration** officials in violation of 8 U.S.C. § 1373 or 8 U.S.C. § 1644, or that restricts its officers in the enforcement of this act. If, in the judgment of the Attorney General of Alabama, an official or agency of this state or any political subdivision thereof, including, but not limited to, an officer of a court in this state, is in violation of this subsection, the Attorney General shall report any violation of this subsection to the Governor and the state Comptroller and that agency or political subdivision shall not be eligible to receive any funds, grants, or appropriations from the State of Alabama until such violation has ceased and the Attorney General has so certified. Any appeal of the determination of the Attorney General as considered in this section shall be first appealed to the circuit court of the respective jurisdiction in which the alleged offending agency resides.

(b) All state officials, agencies, and personnel, including, but not limited to, an officer of a court of this state, shall

fully comply with and, to the full extent permitted by law, support the enforcement of federal law prohibiting the entry into, presence, or residence in the United States of aliens in violation of federal **immigration** law.

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

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

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

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

(d) A person who is a United States citizen or an alien who is lawfully present in the United States and is a resident of this state may bring an action in circuit court to challenge any official or head of an agency of this state or political subdivision thereof, including, but not limited to, an officer of a court in this state, that adopts or implements a policy or practice that is in violation of 8 U.S.C. § 1373 or 8 U.S.C. § 1644. If there is a judicial finding that an official or head of an agency, including, but not limited to, an officer of a court in this state, has violated this section, the court shall order that the officer, official, or head of an agency pay a civil penalty of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) for each day that the policy or practice has remained in effect after the filing of an action pursuant to this section.

(e) A court shall collect the civil penalty prescribed in subsection (d) and remit one half of the civil penalty to the Alabama Department of Homeland Security and the second half shall be remitted to the Department of Public Safety.

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

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

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

Section 6. (a) No official or agency of this state or any political subdivision thereof, including, but not limited to, an officer of a court of this state, may adopt a policy or practice that limits or restricts the enforcement of this act to less than the full extent permitted by this act or that in any way limits communication between its officers or officials in furtherance of the enforcement of this act. If, in the judgment of the Attorney General of Alabama, an official or agency of this state or any political subdivision thereof, including, but not limited to, an officer of a court of this state, is in violation of this subsection, the Attorney General shall report any violation of this subsection to the Gov-

ernor and the state Comptroller and that agency or political subdivision shall not be eligible to receive any funds, grants, or appropriations from the State of Alabama until such violation has ceased and the Attorney General has so certified.

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

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

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

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

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

(d) A person who is a United States citizen or an alien who is lawfully present in the United States and is a resident of this state may bring an action in circuit court to challenge any official or head of an agency of this state or political subdivision thereof, including, but not limited to, an officer of a court in this state, that adopts or implements a policy or practice that limits or restricts the enforcement of this act to less than the full extent permitted by this act. Such person shall have actual knowledge that any official or head of an agency of this state or political subdivision thereof, including, but not limited to, an officer of a court in this state, has adopted or implemented a policy or practice that limits or restricts the enforcement of this act to less than the full extent permitted by this act. If there is a judicial finding that an official or head of an agency, including, but not limited to, an officer of a court in this state, has violated this section, the court shall order that the officer, official, or head of an agency pay a civil penalty of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) for each day that the policy or practice has remained in effect after the filing of an action pursuant to this section.

(e) A court shall collect the civil penalty prescribed in subsection (d) and remit one half of the civil penalty to the Alabama Department of Homeland Security and the second half shall be remitted to the Department of Public Safety.

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

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

Section 7. (a) As used in this section, the following terms have the following meanings:

(1) EMERGENCY MEDICAL CONDITION. The same meaning as provided in 42 U.S.C. § 1396b(v)(3).

(2) FEDERAL PUBLIC BENEFITS. The same meaning as provided in 8 U.S.C. § 1611.

(3) STATE OR LOCAL PUBLIC BENEFITS. The same meaning as provided in 8 U.S.C. § 1621.

(b) An alien who is not lawfully present in the United States and who is not defined as an alien eligible for public benefits under 8 U.S.C. § 1621(a) or 8 U.S.C. § 1641 shall not receive any state or local public benefits.

(c) Except as otherwise provided in subsection (e) or where exempted by federal law, commencing on the effective date of this act, each agency or political subdivision of the state shall verify with the federal government the lawful presence in the United States of each alien who applies for state or local public benefits, pursuant to 8 U.S.C. §§ 1373(c), 1621, and 1625.

(d) An agency of this state or a county, city, town, or other political subdivision of this state may not consider race, color, or national origin in the enforcement of this section.

(e) Verification of lawful presence in the United States shall not be required for any of the following:

(1) For primary or secondary school education, and state or local public benefits that are listed in 8 U.S.C. § 1621(b).

(2) For obtaining health care items and services that are necessary for the treatment of an emergency medical condition of the person involved and are not related to an organ transplant procedure.

(3) For short term, noncash, in kind emergency disaster relief.

(4) For public health assistance for immunizations with respect to immunizable diseases, for the Special Supplemental Nutrition Program for Women, Infants, and Children, and for testing and treatment of symptoms of communicable diseases, whether or not such symptoms are caused by a communicable disease.

(5) For programs, services, or assistance, such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by federal law or regulation that satisfy all of the following:

a. Deliver in-kind services at the community level, including services through public or private nonprofit agencies.

b. Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income or resources of the individual recipient.

c. Are necessary for the protection of life or safety.

(6) For prenatal care.

(7) For child protective services and adult protective services and domestic violence services workers.

(f) No official of this state or political subdivision of this state shall attempt to independently make a final determination of whether an alien is lawfully present in the United States. An alien's lawful presence in the United States shall be verified by the federal government pursuant to 8 U.S.C. § 1373(c).

(g) Any United States citizen applying for state or local public benefits, except those benefits described in subsection (e), shall sign a declaration that he or she is a United States citizen.

(h) Any person who knowingly makes a false, fictitious, or fraudulent statement or representation in a declaration executed pursuant to subsection (g) shall be guilty of perjury in the second degree pursuant to Section 13A-10-102, Code of Alabama 1975. Each time that a person receives a public benefit based upon such a statement or representation shall constitute a separate violation of Section 13A-10-102, Code of Alabama 1975.

(i) The verification that an alien seeking state or local public benefits is an alien lawfully present in the United States shall be made through the Systematic Alien Verification for Entitlements (SAVE) program, operated by the United States Department of Homeland Security. If for any reason the verification of an alien's lawful presence through the SAVE program is delayed or inconclusive, the alien shall be eligible for state or local public benefits in the interim period if the alien signs a declaration that he or she is an alien lawfully present in the United States. The penalties under subsection (h) shall apply to any false, fictitious, or fraudulent statement or representation made in a declaration.

(j) Each state agency or department that administers a program that provides state or local public benefits shall provide an annual report with respect to its compliance with this section to the Government Affairs Committee of the Senate and the Government Operations Committee of the House of Representatives, or any successor committees.

(k) Errors and significant delays resulting from use of the SAVE program shall be reported to the United States Department of Homeland Security and to the Alabama Department of Homeland Security to assist the federal government in ensuring that the application of the SAVE program is not wrongfully denying benefits to aliens lawfully present in the United States.

(l) For the purposes of administering the Alabama Child Health Insurance Program, verification and documentation of lawful presence through any alternative means expressly authorized by federal law shall satisfy the requirements of this section.

Section 8. An alien who is not lawfully present in the United States shall not be permitted to enroll in or attend any public postsecondary education institution in this state. An alien attending any public postsecondary institution in this state must either possess lawful permanent residence or an appropriate nonimmigrant visa under 8 U.S.C. § 1101, et seq. For the purposes of this section, a public postsecondary education institution officer may seek federal verification of an alien's **immigration** status with the federal government pursuant to 8 U.S.C. § 1373(c). A public postsecondary education institution officer or official shall not attempt to independently make a final determination of whether an alien is lawfully present in the United States. Except as otherwise provided by law, an alien who is not lawfully present in the United States shall not be eligible for any postsecondary education benefit, including, but not limited to, scholarships, grants, or financial aid.

Section 9. (a) As a condition for the award of any contract, grant, or incentive by the state, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees, the business entity or employer shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien and shall attest to such, by sworn affidavit signed before a notary.

(b) As a condition for the award of any contract, grant, or incentive by the state, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees, the business entity or employer shall provide documentation establishing that the business entity or employer is enrolled in the E-Verify program. During the performance of the contract, the business entity or employer shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations.

(c) No subcontractor on a project paid for by contract, grant, or incentive by the state, any political subdivision thereof, or any state-funded entity shall knowingly employ, hire for employment, or continue to employ an unauthorized alien and shall attest to such by sworn affidavit signed before a notary. The subcontractor shall also enroll in the E-Verify program prior to performing any work on the project and shall attach to the sworn affidavit documentation establishing that the subcontractor is enrolled in the E-Verify program.

(d) A contractor of any tier shall not be liable under this section when such contractor contracts with its direct subcontractor who violates subsection (c), if the contractor receives a sworn affidavit from the subcontractor signed before a notary attesting to the fact that the direct subcontractor, in good faith, has complied with subsection (c) with respect to verifying each of its employee's eligibility for employment, unless the contractor knows the direct subcontractor is violating subsection (c).

(e)(1) Upon the first violation of subsection (a) by any business entity or employer awarded a contract by the state, any political subdivision thereof, or any state-funded entity the business entity or employer shall be deemed in breach of contract and the state, political subdivision thereof, or state-funded entity may terminate the contract after providing notice and an opportunity to be heard. Upon application by the state entity, political subdivision thereof, or state-funded entity, the Attorney General may bring an action to suspend the business licenses and permits of the business entity or employer for a period not to exceed 60 days, according to the procedures described in Section 15. The court shall order the business entity or employer to file a signed, sworn affidavit with the local district attorney within three days after the order is issued by the court stating that the business entity or employer has terminated the employment of every unauthorized alien and the business entity or employer will not knowingly or intentionally employ an unauthorized alien in this state. Before a business license or permit that has been suspended under this subsection is reinstated, a legal representative of the business entity or employer shall submit to the court a signed, sworn affidavit stating that the business entity or employer is in compliance with the provisions of this act and a copy of the Memorandum of Understanding issued to the business entity or employer at the time of enrollment in E-Verify.

(2) Upon a second or subsequent violation of subsection (a) by any business entity or employer awarded a contract by the state, any political subdivision thereof, or any state-funded entity the business entity or employer shall be deemed in breach of contract and the state, any political subdivision thereof, or any state-funded entity shall terminate the contract after providing notice and an opportunity to be heard. Upon application by the state entity, political subdivision thereof, or state-funded entity, the Attorney General may bring an action to permanently revoke the business licenses and permits of the business entity or employer according to the procedures described in Section 15.

(f)(1) Upon the first violation of subsection (c) by a subcontractor, the state or political subdivision thereof may bar the subcontractor from doing business with the state, any political subdivision thereof, any state-funded entity, or with any contractor who contracts with the state, any political subdivision thereof, or any state-funded entity after providing notice and an opportunity to be heard. Upon application by the state entity or political subdivision thereof, or state-funded entity, the Attorney General may bring an action to suspend the business licenses and permits of the subcontractor for a period not to exceed 60 days, according to the procedures described in Section 15. The court shall order the subcontractor to file a signed, sworn affidavit with the local district attorney within three days after the order is issued by the court stating that the subcontractor has terminated the employment of every unauthorized alien and the subcontractor will not knowingly or intentionally employ an unauthorized alien in this state. Before a business license or permit that has been suspended under this subsection is reinstated, a legal representative of the subcontractor shall submit to the court a signed, sworn affidavit stating that the subcontractor is in compliance with the provisions of this act and a copy of the Memorandum of Understanding issued to the subcontractor at the time of enrollment in E-Verify.

(2) Upon a second or subsequent violation of subsection (c) by a subcontractor and upon application by the state entity or political subdivision thereof, or state-funded entity, the Attorney General may bring an action to perma-

nently suspend the business licenses of the business entity or employer according to the procedures described in Section 15. The determination of a violation shall be according to the procedures described in Section 15.

(g) A business entity or employer that complies with subsection (b) shall not be found to be in violation of subsection (a). A subcontractor that is enrolled in the E-Verify program during the full period of performance of the subcontract shall not be found to be in violation of subsection (c).

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

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

(j) The suspension of a business license or permit under subsection (e)(1) and (f)(1) shall terminate one business day after a legal representative of the business entity, employer, or subcontractor submits a signed, sworn affidavit stating that the business entity, employer, or subcontractor is in compliance with the provisions of this act to the court.

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

(b) In the enforcement of this section, an alien's **immigration** status shall be determined by verification of the alien's **immigration** status with the federal government pursuant to 8 U.S.C. § 1373(c). A law enforcement officer shall not attempt to independently make a final determination of whether an alien is lawfully present in the United States.

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

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

(e) Any record that relates to the **immigration** status of a person is admissible in any court of this state without further foundation or testimony from a custodian of records if the record is certified as authentic by the federal government agency that is responsible for maintaining the record. A verification of an alien's **immigration** status received from the federal government pursuant to 8 U.S.C. § 1373(c) shall constitute proof of that alien's status. A court of this state shall consider only the federal government's verification in determining whether an alien is lawfully present in the United States.

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

(g) A court shall collect the assessments prescribed in subsection (f) and remit 50 percent of the assessments to the general fund of the local government where the person was apprehended to be earmarked for law enforcement purposes, 25 percent of the assessments to the Alabama Department of Homeland Security, and 25 percent of the assessments to the Department of Public Safety.

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

(b) In the enforcement of this section, an alien's **immigration** status shall be determined by verification of the alien's **immigration** status with the federal government pursuant to 8 U.S.C. § 1373(c). A law enforcement officer shall not attempt to independently make a final determination on whether an alien is authorized to work in the United States.

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

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

(e) Any record that relates to the employment authorization of a person is admissible in any court of this state without further foundation or testimony from a custodian of records if the record is certified as authentic by the federal government agency that is responsible for maintaining the record. A verification of an alien's **immigration** status received from the federal government pursuant to 8 U.S.C. § 1373(c) shall constitute proof of that alien's status. A court of this state shall consider only the federal government's verification in determining whether a person is an unauthorized alien.

(f) It is unlawful for an occupant of a motor vehicle that is stopped on a street, roadway, or highway to attempt to hire or hire and pick up passengers for work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.

(g) It is unlawful for a person to enter a motor vehicle that is stopped on a street, roadway or highway in order to be hired by an occupant of the motor vehicle and to be transported to work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.

(h) A person who is in violation of this section shall be guilty of a Class C misdemeanor and subject to a fine of not more than five hundred dollars (\$500).

(i) A court shall collect the assessments prescribed in subsection (h) and remit 50 percent of the assessments to the general fund of the local government where the person was apprehended to be earmarked for law enforcement purposes, 25 percent of the assessments to the Alabama Department of Homeland Security, and 25 percent of the assessments to the Department of Public Safety.

(j) The terms of this section shall be interpreted consistently with 8 U.S.C. § 1324a and any applicable federal rules and regulations.

Section 12. (a) Upon any lawful stop, detention, or arrest made by a state, county, or municipal law enforcement officer of this state in the enforcement of any state law or ordinance of any political subdivision thereof, where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the citizenship and **immigration** status of the person, except if the determination may hinder or obstruct an investigation. Such determination shall be made by contacting the federal government pursuant to 8 U.S.C. § 1373(c) and relying upon any verification provided by the federal government.

(b) Any alien who is arrested and booked into custody shall have his or her **immigration** status determined pursuant to 8 U.S.C. § 1373(c). The alien's **immigration** status shall be verified by contacting the federal government pursuant to 8 U.S.C. § 1373(c) within 24 hours of the time of the alien's arrest. If for any reason federal verification pursuant to 8 U.S.C. § 1373(c) is delayed beyond the time that the alien would otherwise be released from custody, the

alien shall be released from custody.

(c) A law enforcement officer shall not attempt to independently make a final determination of whether an alien is lawfully present in the United States. A law enforcement officer may not consider race, color, or national origin in implementing the requirements of this section except to the extent permitted by the United States Constitution or the Constitution of Alabama of 1901.

(d) A person is presumed to not be an alien who is unlawfully present in the United States if the person provides to the law enforcement officer any of the following:

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

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

(3) A valid tribal enrollment card or other form of tribal identification bearing a photograph or other biometric identifier.

(4) Any valid United States federal or state government issued identification document bearing a photograph or other biometric identifier, if issued by an entity that requires proof of lawful presence in the United States before issuance.

(5) A foreign passport with an unexpired United States Visa and a corresponding stamp or notation by the United States Department of Homeland Security indicating the bearer's admission to the United States.

(6) A foreign passport issued by a visa waiver country with the corresponding entry stamp and unexpired duration of stay annotation or an I-94W form by the United States Department of Homeland Security indicating the bearer's admission to the United States.

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

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

(1) Conceal, harbor, or shield or attempt to conceal, harbor, or shield or conspire to conceal, harbor, or shield an alien from detection in any place in this state, including any building or any means of transportation, if the person knows or recklessly disregards the fact that the alien has come to, has entered, or remains in the United States in violation of federal law.

(2) Encourage or induce an alien to come to or reside in this state if the person knows or recklessly disregards the fact that such coming to, entering, or residing in the United States is or will be in violation of federal law.

(3) Transport, or attempt to transport, or conspire to transport in this state an alien in furtherance of the unlawful presence of the alien in the United States, knowingly, or in reckless disregard of the fact, that the alien has come to, entered, or remained in the United States in violation of federal law. Conspiracy to be so transported shall be a violation of this subdivision.

(4) Harbor an alien unlawfully present in the United States by entering into a rental agreement, as defined by Section 35-9A-141 of the Code of Alabama 1975, with an alien to provide accommodations, if the person knows or reck-

lessly disregards the fact that the alien is unlawfully present in the United States.

(b) Any person violating the provisions of this section is guilty of a Class A misdemeanor for each unlawfully present alien, the illegal presence of which in the United States and the State of Alabama, he or she is facilitating or is attempting to facilitate.

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

(d) Notwithstanding any other law, a law enforcement agency may securely transport an alien whom the agency has received verification from the federal government pursuant to 8 U.S.C. § 1373(c) is unlawfully present in the United States and who is in the agency's custody to a state approved facility, to a federal facility in this state, or to any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency. A law enforcement agency shall obtain judicial or executive authorization from the Governor before securely transporting an alien who is unlawfully present in the United States to a point of transfer that is outside this state.

(e) Notwithstanding any other law, any person acting in his or her official capacity as a first responder or protective services provider may harbor, shelter, move, or transport an alien unlawfully present in the United States pursuant to state law.

(f) Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of this section, and the gross proceeds of such a violation, shall be subject to civil forfeiture under the procedures of Section 20-2-93 of the Code of Alabama 1975.

(g) In the enforcement of this section, an alien's **immigration** status shall be determined by verification of the alien's **immigration** status with the federal government pursuant to 8 U.S.C. § 1373(c). A law enforcement officer shall not attempt to independently make a final determination of whether an alien is lawfully present in the United States.

(h) Any record that relates to the **immigration** status of a person is admissible in any court of this state without further foundation or testimony from a custodian of records if the record is certified as authentic by the federal government agency that is responsible for maintaining the record. A verification of an alien's **immigration** status received from the federal government pursuant to 8 U.S.C. § 1373(c) shall constitute proof of that alien's status. A court of this state shall consider only the federal government's verification in determining whether an alien is lawfully present in the United States.

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

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

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

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

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

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

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

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

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

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

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

(2) A person less than 19 years of age who uses the identification documents of another person to acquire any of the following:

a. Cigarettes or tobacco products.

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

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

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

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

(f) Any person convicted of dealing in false identification documents as defined in this section shall be fined up to one thousand dollars (\$1,000) for every card or document he or she creates or possesses and be subject to any and all other state laws that may apply. A court shall collect the fines prescribed by this subsection and shall remit 50 percent of the fines to the general fund of the local government that apprehended the person to be earmarked for law enforcement purposes, 25 percent of the fines to the Alabama Department of Homeland Security, and 25 percent of the fines to the Department of Public Safety.

Section 15. (a) No business entity, employer, or public employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Alabama. Knowingly employ, hire for employment, or continue to employ an unauthorized alien means the actions described in 8 U.S.C. § 1324a.

(b) Effective April 1, 2012, every business entity or employer in this state shall enroll in E-Verify and thereafter, according to the federal statutes and regulations governing E-Verify, shall verify the employment eligibility of the employee through E-Verify. A business entity or employer that uses E-Verify to verify the work authorization of an employee shall not be deemed to have violated this section with respect to the employment of that employee.

(c) On a finding of a first violation by a court of competent jurisdiction that a business entity or employer knowingly

violated subsection (a), the court shall do all of the following:

- (1) Order the business entity or employer to terminate the employment of every unauthorized alien.
- (2) Subject the business entity or employer to a three-year probationary period throughout the state. During the probationary period, the business entity or employer shall file quarterly reports with the local district attorney of each new employee who is hired by the business entity or employer in the state.
- (3) Order the business entity or employer to file a signed, sworn affidavit with the local district attorney within three days after the order is issued by the court stating that the business entity or employer has terminated the employment of every unauthorized alien and the business entity or employer will not knowingly or intentionally employ an unauthorized alien in this state.
- (4) Direct the applicable state, county, or municipal governing bodies to suspend the business licenses and permits, if such exist, of the business entity or employer for a period not to exceed 10 business days specific to the business location where the unauthorized alien performed work.
- (d)(1) Before a business license or permit that has been suspended under subsection (c) is reinstated, a legal representative of the business entity or employer shall submit to the court a signed, sworn affidavit stating that the business entity or employer is in compliance with the provisions of this act and a copy of the Memorandum of Understanding issued to the business entity or employer at the time of enrollment in E-Verify.
- (2) The suspension of a business license or permit under subsection (c) shall terminate one business day after a legal representative of the business entity or employer submits a signed, sworn affidavit stating that the business entity or employer is in compliance with the provisions of this act to the court.
- (e) For a second violation of subsection (a) by a business entity or employer, the court shall direct the applicable state, county, or municipal governing body to permanently revoke all business licenses and permits, if such exist, held by the business entity or employer specific to the business location where the unauthorized alien performed work. On receipt of the order, and notwithstanding any other law, the appropriate agencies shall immediately revoke the licenses and permits held by the business entity or employer.
- (f) For a subsequent violation of subsection (a), the court shall direct the applicable governing bodies to forever suspend the business licenses and permits, if such exist, of the business entity or employer throughout the state.
- (g) This section shall not be construed to deny any procedural mechanisms or legal defenses included in the E-Verify program or any other federal work authorization program. A person or entity that establishes that it has complied in good faith with the requirements of 8 U.S.C. § 1324a(b) establishes an affirmative defense that the business entity or employer did not knowingly hire or employ an unauthorized alien.
- (h) In proceedings of the court, the determination of whether an employee is an unauthorized alien shall be made by the federal government, pursuant to 8 U.S.C. § 1373(c). The court shall consider only the federal government's determination when deciding whether an employee is an unauthorized alien. The court may take judicial notice of any verification of an individual's **immigration** status previously provided by the federal government and may request the federal government to provide further automated or testimonial verification.
- (i) Any business entity or employer that terminates an employee to comply with this section shall not be liable for any claims made against the business entity or employer by the terminated employee, provided that such termination is made without regard to the race, ethnicity, or national origin of the employee and that such termination is consistent with the anti-discrimination laws of this state and of the United States.

(j) If any agency of the state or any political subdivision thereof fails to suspend the business licenses or permits, if such exist, as a result of a violation of this section, the agency shall be deemed to have violated subsection (a) of Section 5 and shall be subject to the penalties thereunder.

(k) In addition to the district attorneys of this state, the Attorney General shall also have authority to bring a civil complaint in any court of competent jurisdiction to enforce the requirements of this section.

(1) Any resident of this state may petition the Attorney General to bring an enforcement action against a specific business entity or employer by means of a written, signed petition. A valid petition shall include an allegation that describes the alleged violator or violators, as well as the action constituting the violation, and the date and location where the action occurred.

(2) A petition that alleges a violation on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be acted upon.

(3) The Attorney General shall respond to any petition under this subdivision within 60 days of receiving the petition, either by filing a civil complaint in a court of competent jurisdiction or by informing the petitioner in writing that the Attorney General has determined that filing a civil complaint is not warranted.

(l) This section does not apply to the relationship between a party and the employees of an independent contractor performing work for the party and does not apply to casual domestic labor performed within a household.

(m) It is an affirmative defense to a violation of subsection (a) of this section that a business entity or employer was entrapped.

(1) To claim entrapment, the business entity or employer must admit by testimony or other evidence the substantial elements of the violation.

(2) A business entity or employer who asserts an entrapment defense has the burden of proving by clear and convincing evidence the following:

a. The idea of committing the violation started with law enforcement officers or their agents rather than with the business entity or employer.

b. The law enforcement officers or their agents urged and induced the business entity or employer to commit the violation.

c. The business entity or employer was not already predisposed to commit the violation before the law enforcement officers or their agents urged and induced the employer to commit the violation.

(n) In addition to actions taken by the state or political subdivisions thereof, the Attorney General or the district attorney of the relevant county may bring an action to enforce the requirements of this section in any county district court of this state wherein the business entity or employer does business.

(o) The terms of this section shall be interpreted consistently with 8 U.S.C. § 1324a and any applicable federal rules and regulations.

Section 16. (a) No wage, compensation, whether in money or in kind or in services, or remuneration of any kind for

the performance of services paid to an unauthorized alien shall be allowed as a deductible business expense for any state income or business tax purposes in this state. This subsection shall apply whether or not an Internal Revenue Service Form 1099 is issued in conjunction with the wages or remuneration.

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

Section 17. (a) It shall be a discriminatory practice for a business entity or employer to fail to hire a job applicant who is a United States citizen or an alien who is authorized to work in the United States as defined in 8 U.S.C. § 1324a(h)(3) or discharge an employee working in Alabama who is a United States citizen or an alien who is authorized to work in the United States as defined in 8 U.S.C. § 1324a(h)(3) while retaining or hiring an employee who the business entity or employer knows, or reasonably should have known, is an unauthorized alien.

(b) A violation of subsection (a) may be the basis of a civil action in the state courts of this state. Any recovery under this subsection shall be limited to compensatory relief and shall not include any civil or criminal sanctions against the employer.

(c) The losing party in any civil action shall pay the court costs and reasonable attorneys fees for the prevailing party; however, the losing party shall only pay the attorneys fees of the prevailing party up to the amount paid by the losing party for his or her own attorneys fees.

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

(e) In proceedings of the court, the determination of whether an employee is an unauthorized alien shall be made by the federal government, pursuant to 8 U.S.C. § 1373(c). The court shall consider only the federal government's determination when deciding whether an employee is an unauthorized alien. The court may take judicial notice of any verification of an individual's **immigration** status previously provided by the federal government and may request the federal government to provide further automated or testimonial verification.

Section 18. [Section 32-6-9, Code of Alabama 1975](#), is amended to read as follows:

“§32-6-9.

“(a) Every licensee shall have his or her license in his or her immediate possession at all times when driving a motor vehicle and shall display the same, upon demand of a judge of any court, a peace officer or a state trooper. However, no person charged with violating this section shall be convicted if he or she produces in court or the office of the arresting officer a driver's license theretofore issued to him or her and valid at the time of his or her arrest.

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

“(c) A reasonable effort shall be made to determine the citizenship of the person and if an alien, whether the alien is lawfully present in the United States by verification with the federal government pursuant to 8 U.S.C. § 1373(c). An officer shall not attempt to independently make a final determination of whether an alien is lawfully present in the United States.

“(d) A verification inquiry, pursuant to 8 U.S.C. § 1373(c), shall be made within 48 hours to the Law Enforce-

ment Support Center of the United States Department of Homeland Security or other office or agency designated for that purpose by the federal government. If the person is determined to be an alien unlawfully present in the United States, the person shall be considered a flight risk and shall be detained until prosecution or until handed over to federal immigration authorities.”

Section 19. (a) When a person is charged with a crime for which bail is required, or is confined for any period in a state, county, or municipal jail, a reasonable effort shall be made to determine if the person is an alien unlawfully present in the United States by verification with the federal government pursuant to 8 U.S.C. § 1373(c).

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

Section 20. If an alien who is unlawfully present in the United States is convicted of a violation of state or local law and is within 30 days of release or has paid any fine as required by operation of law, the agency responsible for his or her incarceration shall notify the United States Bureau of **Immigration** and Customs Enforcement and the Alabama Department of Homeland Security, pursuant to 8 U.S.C. § 1373. The Alabama Department of Homeland Security shall assist in the coordination of the transfer of the prisoner to the appropriate federal **immigration** authorities; however, the Alabama Department of Corrections shall maintain custody during any transfer of the individual.

Section 21. If a person is an alien who is unlawfully present in the United States and is a victim of a criminal act, is the child of a victim of a criminal act, is a critical witness in any prosecution, or is the child of a critical witness in any prosecution of a state or federal crime, all provisions of this act shall be stayed until all of the related legal proceedings are concluded. However, the relevant state, county, or local law enforcement agency shall comply with any request by federal **immigration** officers to take custody of the person.

Section 22. (a) Notwithstanding the provisions of Section 31-9A-9 of the Code of Alabama 1975, the Alabama Department of Homeland Security may hire, appoint, and maintain APOST certified state law enforcement officers. Such officers shall receive the same rights and benefits as those prescribed to officers of the Alabama Department of Public Safety, except for the purposes of retirement. The officers shall have the same retirement benefits as a law enforcement officer as defined under Section 36-27-59 of the Code of Alabama 1975.

(b) Unless a violation of state law occurs in their presence, officers authorized under this section shall not engage in routine law enforcement activity, except for those investigative and analytical duties necessary to carry out the enforcement of this act and to fulfill the mission of the Alabama Department of Homeland Security or those duties necessary to provide assistance to other law enforcement agencies.

(c) The Director of the Alabama Department of Homeland Security shall have the authority to promulgate rules for the enforcement of this act.

Section 23. The Alabama Department of Homeland Security shall have the authority to coordinate with state and local law enforcement the practice and methods required to enforce this act in cooperation with federal **immigration** authorities and consistent with federal **immigration** laws.

Section 24. The Alabama Department of Homeland Security shall file a quarterly report to the Legislature on the progress being made regarding the enforcement of this act and the status of the progress being made in the effort to reduce the number of illegal aliens in the State of Alabama. The report shall include, but is not limited to, the statistics and results from the enforcement of the sections of this act, and suggestions on what can be done including addi-

tional legislation to further assist the federal government in its efforts to apprehend illegal aliens in the State of Alabama. At the start of the 2013 fiscal year, the report shall be filed twice a year. At the start of the 2015 fiscal year, the report is required annually. This report shall also be made available to the public and shall be announced through a press release from the Attorney General's office.

Section 25. (a) A solicitation to violate any criminal provision of this act, an attempt to violate any criminal provision of this act, or a conspiracy to violate any criminal provision of this act shall have the same penalty as a violation of this act.

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

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

(d) For the purposes of this section, conspiracy shall have the same principles of liability and defenses as criminal conspiracy under subsections (b) through (f) of Section 13A-4-3, Code of Alabama 1975, and Sections 13A-4-4 and 13A-4-5, Code of Alabama 1975.

Section 26. (a)(1) The Alabama Department of Homeland Security shall establish and maintain an E-Verify employer agent service for any business entity or employer in this state with 25 or fewer employees to use the E-Verify program to verify an employee's employment eligibility on behalf of the business entity or employer. The Alabama Department of Homeland Security shall establish an E-Verify employer agent account with the United States Department of Homeland Security, shall enroll a participating business entity or employer in the E-Verify program on its behalf, and shall conform to all federal statutes and regulations governing E-Verify employer agents. The Alabama Department of Homeland Security shall not charge a fee to a participating business entity or employer for this service.

(2) The Alabama Department of Homeland Security E-Verify employer agent service shall be in place within 90 days after the effective date of this act. The service shall accommodate a business entity or employer who wishes to communicate with the Alabama Department of Homeland Security by internet, by electronic mail, by facsimile machine, by telephone, or in person, provided that such communication is consistent with federal statutes and regulations governing E-Verify employer agents.

(b) On or after January 1, 2012, before receiving any contract, grant, or incentive by the state, any political subdivision thereof, or any state-funded entity, a business entity or employer shall provide proof to the state, political subdivision thereof, or state-funded entity that the business entity or employer is enrolled and is participating in the E-Verify program, either independently or through the Alabama Department of Homeland Security E-Verify employer agent service.

(c) Every three months, the Alabama Department of Homeland Security shall request from the United States Department of Homeland Security a list of every business entity or employer in this state that is enrolled in the E-Verify program. On receipt of the list, the Alabama Department of Homeland Security shall make the list available on its website.

(d) A business entity or employer that is enrolled in the E-Verify program and that verifies the employment eligibility of an employee in good faith pursuant to this section, and acts in conformity with all applicable federal statutes and regulations is immune from liability under Alabama law for any action by an employee for wrongful discharge or retaliation based on a notification from the E-Verify program that the employee is an unauthorized alien.

Section 27. (a) No court of this state shall enforce the terms of, or otherwise regard as valid, any contract between a party and an alien unlawfully present in the United States, if the party had direct or constructive knowledge that the alien was unlawfully present in the United States at the time the contract was entered into, and the performance of the contract required the alien to remain unlawfully present in the United States for more than 24 hours after the time the contract was entered into or performance could not reasonably be expected to occur without such remaining.

(b) This section shall not apply to a contract for lodging for one night, a contract for the purchase of food to be consumed by the alien, a contract for medical services, or a contract for transportation of the alien that is intended to facilitate the alien's return to his or her country of origin.

(c) This section shall not apply to a contract authorized by federal law.

(d) In proceedings of the court, the determination of whether an alien is unlawfully present in the United States shall be made by the federal government, pursuant to 8 U.S.C. § 1373(c). The court shall consider only the federal government's determination when deciding whether an alien is unlawfully present in the United States. The court may take judicial notice of any verification of an individual's **immigration** status previously provided by the federal government and may request the federal government to provide further automated or testimonial verification.

Section 28. (a)(1) Every public elementary and secondary school in this state, at the time of enrollment in kindergarten or any grade in such school, shall determine whether the student enrolling in public school was born outside the jurisdiction of the United States or is the child of an alien not lawfully present in the United States and qualifies for assignment to an English as Second Language class or other remedial program.

(2) The public school, when making the determination required by subdivision (1), shall rely upon presentation of the student's original birth certificate, or a certified copy thereof.

(3) If, upon review of the student's birth certificate, it is determined that the student was born outside the jurisdiction of the United States or is the child of an alien not lawfully present in the United States, or where such certificate is not available for any reason, the parent, guardian, or legal custodian of the student shall notify the school within 30 days of the date of the student's enrollment of the actual citizenship or **immigration** status of the student under federal law.

(4) Notification shall consist of both of the following:

a. The presentation for inspection, to a school official designated for such purpose by the school district in which the child is enrolled, of official documentation establishing the citizenship and, in the case of an alien, the **immigration** status of the student, or alternatively by submission of a notarized copy of such documentation to such official.

b. Attestation by the parent, guardian, or legal custodian, under penalty of perjury, that the document states the true identity of the child. If the student or his or her parent, guardian, or legal representative possesses no such documentation but nevertheless maintains that the student is either a United States citizen or an alien lawfully present in the United States, the parent, guardian, or legal representative of the student may sign a declaration so stating, under penalty of perjury.

(5) If no such documentation or declaration is presented, the school official shall presume for the purposes of reporting under this section that the student is an alien unlawfully present in the United States.

- (b) Each school district in this state shall collect and compile data as required by this section.
- (c) Each school district shall submit to the State Board of Education an annual report listing all data obtained pursuant to this section.
- (d)(1) The State Board of Education shall compile and submit an annual public report to the Legislature.
- (2) The report shall provide data, aggregated by public school, regarding the numbers of United States citizens, of lawfully present aliens by **immigration** classification, and of aliens believed to be unlawfully present in the United States enrolled at all primary and secondary public schools in this state. The report shall also provide the number of students in each category participating in English as a Second Language Programs enrolled at such schools.
- (3) The report shall analyze and identify the effects upon the standard or quality of education provided to students who are citizens of the United States residing in Alabama that may have occurred, or are expected to occur in the future, as a consequence of the enrollment of students who are aliens not lawfully present in the United States.
- (4) The report shall analyze and itemize the fiscal costs to the state and political subdivisions thereof of providing educational instruction, computers, textbooks and other supplies, free or discounted school meals, and extracurricular activities to students who are aliens not lawfully present in the United States.
- (5) The State Board of Education shall prepare and issue objective baseline criteria for identifying and assessing the other educational impacts on the quality of education provided to students who are citizens of the United States, due to the enrollment of aliens who are not lawfully present in the United States, in addition to the statistical data on citizenship and **immigration** status and English as a Second Language enrollment required by this act. The State Board of Education may contract with reputable scholars and research institutions to identify and validate such criteria. The State Board of Education shall assess such educational impacts and include such assessments in its reports to the Legislature.
- (e) Public disclosure by any person of information obtained pursuant to this section which personally identifies any student shall be unlawful, except for purposes permitted pursuant to 8 U.S.C. §§ 1373 and 1644. Any person intending to make a public disclosure of information that is classified as confidential under this section, on the ground that such disclosure constitutes a use permitted by federal law, shall first apply to the Attorney General and receive a waiver of confidentiality from the requirements of this subsection.
- (f) A student whose personal identity has been negligently or intentionally disclosed in violation of this section shall be deemed to have suffered an invasion of the student's right to privacy. The student shall have a civil remedy for such violation against the agency or person that has made the unauthorized disclosure.
- (g) The State Board of Education shall construe all provisions of this section in conformity with federal law.
- (h) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.
- Section 29. (a) Applications for voter registration shall give voter eligibility requirements and such information as is necessary to prevent duplicative voter registrations and enable the relevant election officer to assess the eligibility of the applicant and to administer voter registration, identify the applicant and to determine the qualifications of the applicant as an elector and the facts authorizing such person to be registered. Applications shall contain a statement that the applicant shall be required to provide qualifying identification when voting.
- (b) The Secretary of State shall create a process for the county election officer to check to indicate whether an appli-

cant has provided with the application the information necessary to assess the eligibility of the applicant, including the applicant's United States citizenship. This section shall be interpreted and applied in accordance with federal law. No eligible applicant whose qualifications have been assessed shall be denied registration.

(c) The county election officer or Secretary of State's office shall accept any completed application for registration, but an applicant shall not be registered until the applicant has provided satisfactory evidence of United States citizenship. Satisfactory evidence of United States citizenship shall be provided in person at the time of filing the application for registration or by including, with a mailed registration application, a photocopy of one of the documents listed as evidence of United States citizenship in subsection (k). After a person has submitted satisfactory evidence of citizenship, the county election officer shall indicate this information in the person's permanent voter file.

(d) Any person who is registered in this state on the effective date of this act is deemed to have provided satisfactory evidence of United States citizenship and shall not be required to submit evidence of citizenship.

(e) For purposes of this section, proof of voter registration from another state is not satisfactory evidence of United States citizenship.

(f) A registered voter who moves from one residence to another within the state or who modifies his or her voter registration records for any other reason shall not be required to submit evidence of United States citizenship.

(g) If evidence of United States citizenship is deemed to be unsatisfactory due to an inconsistency between the document submitted as evidence and the name or sex provided on the application for registration, such applicant may sign an affidavit containing both of the following:

(1) Stating the inconsistency or inconsistencies related to the name or sex, and the reason therefor.

(2) Swearing under oath that, despite the inconsistency, the applicant is the individual reflected in the document provided as evidence of citizenship.

(h) There shall be no inconsistency between the date of birth on the document provided as evidence of citizenship and the date of birth provided on the application for registration. If such an affidavit is submitted by the applicant, the county election officer or Secretary of State shall assess the eligibility of the applicant without regard to any inconsistency stated in the affidavit.

(i) All documents submitted as evidence of United States citizenship shall be kept confidential by the county election officer or the Secretary of State and maintained as provided by record retention laws.

(j) Nothing in this section shall prohibit an applicant from providing, or the Secretary of State or county election officer from obtaining, satisfactory evidence of United States citizenship, as described in this section, at a different time or in a different manner than an application for registration is provided, as long as the applicant's eligibility can be adequately assessed by the Secretary of State or county election officer as required by this section.

(k) Evidence of United States citizenship shall be demonstrated by one of the following documents, or a legible photocopy of one of the following documents:

(1) The applicant's driver's license or nondriver's identification card issued by the division of motor vehicles or the equivalent governmental agency of another state within the United States if the agency indicates on the applicant's driver's license or nondriver's identification card that the person has provided satisfactory proof of United States citizenship.

(2) The applicant's birth certificate that verifies United States citizenship to the satisfaction of the county election officer or Secretary of State.

(3) Pertinent pages of the applicant's United States valid or expired passport identifying the applicant and the applicant's passport number, or presentation to the county election officer of the applicant's United States passport.

(4) The applicant's United States naturalization documents or the number of the certificate of naturalization. If only the number of the certificate of naturalization is provided, the applicant shall not be included in the registration rolls until the number of the certificate of naturalization is verified with the United States Bureau of Citizenship and **Immigration** Services by the county election officer or the Secretary of State, pursuant to 8 U.S.C. § 1373(c).

(5) Other documents or methods of proof of United States citizenship issued by the federal government pursuant to the **Immigration** and Nationality Act of 1952, and amendments thereto.

(6) The applicant's Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number.

(7) The applicant's consular report of birth abroad of a citizen of the United States of America.

(8) The applicant's certificate of citizenship issued by the United States Citizenship and **Immigration** Services.

(9) The applicant's certification of report of birth issued by the United States Department of State.

(10) The applicant's American Indian card, with KIC classification, issued by the United States Department of Homeland Security.

(11) The applicant's final adoption decree showing the applicant's name and United States birthplace.

(12) The applicant's official United States military record of service showing the applicant's place of birth in the United States.

(13) An extract from a United States hospital record of birth created at the time of the applicant's birth indicating the applicant's place of birth in the United States.

(l) There is hereby established the State Election Board, consisting of the Secretary of State, the Attorney General, and the Lieutenant Governor. The State Election Board shall meet on the call of the Secretary of State. The State Election Board shall do both of the following:

(1) Assess information provided by any applicant for voter registration as evidence of citizenship pursuant to subsection (m).

(2) Adopt rules to implement subsection (m).

(m)(1) If an applicant is a United States citizen but does not have any of the documentation listed in this section as satisfactory evidence of United States citizenship, the applicant may submit any evidence that the applicant believes demonstrates the applicant's United States citizenship.

(2) Any applicant seeking an assessment of evidence under this section may directly contact the office of the Secre-

tary of State by submitting a voter registration application or the national voter registration form and any supporting evidence of United States citizenship. Upon receipt of this information, the Secretary of State shall notify the State Election Board that such application is pending.

(3) The State Election Board shall give the applicant an opportunity for a hearing, upon the applicant's request in writing, and an opportunity to present any additional evidence to the State Election Board. Notice of such hearing shall be given to the applicant at least five days prior to the hearing date. An applicant shall have the opportunity to be represented by counsel at such hearing.

(4) The State Election Board shall assess the evidence provided by the applicant to determine whether the applicant has provided satisfactory evidence of United States citizenship. A decision of the State Election Board shall be determined by a majority vote of the board.

(5) If an applicant submits an application and any supporting evidence prior to the close of registration for an election cycle, a determination by the State Election Board shall be issued at least five days before such election date.

(6) If the State Election Board finds that the evidence presented by the applicant constitutes satisfactory evidence of United States citizenship, the applicant shall meet the requirements under this section to provide satisfactory evidence of United States citizenship.

(7) If the State Election Board finds that the evidence presented by an applicant does not constitute satisfactory evidence of United States citizenship, the applicant shall have the right to appeal such determination by the State Election Board by instituting an action under 8 U.S.C. § 1503. Any negative assessment of an applicant's eligibility by the State Election Board shall be reversed if the applicant obtains a declaratory judgment pursuant to 8 U.S.C. § 1503, demonstrating that the applicant is a national of the United States.

(n)(1) The Department of Public Health shall not charge or accept any fee for a certified copy of a birth certificate if the certificate is requested by any person who is 17 years of age or older for purposes of meeting the voter registration requirements of this act. The person requesting a certified copy of a birth certificate shall swear under oath to both of the following:

a. That the person plans to register to vote in this state.

b. That the person does not possess any of the documents that constitute evidence of United States citizenship as defined in this act.

(2) The affidavit shall specifically list the documents that constitute evidence of United States citizenship as defined in this act.

Section 30. (a) For the purposes of this section, "business transaction" includes any transaction between a person and the state or a political subdivision of the state, including, but not limited to, applying for or renewing a motor vehicle license plate, applying for or renewing a driver's license or nondriver identification card, or applying for or renewing a business license. "Business transaction" does not include applying for a marriage license.

(b) An alien not lawfully present in the United States shall not enter into or attempt to enter into a business transaction with the state or a political subdivision of the state and no person shall enter into a business transaction or attempt to enter into a business transaction on behalf of an alien not lawfully present in the United States.

(c) Any person entering into a business transaction or attempting to enter into a business transaction with this state

or a political subdivision of this state shall be required to demonstrate his or her United States citizenship, or if he or she is an alien, his or her lawful presence in the United States to the person conducting the business transaction on behalf of this state or a political subdivision of this state. United States citizenship shall be demonstrated by presentation of one of the documents listed in Section 29(k). An alien's lawful presence in the United States shall be demonstrated by this state's or a political subdivision of this state's verification of the alien's lawful presence through the Systematic Alien Verification for Entitlements program operated by the Department of Homeland Security, or by other verification with the Department of Homeland Security pursuant to 8 U.S.C. § 1373(c).

(d) A violation of this section is a Class C felony.

(e) An agency of this state or a county, city, town, or other political subdivision of this state may not consider race, color, or national origin in the enforcement of this section except to the extent permitted by the United States Constitution or the Constitution of Alabama of 1901.

(f) In the enforcement of this section, an alien's **immigration** status shall be determined by verification of the alien's **immigration** status with the federal government pursuant to 8 U.S.C. § 1373(c). An official of this state or political subdivision of this state shall not attempt to independently make a final determination of whether an alien is lawfully present in the United States.

Section 31. Nothing in this act is in any way meant to implement, authorize, or establish the Real ID Act of 2005 (P.L. 109-13, Division D; 119 Stat. 302).

Section 32. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, because the bill defines a new crime or amends the definition of an existing crime.

Section 33. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 34. Sections 22 and 23 of this act shall become effective immediately following the passage and approval of this act by the Governor, or its otherwise becoming law. Section 9 shall become effective on January 1, 2012, following the passage and approval of this act by the Governor, or its otherwise becoming law. Section 15 shall become effective on April 1, 2012, following the passage and approval of this act by the Governor, or its otherwise becoming law. The remainder of this act shall become effective on the first day of the third month following the passage and approval of this act by the Governor, or its otherwise becoming law.

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 05-APR-11, as amended.

Greg Pappas

Clerk

_____ Senate 05-MAY-11 Amended and Passed House 02-JUN-11 Passed, as amended

by Conference Committee

Report Senate 02-JUN-11 Passed, as amended

by Conference Committee

Report

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