

PUBLICATION

Alabama Joins Trend of Immigration Enforcement Laws

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UPDATE: June 9, 2011 - Alabama Governor Robert Bentley signs Alabama House Bill

On June 2, 2011, the Alabama Legislature resoundingly passed an immigration bill similar to Arizona's immigration statute, and it awaits the governor's signature. Like its Arizona, Utah and Georgia predecessors, Alabama House Bill 56 broadly empowers and obligates state and local officials to verify immigration status and enforce immigration laws. It requires all employers to use E-Verify, especially employers seeking state or local government contracts or grants. As a result, aliens unlawfully present will have increasing difficulty functioning in Alabama, and more may resort to obtaining fraudulent identification documents incorporating stolen identities of authorized people (a crime with enhanced state penalties under the bill).

Requirements on State and Local Agencies

House Bill 56 requires state and local agencies and law enforcement to verify the immigration status of people it deals with in a staggering array of situations.

House Bill 56 prohibits "business transactions" by, with or for an alien not lawfully present and any state or local agency. It also requires the agency to electronically verify immigration status in each transaction using the SAVE system operated by the U.S. Department of Homeland Security.

Under House Bill 56, every state or local agency must collect a signed declaration of citizenship or verify, through SAVE, the lawful presence of each alien who applies for state or local public benefit, including attendance at a public post-secondary education institution. The bill further prohibits any of these benefits to someone not found lawfully present. If SAVE is inconclusive, the alien is eligible upon declaration of lawful presence during the resolution.

House Bill 56 does provide for some exemptions. For example, the bill exempts benefits such as primary or secondary school education, all benefits listed under 8 USC§1621(b) and certain emergency medical, emergency disaster, public health, crisis assistance services and protective services. However, every public elementary or secondary school must determine if an enrolling student was born outside of the United States or is the child of an alien unlawfully present and qualifies for an ESL class or other remedial class. The data will be submitted to the Legislature.

Similar to the Arizona law, law enforcement officers must determine the immigration status of anyone who is stopped, detained or arrested with a reasonable suspicion of unlawful presence as an alien through verification with federal systems. Anyone found driving without a license will be taken into custody for determination of immigration status, and if found to be unlawfully present, the person will be considered a flight risk and will be detained until prosecution or until handed over to federal immigration authorities. In any criminal matter involving detention, someone determined to be unlawfully present must be detained and will not be allowed bail.

The bill prohibits any officer of the state from restricting enforcement of federal immigration laws and cuts off government funding in the event of violation until it ceases. Also of note, it requires all state employees to report violations of the Act and allows private law suits against violating officers.

After the Act becomes effective, any person who applies to become a registered voter in Alabama must prove United States citizenship.

Advocates have brought a suit to strike down similar provisions in Arizona, Utah and Georgia, but it remains unresolved. The U.S. Department of Justice joined the Arizona challenge on grounds that it effectively usurps the exclusive federal authority to prioritize immigration enforcement. That case awaits U.S. Supreme Court review.

Requirements on Private Employers

An employer must attest to not employing an unauthorized alien to receive any government contract, grant or incentive, and the recipient must enroll in E-Verify. The employer must require all tiers of subcontractors down the chain to provide such an affidavit. A violation of this section is a breach of contract which justifies government contract termination and business license/permit suspension for 60 days. It also could lead to debarment from further contracts. A second offense can result in permanent suspension of the employer's business license.

Under House Bill 56, every business entity or employer in Alabama must enroll in E-Verify by April 1, 2012. Although the law does not provide for a penalty for failing to register for E-Verify, penalties for knowingly hiring an unauthorized worker are severe, including loss of business license. If an entity or employer enrolls in E-Verify, the employer will have a complete defense to the employment of an unauthorized worker.

Interestingly, an individual may petition the Attorney General to bring action against an employer, and the Attorney General has 60 days either to file a complaint or respond to the petitioner why it is not appropriate. Alabama DHS will provide an E-Verify employer agent service for Alabama employers with 25 or fewer employees and publish on its website a list of all E-Verify participating Alabama employers.

The bill carries tax consequences and legal ramifications for violations. For instance, it will prohibit a tax deduction for any payment for services of an unauthorized alien, whether as an employee or through contract, with a penalty of ten times the business expense deduction claimed. Likewise, no court can enforce any contract involving someone whom the other party had direct or constructive knowledge to be an alien unlawfully present when the contract was entered into if the alien would need to be present for 24 hours to perform.

The U.S. Supreme Court recently upheld similar provisions in Arizona, and these employer-related provisions of the Alabama bill are likely to survive any challenge.

Effective Dates

If Alabama House Bill 56 is signed by Governor Bentley, it will be effective generally 3 months after his signature. However, the government grant provisions will go into effect on January 1, 2012. The penalties for employing unauthorized aliens and the requirement to use E-Verify will be effective as of April 1, 2012.