HB56

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RFD: Public Safety and Homeland Security

First Read: 01-MAR-11

PFD: 02/25/2011
A BILL
TO BE ENTITLED
AN ACT

Relating to immigration laws; to provide for the enforcement of immigration laws on the state and local level; to make the entry, presence, and involvement in economic activity of unauthorized aliens illegal in the state and to provide penalties; to require the verification of the legal status of persons; to prohibit the knowing or intentional hiring of unauthorized aliens and to provide penalties; to require participation in the federal E-verify program; to provide for the impoundment of a vehicle under certain conditions; to prohibit certain practices related to voting and registration for voting and to provide criminal penalties; to require proof of citizenship or legal residency in order to access government benefits; to give the Alabama Department of Homeland Security certain powers and duties; to require a landlord to verify the lawful presence of a person before entering into a rental agreement and to provide penalties; to provide for distribution of certain fines; to provide for the crimes of dealing in false identification documents and vital records identity fraud and to 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 Recompilation of the Constitution of Alabama of 1901,
as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The Legislature declares that the intent
of this act is to make the attrition of unauthorized aliens
through enforcement the public policy of all state and local
government agencies in Alabama. The provisions of this act are
intended to discourage and deter the entry, presence, and
involvement in economic activity of unauthorized aliens in
Alabama, consistent with the intent of Congress expressed in
federal immigration law.

Section 2. (a) No official or agency of this state
or a county, city, town, or other political subdivision of
this state may limit or restrict the enforcement of federal
immigration laws to less than the full extent permitted by
federal law.

(b) When there is any lawful stop, detention, or
arrest made by a law enforcement officer or agency of this
state or a county, city, town, or other political subdivision
of this state in the enforcement of any other law or ordinance
of a county, city, town, or other political subdivision of
this state where reasonable suspicion exists that a person is
an unauthorized alien, a reasonable attempt shall be made to
determine the immigration status of the person, except if the
determination may hinder or obstruct an investigation. The immigration status of the person shall be verified pursuant to subsection (e). Any person who is arrested shall have his or her immigration status determined before the person is released. A person is presumed not to be an unauthorized alien in the United States if the person provides to the law enforcement officer or agency any of the following:

(1) A valid Alabama driver's license or an Alabama nondriver identification card or a valid driver's license from another state.

(2) A valid tribal enrollment card or other form of tribal identification.

(3) Any valid United States federal or state government issued identification.

(4) A valid passport and federal form I-94 or any successor document.

(5) A valid Canadian federal or territorial government issued identification.

(c) If an alien who is unlawfully present in the United States is convicted of a violation of state or local law, on discharge from imprisonment or assessment of any fine that is imposed, the alien shall be transferred immediately to the custody of the United States Immigration and Customs Enforcement Agency or the United States Customs and Border Protection Agency.

(d) Notwithstanding any other law, a law enforcement agency may transport an alien who is verified as unlawfully
present in the United States and who is in the custody of the agency to a federal facility in this state or to any other point of transfer into federal custody that is outside of the jurisdiction of the law enforcement agency. A law enforcement agency shall obtain judicial authorization before transporting an alien who is present in the United States unlawfully to a point of transfer that is outside of this state.

(e) In the implementation of this section, the immigration status of an alien shall be determined by either of the following:

(1) A law enforcement officer who is authorized by the federal government to verify or ascertain the immigration status of an alien.

(2) The federal government pursuant to 8 U.S.C. § 1373(c) through the Alabama Department of Homeland Security.

(f) Except as provided by federal law, officials or agencies of this state and counties, cities, towns, and other political subdivisions 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 the following official purposes:

(1) Determining eligibility for any public benefit, service, or license provided by the federal government, the state, or a county, city, town, 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 in this state.

(3) Confirming the identity of any person who is detained.

(4) If the person is an alien, determining whether the person is in compliance with the federal registration laws prescribed by Title II, Chapter 7 of the Federal Immigration and Nationality Act pursuant to 8 U.S.C. § 1373 and 8 U.S.C. § 1644.

(g) A person may bring an action in circuit court to challenge any official or head of an agency of this state that adopts or implements a policy that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law. Child protective services, adult protective services, and domestic violence services workers are exempt from this subsection. If there is a judicial finding that an official or head of an agency of this state has violated this section, the court shall order any of the following:

(1) That the person who brought the action recover court costs and attorney fees.

(2) That the official or head of the agency pay a civil penalty of not less than five hundred dollars ($500) and not more than five thousand dollars ($5,000) for each day that
the policy has remained in effect after the filing of an action pursuant to this subsection.

(h) A court shall collect the civil penalty prescribed in subsection (g) and remit 50 percent of the civil penalty to the Department of Public Safety and 50 percent of the civil penalty to the Alabama Department of Homeland Security. Both departments shall establish a special account for the monies for the purpose of enforcement of this act.

(i) A law enforcement officer shall be indemnified by the agency of the law enforcement officer against reasonable costs and expenses, including attorney fees, incurred by the officer in connection with any action, suit, or proceeding brought pursuant to this section to which the officer may be party by reason of the officer being or having been a member of the law enforcement agency, except in relation to matters in which the officer is adjudged to have willfully and wantonly acted in bad faith outside the line and scope of his or her duty.

(j) This section shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons, and respecting the privileges and immunities of United States citizens.

(k)(1) If the Alabama Department of Homeland Security creates a state verification system to verify the lawful presence of a person, a law enforcement agency shall utilize the state verification system to verify the lawful presence of a person for the purposes of this section.
(2) A law enforcement agency that verifies the lawful presence of a person in good faith utilizing the state verification system pursuant to this section is immune from liability for any actions taken as a result of the notification from the state verification system that the person is unlawfully present in the United States.

(1) A law enforcement official or 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.

(m) For the purpose of this section, the term "official or head of an agency of this state" shall not include a county law enforcement officer, sheriff, deputy, or personnel in a county jail acting within the line and scope of his or her duty.

Section 3. (a) In addition to any violation of federal law, an alien is guilty of trespassing if the alien is both (1) present on any public or private land in this state and (2) in violation of 8 U.S.C. § 1304(e) or § 1306(a), relating to the registration of aliens.

(b) In the implementation of this section, the immigration status of an alien shall be determined by either of the following:
(1) A law enforcement officer who is authorized by the federal government to verify or ascertain the immigration status of an alien.

(2) The federal government pursuant to 8 U.S.C. § 1373(c) through the Alabama Department of Homeland Security.

(c)(1) A person who is sentenced pursuant to this section is not eligible for suspension or commutation of sentence or release on any basis until the sentence imposed is served.

(2) Notwithstanding the provisions of this act, should an unauthorized alien be transferred to federal custody pursuant to subsections (c) and (d) of Section 2, then any charges pending pursuant to this section may be dismissed or any sentence imposed pursuant to this section may be commuted.

(d) In addition to any other penalty prescribed by law, the court shall order the person to pay court costs and an additional assessment in the following amounts:

(1) At least five hundred dollars ($500) for a first violation.

(2) Twice the amount specified in subdivision (1) if the person was previously subject to an assessment pursuant to this subsection.

(e) A court shall collect the assessments prescribed in subsection (d) and remit 50 percent of the assessments to the Department of Public Safety and 50 percent of the assessments to the Alabama Department of Homeland Security.
Both departments shall establish a special account for the
monies for the purpose of enforcement of this act.

(f) This section does not apply to an alien who
maintains authorization from the federal government to remain
in the United States.

(g) A violation of this section is a Class A
misdemeanor, except that a violation of this section is a
Class C felony if the person violates this section while in
possession of any of the following:

(1) A controlled substance, as defined in Section

(2) An immediate precursor, a substance as defined
in Section 20-2-2(12), Code of Alabama 1975, that is used in
the manufacturing of a controlled substance in violation of
Section 13A-12-217 or 13A-12-218, Code of Alabama 1975.

(3) A deadly weapon or a dangerous instrument as

(4) Property that is used as material support or
resources, as defined in Section 13A-10-151, Code of Alabama
1975, for the purpose of committing or aiding in the
commission of an act of terrorism as prescribed in Sections

(h) Any record that relates to the immigration
status of a person is admissible in any court without further
foundation or testimony from a custodian of records if the
record is certified as authentic by the government agency that
is responsible for maintaining the record.
(i)(1) If the Alabama Department of Homeland Security creates a state verification system to verify the lawful presence of a person, a law enforcement agency shall utilize the state verification system to verify the lawful presence of a person for the purposes of this section.

(2) A law enforcement agency that verifies the lawful presence of a person in good faith utilizing the state verification system pursuant to this section is immune from liability for any actions taken as a result of the notification from the state verification system that the person is unlawfully present in the United States.

(j) A law enforcement official or 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.

Section 4. (a) It is unlawful for a person to intentionally engage in the smuggling of human beings for profit or commercial purposes.

(b) A violation of this section is a Class B felony.

(c) Notwithstanding any other law, a law enforcement officer may lawfully stop any person who is operating a motor vehicle if the officer has reasonable suspicion to believe the person is in violation of any traffic law and this section.

(d) For the purposes of this section, "smuggling of human beings" means the transportation, procurement of
transportation, or use of real or personal property by a person or an entity that knows or has reason to know that the person or persons transported or to be transported are not United States citizens, permanent resident aliens, or persons otherwise allowed to enter or remain in the United States.

(e)(1) If the Alabama Department of Homeland Security creates a state verification system to verify the lawful presence of a person, a law enforcement agency shall utilize the state verification system to verify the lawful presence of a person for the purposes of this section.

(2) A law enforcement agency that verifies the lawful presence of a person in good faith utilizing the state verification system pursuant to this section is immune from liability for any actions taken as a result of the notification from the state verification system that the person is unlawfully present in the United States.

(f) A law enforcement official or 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.

Section 5. (a) 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.
(b) 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.

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

(d) A law enforcement official or 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.

(e) In the implementation of this section, the immigration status of an alien shall be determined by either of the following:

(1) A law enforcement officer who is authorized by the federal government to verify or ascertain the immigration status of an alien.

(2) The federal government pursuant to 8 U.S.C. § 1373(c) through the Alabama Department of Homeland Security.

(f) A violation of this section is a Class A misdemeanor.

(g)(1) If the Alabama Department of Homeland Security creates a state verification system to verify the
lawful presence of a person, a law enforcement agency shall
utilize the state verification system to verify the lawful
presence of a person for the purposes of this section.

(2) A law enforcement agency that verifies the
lawful presence of a person in good faith utilizing the state
verification system pursuant to this section is immune from
liability for any actions taken as a result of the
notification from the state verification system that the
person is unlawfully present in the United States.

(h) For the purposes of this section, the following
terms shall have the following meanings:

(1) SOLICIT. To exhibit verbal or nonverbal
communication by a gesture or a nod that would indicate to a
reasonable person that a person is willing to be employed.

(2) UNAUTHORIZED ALIEN. An alien who does not have
the legal right or authorization under federal law to work in
the United States as specified in 8 U.S.C. § 1324a(h)(3).

Section 6. (a) It is unlawful for a person to do any
of the following:

(1) Transport or move or attempt to transport or
move an unauthorized alien in this state in furtherance of the
presence of the unauthorized alien in the United States in a
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 law.

(2) Conceal, harbor, or shield or attempt 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 law.

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

(4) Enter into a rental agreement, as defined by Section 35-9A-141 of the Code of Alabama 1975, with an alien 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 law.

(b) A means of transportation that is used in the commission of a violation of this section is subject to mandatory vehicle impoundment procedures as provided for by state law. A person who violates this section is guilty of a Class A misdemeanor except that a violation of this section that involves 10 or more unauthorized aliens is a Class C felony.

(c) A law enforcement official or 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.
(d) In the implementation of this section, the immigration status of an alien shall be determined by either of the following:

(1) A law enforcement officer who is authorized by the federal government to verify or ascertain the immigration status of an alien.

(2) The federal government pursuant to 8 U.S.C. § 1373(c) through the Alabama Department of Homeland Security.

(e) This section does not apply to a child protective services or adult protective services worker or a domestic violence services worker acting in the official capacity of the worker or a person who is acting in the capacity of a first responder, an ambulance attendant, or an emergency medical technician and who is transporting or moving an alien in this state pursuant to state law.

(f)(1) If the Alabama Department of Homeland Security creates a state verification system to verify the lawful presence of a person, a law enforcement agency shall utilize the state verification system to verify the lawful presence of a person for the purposes of this section.

(2) A law enforcement agency that verifies the lawful presence of a person in good faith utilizing the state verification system pursuant to this section is immune from liability for any actions taken as a result of the notification from the state verification system that the person is unlawfully present in the United States.
Section 7. (a) An employer may not knowingly or intentionally employ an unauthorized alien. An employer knowingly or intentionally contracts with an unauthorized alien or with a person who employs or contracts with an unauthorized alien to perform the labor, if the employer uses a contract, subcontract, or other independent contractor agreement to obtain the labor of a person the employer knows is an unauthorized alien.

(b) On receipt of an allegation on a prescribed complaint form that an employer knowingly or intentionally employs an unauthorized alien, a local law enforcement agency shall investigate whether the employer has violated subsection (a).

(c) In the implementation of this section, the immigration status or work authorization status of an alien shall be determined by either of the following:

(1) A law enforcement officer who is authorized by the federal government to verify or ascertain the immigration status of an alien.

(2) The federal government pursuant to 8 U.S.C. § 1373(c) through the Alabama Department of Homeland Security.

(d)(1) If the Alabama Department of Homeland Security creates a state verification system to verify the lawful presence of a person, an employer may utilize the state verification system in lieu of the E-verify program to verify the lawful presence of a person for the purposes of this section.
(2) An employer that verifies the lawful presence of
a person in good faith utilizing the state verification system
pursuant to this section is immune from liability, including
liability from any action by an employee or prospective
employee for failure to hire, wrongful discharge, or
retaliation based on a notification from the state
verification system that the person is an unauthorized alien.

(e) A person who knowingly or intentionally files a
false or frivolous complaint under this section is guilty of a
Class C misdemeanor.

(f) The local law enforcement agency, after a
determination that the complaint is not false or frivolous,
shall do all of the following:

(1) Notify the United States Immigration and Customs
Enforcement Agency of the unauthorized alien.

(2) Notify the Alabama Department of Homeland
Security of the unauthorized alien.

(3) Refer the matter to the local district attorney
for the local district attorney to bring an action for the
enforcement of this section.

(g) A law enforcement official or 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.
Section 8. (a) On a finding of a first violation of
Section 7, a court shall do all of the following:

(1) Order the employer to terminate the employment
of all unauthorized aliens.

(2) Subject the employer to a three-year
probationary period throughout the state. During the
probationary period, the employer shall file quarterly reports
with the local district attorney of each new employee who is
hired by the employer in the state.

(3) Order the employer to file a signed, sworn
affidavit with the local district attorney within three days
after the order is issued stating that the employer has
terminated the employment of all unauthorized aliens and the
employer will not knowingly or intentionally employ an
unauthorized alien in this state.

(b) The court shall order the appropriate agencies
to suspend for up to 10 days all licenses subject to this
section that are held by the employer if the employer fails to
file a signed, sworn affidavit with the appropriate district
attorney within three business days after the order is issued.

(c) The court shall send a copy of the order to the
Attorney General and the local district attorney, who shall
maintain the copy pursuant to this section.

(d)(1) All licenses that are suspended under this
section shall remain suspended until the employer files a
signed sworn affidavit with the local district attorney.

Notwithstanding any other law, on the filing of the affidavit,
the suspended licenses shall be reinstated immediately by the appropriate agencies.

(2) For the purposes of this section, the licenses subject to suspension are all licenses held by the employer specific to the county where the unauthorized alien performed work.

(e) For a second violation, the court shall order the appropriate agencies to permanently revoke all licenses held by the employer specific to the county where the unauthorized alien performed work. On receipt of the order, and notwithstanding any other law, the appropriate agencies shall immediately revoke the licenses held by the employer.

(f) For a third violation, the court shall order the appropriate agencies to permanently revoke all licenses held by the employer throughout the state.

(g) It is an affirmative defense to a violation of subsection (a) of this section that the employer was entrapped.

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

(2) An 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 employer.
b. The law enforcement officers or their agents urged and induced the employer to commit the violation.

c. The 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.

(h) Any employer found in violation of Section 7 shall have the right to contest any finding on appeal.

Section 9. (a) For the purposes of this section, the following words shall have the following meanings:

(1) ECONOMIC DEVELOPMENT INCENTIVE. Any grant, loan, or performance-based incentive from any governmental entity that is awarded after September 30, 2011. Economic development incentive does not include any tax provision.

(2) GOVERNMENTAL ENTITY. This state and any political subdivision of this state that receives and uses tax revenues.

(b) Except as provided in subsection (c), beginning January 1, 2012, every employer shall verify the employment eligibility of an employee through the E-verify program and shall keep a record of the verification for the duration of the employment of the employee or at least three years, whichever is longer.

(c)(1) The Department of Industrial Relations shall establish and maintain a telephone verification system to be approved by the Alabama Department of Homeland Security for an
employer with 25 or less employees to utilize in lieu of the
E-verify program.

(2) An employer with 25 or less employees shall be
required to utilize the E-verify program until the telephone
verification system is established.

(2) The telephone verification system shall be in
place within 90 days after the effective date of this act.

(d) Before receiving any economic development
incentive, the employer shall provide proof to the
governmental entity that the employer is registered with and
is participating in the E-verify program or the telephone
verification system.

(e) Every three months, the Alabama Department of
Homeland Security shall request from the U.S. Department of
Homeland Security a list of employers from this state who are
registered with the E-verify program. On receipt of the list
of employers, the Alabama Department of Homeland Security
shall make the list available on its website.

(f) An employer that verifies the employment
eligibility of an employee in good faith pursuant to this
section is immune from liability, including liability from any
action by an employee or prospective employee for failure to
hire, wrongful discharge, or retaliation based on a
notification from the E-verify program or the telephone
verification system that the person is an unauthorized alien.

(g)(1) If the Alabama Department of Homeland
Security creates a state verification system to verify the
lawful presence of a person, an employer may utilize the state verification system in lieu of the E-verify program to verify the lawful presence of a person for the purposes of this section.

(2) An employer that verifies the lawful presence of a person in good faith utilizing the state verification system pursuant to this section is immune from liability, including liability from any action by an employee or prospective employee for failure to hire, wrongful discharge, or retaliation based on a notification from the state verification system that the person is an unauthorized alien.

(h) A law enforcement official or 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.

Section 10. (a) No unauthorized alien may register to vote or attempt to register to vote.

(b) No person may knowingly assist or conspire to allow an unauthorized alien to vote.

(c) No person may knowingly assist or conspire with an unauthorized alien to register the unauthorized alien for voting.

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

(e)(1) If the Alabama Department of Homeland Security creates a state verification system to verify the
lawful presence of a person, the state or local agency that
handles voter registration shall utilize the state
verification system to verify the lawful presence of a person
for the purposes of this section.

(2) A state or local agency that handles voter
registration that verifies the lawful presence of a person in
good faith utilizing the state verification system pursuant to
this section is immune from liability for any actions taken as
a result of the notification from the state verification
system that the person is unlawfully present in the United
States.

(f) 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.

Section 11. (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) Any person who applies for federal public
benefits administered by this state or a political subdivision
of this state or for state or local public benefits shall
provide proof that he or she is lawfully present in the United States before receiving those 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 the lawful presence in the United States of each natural person who applies for federal public benefits administered by this state or a political subdivision of this state or for state or local public benefits.

(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 except to the extent permitted by the United States Constitution or the Constitution of Alabama of 1901.

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

(1) For any purpose for which lawful presence in the United States is not required by law, ordinance, or rule.

(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 family planning services, for the Special Supplemental Nutrition Program for
(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) An agency or a political subdivision of this state shall verify the lawful presence in the United States of each applicant who applies for federal public benefits administered by this state or a political subdivision of this state or for state or local public benefits by requiring the applicant to do either of the following:

(1) Produce any of the following documents:
a. A valid Alabama driver's license or an Alabama nondriver identification card or a valid driver's license from another state.

b. A valid tribal enrollment card or other form of tribal identification.

c. Any valid United States federal or state government issued identification.

d. A valid passport and federal form I-94 or any successor document.

e. A valid Canadian federal or territorial government issued identification.

(2) Execute an affidavit stating that he or she is either of the following:

a. A United States citizen or legal permanent resident.

b. Otherwise lawfully present in the United States pursuant to federal law.

(g) Notwithstanding the requirements of subdivision (1) of subsection (f), the Alabama Department of Public Health may issue emergency rules, to be effective until the first day of the sixth month after the effective date of this act, providing for additional forms of identification or a waiver process to ensure that an individual seeking public benefits pursuant to this section proves lawful presence in the United States. The rules are necessary to ensure that certain individuals, including, but not limited to, homeless state
citizens, lawfully present in the United States receive authorized benefits.

(h) All emergency rules authorized under this section shall terminate on the first day of the sixth month after the effective date of this act.

(i) Any person who knowingly makes a false, fictitious, or fraudulent statement or representation in an affidavit executed pursuant to subsection (f) 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.

(j) Beginning January 1, 2012, verification of lawful presence for federal public benefits administered by this state or a political subdivision of this state or for state or local public benefits shall be made through the Systematic Alien Verification for Entitlements (SAVE) program, operated by the United States Department of Homeland Security, or a successor program designated by the Alabama Department of Homeland Security. Until verification of lawful presence is made, the identification required under subsection (f)(1) or the affidavit required under subsection (f)(2) may be presumed to be proof of lawful presence for purposes of this section.

(k) It shall be unlawful for an agency or a political subdivision of this state to provide federal public benefits administered by this state or a political subdivision
of this state or state or local public benefits in violation of this section. 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.

(l) Errors and significant delays by the SAVE program shall be reported to the United States Department of Homeland Security and to the Alabama Department of Homeland Security, both of which monitor the SAVE program and its verification application errors and significant delays and report yearly on such errors and delays, to ensure that the application of the SAVE program is not wrongfully denying benefits to legal residents of the state.

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

(n) For the purposes of administering the Alabama Medicaid Program, the requirements of subsection (j) shall apply.

(o)(1) If the Alabama Department of Homeland Security creates a state verification system to verify the lawful presence of a person, an agency or political subdivision of this state may utilize the state verification system.
system in lieu of the SAVE program to verify the lawful presence of a person for the purposes of this section.

(2) An agency or political subdivision of this state that verifies the lawful presence of a person in good faith utilizing the state verification system pursuant to this section is immune from liability for any actions taken as a result of the notification from the state verification system that the person is unlawfully present in the United States.

Section 12. (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 police officers and special agents to assist with the implementation and enforcement of the laws to fulfill the mission of the Alabama Department of Homeland Security.

(b) The Alabama Department of Homeland Security, its officers, and special agents shall have the same powers and authority and receive the same benefits and compensation as those prescribed to officers and special agents employed by the Alabama Department of Public Safety under Chapter 2 of Title 32 of the Code of Alabama 1975, except for the purposes of retirement, the officers or special agents shall have the same retirement benefits as a law enforcement officer as defined under Section 36-27-59 of the Code of Alabama 1975.

(c) The officers and special agents shall be subject to the same Peace Officers' Standards and Training as those prescribed to officers and special agents employed by the
Alabama Department of Public Safety under Article 3 of Chapter 21 of Title 36 of the Code of Alabama 1975.

(d) The Director of the Alabama Department of Homeland Security may promulgate rules necessary for the implementation of this act.

(e) The Alabama Department of Homeland Security shall have the authority to direct which verification program is used to determine the immigration status of an alien as required by this act.

Section 13. (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, a person applying for or renewing a motor vehicle license plate, applying for a marriage license, applying for or renewing a driver's license or nondriver identification card, or applying for or renewing a business license.

(b) No unauthorized alien may 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 unauthorized alien.

(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 show proof of his or her lawful presence in the United States by providing to the person conducting the
business transaction on behalf of the state or a political subdivision of the state any of the following:

(1) A valid Alabama driver's license or an Alabama nondriver identification card or a valid driver's license from another state.

(2) A valid tribal enrollment card or other form of tribal identification.

(3) Any valid United States federal or state government issued identification.

(4) A valid passport and federal form I-94 or any successor document.

(5) A valid Canadian federal or territorial government issued identification.

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

(e)(1) If the Alabama Department of Homeland Security creates a state verification system to verify the lawful presence of a person, the state or a political subdivision of this state shall utilize the state verification system to verify the lawful presence of a person for the purposes of this section.

(2) The state or a political subdivision of this state that verifies the lawful presence of a person in good faith utilizing the state verification system pursuant to this section is immune from liability for any actions taken as a result of the notification from the state verification system that the person is unlawfully present in the United States.
(f) 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.

Section 14. (a) For the purposes of this section, the following terms shall have the following meanings:

(1) LANDLORD. As defined by Section 35-9A-141 of the Code of Alabama 1975.

(2) RENTAL AGREEMENT. As defined by Section 35-9A-141 of the Code of Alabama 1975.

(b) No landlord shall enter into a rental agreement with any person unless the person provides proof of his or her legal presence in the United States by providing to the landlord any of the following:

(1) A valid Alabama driver's license or an Alabama nondriver identification card or a valid driver's license from another state.

(2) A valid tribal enrollment card or other form of tribal identification.

(3) Any valid United States federal or state government issued identification.

(4) A valid passport and federal form I-94 or any successor document.

(5) A valid Canadian federal or territorial government issued identification.
(c) On a finding of a first violation of this section, the court shall do all of the following:

(1) Order the landlord to terminate the rental agreement of any unauthorized alien as defined by 8 U.S.C. §1324a(h)(3).

(2) Order the landlord to file a signed, sworn affidavit with the district attorney within three days after the order is issued stating the landlord has terminated the rental agreement of all unauthorized aliens and stating that the landlord will not knowingly or intentionally enter into a rental agreement with an unauthorized alien in this state.

(3) Order the appropriate agencies to suspend for up to 10 days all licenses held by the landlord if the landlord fails to file a signed, sworn affidavit with the appropriate district attorney within three business days after the order is issued.

(4) Order the licenses of the landlord subject to this section to remain suspended until the landlord files the signed, sworn affidavit with the appropriate district attorney. Notwithstanding any other law, on the filing of the affidavit, the suspended licenses shall be reinstated immediately by the appropriate authorities.

(d) For the purposes of this section, the licenses subject to suspension are all licenses held by the landlord specific to the county where the landlord entered into a rental agreement with an unauthorized alien.
(e) On a finding of a second violation of this section, the court shall order the appropriate agencies to permanently revoke all licenses held by the landlord specific to the county where the landlord entered into a rental agreement with an unauthorized alien. On receipt of the order, and notwithstanding any other law, the appropriate agencies shall immediately revoke the licenses held by the landlord subject to this section.

(f) For a third violation, the court shall order the appropriate agencies to permanently revoke all licenses held by the landlord throughout the state.

(g) It is an affirmative defense to a violation of this section that the landlord was entrapped.

(h) To claim entrapment, the landlord must admit by testimony or other evidence the substantial elements of the violation.

(i) A landlord who asserts an entrapment defense has the burden of proving by clear and convincing evidence the following:

(1) The idea of committing the violation started with law enforcement officers or their agents rather than with the landlord.

(2) The law enforcement officers or their agents urged and induced the landlord to commit the violation.

(3) The landlord was not already predisposed to commit the violation before the law enforcement officers or
their agents urged and induced the landlord to commit the violation.

(j)(1) If the Alabama Department of Homeland Security creates a state verification system to verify the lawful presence of a person, a landlord shall utilize the state verification system to verify the lawful presence of a person for the purposes of this section.

(2) A landlord that verifies the lawful presence of a person in good faith utilizing the state verification system pursuant to this section is immune from liability for any actions taken as a result of the notification from the state verification system that the person is unlawfully present in the United States.

(k) A law enforcement official or 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.

Section 15. All fines levied under the provisions of this bill in those instances where the arrested individual is placed in a county jail, shall be shared equally with the county in which the individual was jailed.

Section 16. (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 18 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 five thousand dollars ($5,000) for every card or document he or she creates or possesses and be subject to any and all other state laws that may apply.
Section 17. The Alabama Department of Homeland Security shall report to the Legislature every two years all of the following:

(1) The total number of unauthorized aliens that have been convicted of a crime under this act.

(2) The total number of unauthorized aliens that have been deported pursuant to this act.

(3) A list of all employers that have been found guilty pursuant to this act.

Section 18. For the purposes of this act, "unauthorized alien" means an alien who does not have the legal right or authorization to be present in the United States or the legal right or authorization under federal law to work in the United States as specified in 8 U.S.C. §1324a (h) (3).

Section 19. The Department of Public Safety and the Alabama Department of Homeland Security shall provide an annual report to the Legislature to include data showing the number of offenders arrested pursuant to this act by race.

Section 20. 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 21. 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 because the
bill defines a new crime or amends the definition of an existing crime.

Section 22. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.
House of Representatives

Read for the first time and referred to the House of Representatives committee on Public Safety and Homeland Security.............. 01-MAR-11

Read for the second time and placed on the calendar with 1 substitute and 4 amendments.............. 08-MAR-11

Read for the third time and passed as amended......................... 05-APR-11

Yeas 73, Nays 28, Abstains 1

Greg Pappas
Clerk