

1 SB256  
2 127491-1  
3 By Senators Beason, Orr, Scofield, Brewbaker, Williams,  
4 Sanford, Holley, Allen, McGill, Holtzclaw, Bedford, Bussman,  
5 Glover, Ward, Waggoner, Pittman and Reed  
6 RFD: Job Creation and Economic Development  
7 First Read: 22-MAR-11

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8 SYNOPSIS: Under existing law, the determination of who  
9 is an alien lawfully present in the United States  
10 and the enforcement of immigration laws are  
11 generally functions administered by the federal  
12 government.

13 This bill would relate to illegal  
14 immigration and would: Define terms; require the  
15 Attorney General to draft a Memorandum of  
16 Understanding between the State of Alabama and the  
17 United States Department of Justice or the United  
18 States Department of Homeland Security concerning  
19 the enforcement of federal immigration and customs  
20 laws, detention and removals, and investigations in  
21 the state; prohibit an unauthorized alien from  
22 being issued a driver's license or nondriver  
23 identification card; require the Department of  
24 Public Safety to begin issuing nondriver  
25 identification cards to residents or nonresidents  
26 of this state marked with a designation to indicate  
27 a person's legal presence; require a person to

1 present proof of citizenship or residency before  
2 voting; preclude any state or local government or  
3 official from refusing to enforce federal  
4 immigration laws; prohibit an alien unlawfully  
5 present in the United States from receiving any  
6 state or local public benefits; prohibit a person  
7 not lawfully present from being eligible on the  
8 basis of residence for education benefits; require  
9 business entities seeking economic incentives to  
10 verify the employment eligibility of their  
11 employees and would provide penalties; prohibit an  
12 unauthorized alien from being present in this state  
13 and would provide penalties; prohibit an  
14 unauthorized alien from seeking employment in this  
15 state and would provide penalties; require the  
16 verification of the legal status of persons by law  
17 enforcement officers under certain circumstances;  
18 criminalize certain behavior relating to  
19 concealing, harboring, shielding, or attempting to  
20 conceal, harbor, or shield unauthorized aliens and  
21 would provide penalties; create the crime of  
22 dealing in false identification documents and the  
23 crime of vital records identity fraud and would  
24 provide penalties; prohibit a business entity or  
25 employers from knowingly employing an unauthorized  
26 alien and would provide penalties; require all  
27 employers contracting with other employers to

1 provide proof of their employees' employment  
2 authorization and would provide tax withholding  
3 provisions and penalties; prohibit certain  
4 deductible business expenses; make it a  
5 discriminatory practice for an employer to fail to  
6 hire a legally present job applicant or discharge  
7 an employee while retaining an employee who is an  
8 unauthorized alien under certain conditions;  
9 require the verification of legal status of every  
10 person charged with a crime for which bail is  
11 required; require law enforcement to detain any  
12 person whose lawful immigration status cannot be  
13 verified under certain conditions; require  
14 notification of the United States Bureau of  
15 Immigration and Customs Enforcement when an  
16 unlawfully present alien is convicted of state law;  
17 authorize the Alabama Department of Homeland  
18 Security to hire state police officers and give the  
19 department enforcement power; and would require the  
20 Attorney General to file a quarterly report with  
21 the Legislature under certain conditions.

22 Amendment 621 of the Constitution of Alabama  
23 of 1901, now appearing as Section 111.05 of the  
24 Official Recompilation of the Constitution of  
25 Alabama of 1901, as amended, prohibits a general  
26 law whose purpose or effect would be to require a  
27 new or increased expenditure of local funds from

1 becoming effective with regard to a local  
2 governmental entity without enactment by a 2/3 vote  
3 unless: it comes within one of a number of  
4 specified exceptions; it is approved by the  
5 affected entity; or the Legislature appropriates  
6 funds, or provides a local source of revenue, to  
7 the entity for the purpose.

8 The purpose or effect of this bill would be  
9 to require a new or increased expenditure of local  
10 funds within the meaning of the amendment. However,  
11 the bill does not require approval of a local  
12 governmental entity or enactment by a 2/3 vote to  
13 become effective because it comes within one of the  
14 specified exceptions contained in the amendment.

15  
16 A BILL  
17 TO BE ENTITLED  
18 AN ACT

19  
20 Relating to illegal immigration; to define terms; to  
21 require the Attorney General to draft a Memorandum of  
22 Understanding under certain conditions; to prohibit an  
23 unauthorized alien from being issued a driver's license or  
24 nondriver identification card; to require the Department of  
25 Public Safety to begin issuing nondriver identification cards  
26 to residents or nonresidents of this state marked with a  
27 designation to indicate a person's legal presence; to require

1 a person to present proof of citizenship or residency before  
2 voting; to preclude any state or local government or official  
3 from refusing to enforce federal immigration laws; to prohibit  
4 an alien unlawfully present in the United States from  
5 receiving any state or local public benefits; to prohibit a  
6 person not lawfully present from being eligible on the basis  
7 of residence for education benefits; to require business  
8 entities seeking economic incentives to verify the employment  
9 eligibility of their employees and to provide penalties; to  
10 prohibit an unauthorized alien from being present in this  
11 state and to provide penalties; to prohibit an unauthorized  
12 alien from seeking employment in this state and to provide  
13 penalties; to require the verification of the legal status of  
14 persons by law enforcement officers under certain  
15 circumstances; to criminalize certain behavior relating to  
16 concealing, harboring, shielding, or attempting to conceal,  
17 harbor, or shield unauthorized aliens and to provide  
18 penalties; to create the crime of dealing in false  
19 identification documents and the crime of vital records  
20 identity fraud and to provide penalties; to prohibit a  
21 business entity or employers from knowingly employing an  
22 unauthorized alien and to provide penalties; to require all  
23 employers contracting with other employers to provide proof of  
24 their employees' employment authorization and to provide tax  
25 withholding provisions and penalties; to prohibit certain  
26 deductible business expenses; to make it a discriminatory  
27 practice for an employer to fail to hire a legally present job

1 applicant or discharge an employee while retaining an employee  
2 who is an unauthorized alien under certain conditions; to  
3 require the verification of legal status of every person  
4 charged with a crime for which bail is required; to amend  
5 Section 32-6-9 of the Code of Alabama 1975, relating to  
6 driver's licenses; to require law enforcement to detain any  
7 person whose lawful immigration status cannot be verified  
8 under certain conditions; to require notification of the  
9 United States Bureau of Immigration and Customs Enforcement  
10 when an unlawfully present alien is convicted of state law; to  
11 authorize the Alabama Department of Homeland Security to hire  
12 state police officers and give the department enforcement  
13 power; to require the Attorney General to file a quarterly  
14 report with the Legislature under certain conditions; and in  
15 connection therewith would have as its purpose or effect the  
16 requirement of a new or increased expenditure of local funds  
17 within the meaning of Amendment 621 of the Constitution of  
18 Alabama of 1901, now appearing as Section 111.05 of the  
19 Official Recompilation of the Constitution of Alabama of 1901,  
20 as amended.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. This act shall be known and may be cited  
23 as the Alabama Taxpayer and Citizen Protection Act.

24 Section 2. The State of Alabama finds that illegal  
25 immigration is causing economic hardship and lawlessness in  
26 this state and that illegal immigration is encouraged when  
27 public agencies within this state provide public benefits

1 without verifying immigration status. The State of Alabama  
2 further finds that certain practices currently allowed in this  
3 state impede and obstruct the enforcement of federal  
4 immigration law, undermine the security of our borders, and  
5 impermissibly restrict the privileges and immunities of the  
6 citizens of Alabama. Therefore, the people of the State of  
7 Alabama declare that it is a compelling public interest to  
8 discourage illegal immigration by requiring all agencies  
9 within this state to fully cooperate with federal immigration  
10 authorities in the enforcement of federal immigration laws.  
11 The State of Alabama also finds that other measures are  
12 necessary to ensure the integrity of various governmental  
13 programs and services.

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

16 (1) ALIEN. Any person who is not a citizen or  
17 national of the United States, as described in Title 8,  
18 Section 1101 of the United States Code, et seq., and any  
19 amendments thereto.

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

25 a. Self-employed individuals, business entities  
26 filing articles of incorporation, partnerships, limited  
27 partnerships, limited liability companies, foreign



1 corporations, foreign limited partnerships, foreign limited  
2 liability companies authorized to transact business in this  
3 state, business trusts, and any business entity that registers  
4 with the Secretary of State.

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

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

18 (4) EMPLOYEE. Any person directed, allowed, or  
19 permitted to perform labor or service of any kind by an  
20 employer, with the exception of casual domestic labor hired to  
21 work in or around the personal abode of an individual. The  
22 employees of an independent contractor working for a business  
23 entity shall not be regarded as the employees of the business  
24 entity, for the purposes of this act.

25 (5) EMPLOYER. Any person, firm, corporation,  
26 partnership, joint stock association, agent, manager,  
27 representative, foreman, or other person having control or

1 custody of any employment, place of employment, or of any  
2 employee, including any person or entity employing any person  
3 for hire within the State of Alabama, including a public  
4 employer.

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

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

14 (8) FEDERAL WORK AUTHORIZATION PROGRAM. Any of the  
15 electronic verification of work authorization programs  
16 operated by the United States Department of Homeland Security  
17 or an equivalent federal work authorization program operated  
18 by the United States Department of Homeland Security to verify  
19 information of newly hired employees, under the Immigration  
20 Reform and Control Act of 1986 (IRCA), P.L. 99-603.

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

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

1           b. A result of the person's conduct when the person  
2 is aware that the person's conduct is practically certain to  
3 cause that result.

4           (10) LEGALLY PRESENT. A person is presumed to be  
5 legally present and not to be an alien who is unlawfully  
6 present in the United States or in the State of Alabama, if  
7 the person possesses proof of self-identification in any of  
8 the following forms:

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

10           b. A valid, unexpired Alabama nondriver  
11 identification card.

12           c. A valid, unexpired Alabama nondriver  
13 identification card, with a designation mark that indicates a  
14 person's legal presence in the United States and if necessary  
15 nonresidence in the State of Alabama.

16           d. A valid tribal enrollment card of other form of  
17 tribal identification.

18           e. Any valid United States federal, state, or local  
19 government issued identification document if issued by an  
20 entity that requires proof of lawful presence in the United  
21 States before issuance.

22           (11) PUBLIC EMPLOYER. Every department, agency, or  
23 instrumentality of the state or a political subdivision of the  
24 state including counties and municipalities.

25           (12) SUBCONTRACTOR. A subcontractor, contract  
26 employee, staffing agency, or any contractor, regardless of  
27 its tier.

1           (13) UNAUTHORIZED ALIEN. An alien who is not  
2 authorized to work in the United States as defined in Title 8,  
3 Section 1324a(h) (3) of the United States Code.

4           (14) WORK. Any job, task, employment, labor,  
5 personal services, or any other activity for which  
6 compensation is provided, expected, or due, including, but not  
7 limited to, all activities conducted by a business entity.

8           Section 4. (a) The Attorney General shall negotiate  
9 the terms of a Memorandum of Understanding between the State  
10 of Alabama and the United States Department of Justice or the  
11 United States Department of Homeland Security, as provided in  
12 8 U.S.C. Section 1357(g), concerning the enforcement of  
13 federal immigration and customs laws, detention and removals,  
14 and investigations in the State of Alabama.

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

19           Section 5. (a) It shall be illegal for an  
20 unauthorized alien or anyone not legally present in the United  
21 States or in the State of Alabama to be issued an Alabama  
22 driver's license or an Alabama nondriver identification card  
23 regardless of its designations.

24           (b) Within 60 days of the effective date of this  
25 act, the Department of Public Safety shall begin issuing  
26 Alabama nondriver identification cards with a designation mark

1 that indicates a person's legal presence in the United States,  
2 and, if appropriate, the state where the individual resides.

3 (1) An Alabama nondriver identification card with a  
4 designation mark that indicates a person's legal presence in  
5 the United States may be issued to residents of other states  
6 or Alabama residents who are legally present in the state that  
7 work or plan to work in Alabama or plan to be involved in  
8 other activities in which the State of Alabama requires proof  
9 of legal presence.

10 (2) To obtain an Alabama nondriver identification  
11 card with a designation mark that indicates a person's legal  
12 presence in the United States, a person shall show  
13 documentation from his or her state of residence or from the  
14 United States government proving his or her legal status in  
15 the United States.

16 (3) An Alabama nondriver identification card with a  
17 designation mark that indicates a person's legal presence in  
18 the United States has the same effect for verifying legal  
19 presence in the United States as an Alabama driver's license.

20 (c) The Department of Public Safety may not use  
21 voter registration information when issuing any identification  
22 authorized by this section. Notwithstanding any provision of  
23 law, each person who registers to vote shall present proof  
24 that he or she is a United States citizen and a resident of  
25 this state before he or she is allowed to register to vote.

26 Section 6. (a) No official or agency of this state  
27 or any political subdivision thereof may adopt a policy that

1 limits or restricts the enforcement of federal immigration  
2 laws to less than the full extent permitted by federal law or  
3 that in any way limits communication between its officers and  
4 federal immigration officials in violation of 8 U.S.C. § 1373.  
5 If, in the judgment of the Attorney General of Alabama, an  
6 official or agency of this state or any political subdivision  
7 thereof is in violation of this subsection, that agency or  
8 political subdivision shall not be eligible to receive any  
9 funds, grants, or appropriations from the State of Alabama  
10 until such violation has ceased and the Attorney General has  
11 so certified.

12 (b) All state officials, agencies, and personnel  
13 shall fully comply with and, to the full extent permitted by  
14 law, support the enforcement of federal law prohibiting the  
15 entry into, presence, or residence in the United States of  
16 aliens in violation of federal immigration law.

17 (c) Except as provided by federal law, officials or  
18 agencies of this state or any political subdivision thereof  
19 may not be prohibited or in any way be restricted from  
20 sending, receiving, or maintaining information relating to the  
21 immigration status, lawful or unlawful, of any individual or  
22 exchanging that information with any other federal, state, or  
23 local governmental entity for any of the following official  
24 purposes:

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

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

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

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

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

23          (e) A court shall collect the civil penalty  
24 prescribed in subsection (d) and remit one half of the civil  
25 penalty to the State Treasurer for deposit in the State  
26 General Fund and the second half shall be awarded to the party  
27 that brought the action.

1 (f) The court may award court costs and reasonable  
2 attorney fees to the prevailing party in a proceeding brought  
3 pursuant to this section.

4 (g) Every person working for the State of Alabama or  
5 a political subdivision thereof, including, but not limited  
6 to, a law enforcement agency in the State of Alabama or a  
7 political subdivision thereof, are to enforce the provisions  
8 of this act. Failure to enforce this act when there is  
9 reasonable cause to believe that this act is being violated is  
10 considered obstruction of justice and shall be punishable  
11 pursuant to state law.

12 Section 7. (a) No alien who is unlawfully present in  
13 the United States shall receive any state or local public  
14 benefit, except for state or local public benefits that are  
15 required to be offered by 8 U.S.C. § 1621(b).

16 (b) In addition to providing proof of other  
17 eligibility requirements, at the time of application for any  
18 state or local public benefit, an individual applicant who is  
19 18 years of age or older shall provide proof that the  
20 individual applicant is a citizen or a permanent resident of  
21 the United States or is an alien who is lawfully present in  
22 the United States. Such affirmative proof shall include  
23 documentary evidence issued by the Department of Public Safety  
24 or recognized by the Department of Public Safety when  
25 processing an application for a driver's license, and  
26 amendments thereto, as well as any document issued by the



1 federal government that confirms an alien's lawful presence in  
2 the United States.

3 (c) No state, county, or local agency shall provide  
4 any public benefit to any alien without first verifying that  
5 the alien is lawfully present in the United States and is a  
6 qualified alien, as described by 8 U.S.C. § 1621, and 8 U.S.C.  
7 § 1641. Such verification shall occur through the Systematic  
8 Alien Verification for Entitlements program operated by the  
9 United States Department of Homeland Security, or its  
10 successor program.

11 (d) State and local agencies administering public  
12 benefits in this state shall cooperate with the United States  
13 Department of Homeland Security in achieving verification of  
14 the lawful presence of an alien in the United States in  
15 furtherance of this section.

16 (e) As used in this section, "public benefit" means  
17 any grant, contract, loan, tag, permit, or license of any kind  
18 provided by an agency or any licensing authority of the State  
19 of Alabama or a subdivision thereof, or any retirement,  
20 welfare, health, disability, housing, food assistance, or  
21 unemployment benefit under which payments, assistance,  
22 credits, or reduced rates or fees are provided.

23 Section 8. (a) Except as otherwise provided by law,  
24 an individual who is not lawfully present in the United States  
25 shall not be eligible on the basis of residence within the  
26 state for any of the following:

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

3           (2) Resident or nonresident tuition.

4           (3) Participation in any extracurricular activity  
5 outside of the basic course of study in any primary,  
6 secondary, or postsecondary educational program.

7           (b) The provisions of subsection (a) shall not apply  
8 to a student enrolled in a degree program at a postsecondary  
9 educational institution in this state during the 2010-2011  
10 school year or any prior year who received a resident tuition  
11 benefit pursuant to state law.

12           Section 9. (a) As a condition for the award of any  
13 contract, grant, or incentive by the state or any political  
14 subdivision thereof to a business entity that employs one or  
15 more employees, the business entity, by sworn affidavit signed  
16 before a notary and under penalty of perjury, and by provision  
17 of documentation, shall affirm its employees are eligible for  
18 employment by using E-Verify or accepting any of the forms of  
19 identification used to document that an employee is legally  
20 present, as defined by this act.

21           (b) All public employers, to include the state,  
22 shall enroll and participate in good faith in the E-Verify  
23 program operated by the United States Department of Homeland  
24 Security pursuant to the Illegal Immigration Reform and  
25 Immigrant Responsibility Act of 1996, P.L. 104-208, or a  
26 successor electronic federal work authorization program.

1           (c) A general contractor or subcontractor of any  
2 tier shall not be liable under this section when such general  
3 contractor or subcontractor contracts with its direct  
4 subcontractor who violates subsection (a), if the contract  
5 binding the contractor and subcontractor affirmatively states  
6 that the direct subcontractor is not knowingly in violation of  
7 subsection (a) and shall not henceforth be in such violation  
8 and the contractor or subcontractor receives a sworn affidavit  
9 signed before a notary and under the penalty of perjury  
10 attesting to the fact that the direct subcontractor, in good  
11 faith, has complied with subsection (a) or (b) with respect to  
12 verifying an employee's eligibility for employment.

13           (d) All of the following penalties shall be in  
14 addition to any other penalties as prescribed by law:

15           (1) Upon the first violation of subsection (a) by  
16 any business entity awarded a contract by the state or any  
17 political subdivision thereof, the business entity shall be  
18 deemed in breach of contract and the state or political  
19 subdivision thereof may terminate the contract and, upon  
20 notice and opportunity to be heard, suspend or debar the  
21 business entity from doing business with the state or  
22 political subdivision thereof for a period of three years.  
23 Upon such termination, the state or political subdivision  
24 thereof shall, in addition to such other remedies as may be  
25 provided by law, withhold from amounts due or recover as  
26 liquidated damages of no less than 10 percent or more than 25

1 percent of the total amount of the contract with the business  
2 entity.

3 (2) Upon a second or subsequent violation of  
4 subsection (a) by any business entity awarded a contract by  
5 the state or any political subdivision thereof, the business  
6 entity shall be deemed in breach of contract and the state or  
7 political subdivision thereof may terminate the contract and,  
8 upon notice and opportunity to be heard, permanently suspend  
9 or debar the business entity from doing business with the  
10 state or political subdivision thereof. Upon such termination,  
11 the state or political subdivision thereof, in addition to  
12 such other remedies as may be provided by law, shall withhold  
13 from amounts due or recover as liquidated damages 25 percent  
14 of the total amount of the contract with the business entity.

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

21 (f) The Secretary of State shall adopt rules to  
22 administer this section.

23 Section 10. (a) It shall be unlawful for an  
24 unauthorized alien to be present in this state.

25 (b) In addition to any violation of federal law, a  
26 person is guilty of willful failure to complete or carry an  
27 alien registration document if the person is in violation of 8

1 U.S.C. § 1304(e) or 8 U.S.C. § 1306(a), and the person is an  
2 alien unlawfully present in the United States.

3 (c) In the enforcement of this section, an alien's  
4 immigration status shall be determined by verification of the  
5 alien's immigration status with the federal government  
6 pursuant to 8 U.S.C. § 1373(c). At no point shall any law  
7 enforcement officer attempt to independently verify the  
8 immigration status of any alien.

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

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

18 (f) Any record that relates to the immigration  
19 status of a person is admissible in any court of this state  
20 without further foundation or testimony from a custodian of  
21 records if the record is certified as authentic by the  
22 government agency that is responsible for maintaining the  
23 record. A verification of an alien's immigration status  
24 received from the federal government pursuant to 8 U.S.C. §  
25 1373(c) shall constitute proof of that alien's status.

1 (g) An unauthorized alien who is in violation of  
2 this section shall be subject to a fine of not more than five  
3 hundred dollars (\$500) and either of the following:

4 (1) A term of imprisonment of not more than 13  
5 months.

6 (2) A choice to be deported to his or her country of  
7 citizenship.

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

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

14 (2) The federal government pursuant to 8 U.S.C. §  
15 1373(c) through the Alabama Department of Homeland Security or  
16 other law enforcement agency of the State of Alabama or  
17 political subdivision thereof using the Criminal Justice  
18 Information System or other system as specified by the Alabama  
19 Department of Homeland Security.

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

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

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

3                   (2) Five times the amount specified in subdivision  
4 (1) if the person was previously subject to an assessment  
5 pursuant to this subsection.

6                   (k) A court shall collect the assessments prescribed  
7 in subsections (g) and (j) and remit 50 percent of the  
8 assessments to the Department of Public Safety and 50 percent  
9 of the assessments to the Alabama Department of Homeland  
10 Security. Both departments shall establish a special account  
11 for the monies for the purpose of enforcement of this act.

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

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

19                   (1) A controlled substance, as defined in Section  
20 20-2-2, Code of Alabama 1975.

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

25                   (3) A deadly weapon or a dangerous instrument as  
26 defined in Section 13A-1-2, Code of Alabama 1975.

1           (4) Property that is used as material support or  
2 resources, as defined in Section 13A-10-151, Code of Alabama  
3 1975, for the purpose of committing or aiding in the  
4 commission of an act of terrorism as prescribed in Sections  
5 13A-10-152 and 13A-10-153, Code of Alabama 1975.

6           (5) Falsified or fraudulent identification  
7 documents.

8           (n) Any record that relates to the immigration  
9 status of a person is admissible in any court without further  
10 foundation or testimony from a custodian of records if the  
11 record is certified as authentic by the government agency that  
12 is responsible for maintaining the record.

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

17           (b) An unauthorized alien who is in violation of  
18 this section shall be subject to a fine of not more than five  
19 hundred dollars (\$500) and either of the following:

20           (1) A term of imprisonment of not more than 13  
21 months.

22           (2) A choice to be deported to his or her country of  
23 citizenship.

24           Section 12. Upon any lawful stop, detention, or  
25 arrest made by a state, county, or city law enforcement  
26 officer of this state in the enforcement of any state law or  
27 ordinance of a city or county of this state, where reasonable



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

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

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

25 (3) A valid, unexpired Alabama nondriver  
26 identification card, with a designation mark that indicates a

1 person's legal presence in the United States and, if  
2 necessary, nonresidence in the State of Alabama.

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

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

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

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

18 (2) Encourage or induce an alien to come to or  
19 reside in this state if the person knows or recklessly  
20 disregards the fact that such coming to, entering, or residing  
21 in this state is or will be in violation of federal law or any  
22 applicable state law.

23 (3) Transport, or attempt to transport, or conspire  
24 to transport in this state an alien in furtherance of the  
25 illegal presence of the alien in the United States, knowingly,  
26 or in reckless disregard of the fact, that the alien has come

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

3 (4) Enter into a rental agreement, as defined by  
4 Section 35-9A-141 of the Code of Alabama 1975, with an alien  
5 if the person knows or recklessly disregards the fact that the  
6 alien has come to, has entered, or remains in the United  
7 States in violation of law.

8 (d) Any person violating the provisions of this  
9 section is guilty of a Class A misdemeanor for each unlawfully  
10 present alien, the illegal presence of which in the United  
11 States and the State of Alabama, he or she is attempting to  
12 facilitate or facilitating. A person in violation of this  
13 section that involves 10 or more aliens who are unlawfully  
14 present in the United States and the State of Alabama is  
15 guilty of a Class C felony.

16 (e) Notwithstanding any other law, a law enforcement  
17 agency may securely transport an alien whom the agency has  
18 received verification is unlawfully present in the United  
19 States and who is in the agency's custody to a federal  
20 facility in this state or to any other point of transfer into  
21 federal custody that is outside the jurisdiction of the law  
22 enforcement agency. A law enforcement agency shall obtain  
23 judicial authorization before securely transporting an alien  
24 who is unlawfully present in the United States to a point of  
25 transfer that is outside this state.

26 (f) Notwithstanding any other law, any person acting  
27 in his or her official capacity as a first responder or

1 protective services provider may move or transport an  
2 unauthorized alien pursuant to state law.

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

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

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

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

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

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

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

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

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

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

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

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

9 a. Cigarettes or tobacco products.

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

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

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

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

26 (f) Any person convicted of dealing in false  
27 identification documents as defined in this section shall be

1 fined five thousand dollars (\$5,000) for every card or  
2 document he or she creates or possesses and be subject to any  
3 and all other state laws that may apply.

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

8 (b) An employer may use E-Verify or accept any of  
9 the following forms of identification to document that a  
10 person is legally present:

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

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

14 (3) A valid, unexpired Alabama nondriver  
15 identification card, with a designation mark that indicates a  
16 person's legal presence in the United States and if necessary  
17 nonresidence in the State of Alabama.

18 (4) A valid tribal enrollment card of other form of  
19 tribal identification.

20 (5) Any valid United States federal, state, or local  
21 government issued identification document if issued by an  
22 entity that requires proof of lawful presence in the United  
23 States before issuance.

24 (c) If the court finds that a business entity  
25 knowingly violated subsection (a), the court shall direct the  
26 applicable state or municipal governing body to suspend the

1 business permit, if such exists, and any applicable licenses  
2 or exemptions of such business entity for 14 days.

3 (d) The suspension of a business license or licenses  
4 under subsection (c) shall terminate one business day after a  
5 legal representative of the business entity submits a signed,  
6 sworn affidavit stating that the business entity is in  
7 compliance with the provisions of this act to the court.

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

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

20 (g) Any business entity subject to a complaint and  
21 subsequent enforcement under this section, or any employee of  
22 such a business entity, may challenge the enforcement of this  
23 section with respect to such entity or employee in the courts  
24 of the State of Alabama.

25 (h) If the court finds that any complaint is  
26 frivolous in nature or finds no probable cause to believe that  
27 there has been a violation, the court shall dismiss the case.

1 For purposes of this subsection, "frivolous" shall mean a  
2 complaint not shown by clear and convincing evidence to be  
3 valid. Any person who submits a frivolous complaint shall be  
4 liable for actual, compensatory, and punitive damages to the  
5 alleged violator for holding the alleged violator before the  
6 public in a false light. If the court finds that a complaint  
7 is frivolous or that there is not probable cause to believe  
8 there has been a violation, the court shall issue a public  
9 report to the complainant and the alleged violator stating  
10 with particularity its reasons for dismissal of the complaint.  
11 Upon such issuance, the complaint and all materials relating  
12 to the complaint shall be a public record.

13 (i) The determination of whether a worker is an  
14 unauthorized alien shall be made by the federal government. A  
15 determination of such status of an individual by the federal  
16 government shall create a rebuttable presumption as to that  
17 individual's status in any judicial proceedings brought under  
18 this section. The court may take judicial notice of any  
19 verification of an individual's status previously provided by  
20 the federal government and may request the federal government  
21 to provide automated or testimonial verification.

22 (j) Compensation, whether in money or in kind or in  
23 services, knowingly provided to any unauthorized alien shall  
24 not be allowed as a business expense deduction from any income  
25 or business taxes of this state.



1 (k) Any business entity which terminates an employee  
2 in accordance with this section shall not be liable for any  
3 claims made against the business entity.

4 (1) If any political subdivision of the State of  
5 Alabama fails to suspend the business permit, if such exists,  
6 as a result of a violation of this section, the political,  
7 subdivision of the State of Alabama shall be deemed to have  
8 violated subsection (a) of Section 6 and shall be subject to  
9 the penalties thereunder.

10 Section 16. (a) Beginning January 1, 2012, an  
11 employer that enters into a contract with another employer for  
12 the performance of services within this state shall verify the  
13 work eligibility status of all employees of the employer to  
14 the employer with which the contract is made pursuant to  
15 Section 15.

16 (b) (1) Beginning January 1, 2012, an employer  
17 charged with a violation of this section shall be subject to a  
18 civil penalty of five hundred dollars (\$500) for each person  
19 employed that the employer does not have a file containing  
20 proof that an employee is legally present, as defined by this  
21 act.

22 (2) For a second charge, the employer shall be fined  
23 five thousand dollars (\$5,000) for each person employed that  
24 the employer does not have a file containing proof that an  
25 employee is legally present, as defined by this act.

26 (3) For a third charge, the employer shall be fined  
27 five thousand dollars (\$5,000) for each person employed that

1 the employer does not have a file containing proof that an  
2 employee is legally present, as defined by this act and shall  
3 have its business license revoked for one year.

4 (c) The civil penalties imposed in subsection (b)  
5 shall be distributed 75 percent to the local law enforcement  
6 authorities in the area where the violation occurred and 25  
7 percent to state law enforcement.

8 Section 17. (a) If an employer contracting for the  
9 performance of services in this state with another employer  
10 fails to provide to the employer the documentation required by  
11 Section 16, the employer with which the contract is made shall  
12 withhold state income tax at the top marginal income tax rate  
13 as provided by Alabama law as applied to compensation paid to  
14 an individual for the performance of services within this  
15 state which exceeds the minimum amount of compensation the  
16 employer is required to report as income on United States  
17 Internal Revenue Service Form 1099.

18 (b) Any employer who fails to comply with the  
19 withholding requirements of this section shall be liable for  
20 the taxes required to have been withheld and a penalty equal  
21 to five times the taxes that should have been withheld unless  
22 the employer is exempt from federal withholding with respect  
23 to the individual pursuant to a properly filed Internal  
24 Revenue Service Form 8233 or its equivalent.

25 (c) Nothing in this section is intended to create,  
26 or should be construed as creating, an employer-employee  
27 relationship between two employers.

1           Section 18. On or after January 1, 2012, no wage or  
2 remuneration for the performance of services paid to an  
3 individual shall be allowed as a deductible business expense  
4 for state income tax purposes by a taxpayer if the individual  
5 is an unauthorized alien. This subsection shall apply whether  
6 or not an Internal Revenue Service Form 1099 is issued in  
7 conjunction with the wages or remuneration.

8           Section 19. It shall be a discriminatory practice  
9 for an employer to fail to hire a legally present job  
10 applicant or discharge an employee working in Alabama who is a  
11 United States citizen or permanent resident alien while  
12 retaining an employee who the employer knows, or reasonably  
13 should have known, is an unauthorized alien hired after  
14 January 1, 2012, and who is working in Alabama in a job  
15 category that requires equal skill, effort, and  
16 responsibility, and which is performed under similar working  
17 conditions, as defined in 29 U.S.C. § 206(d)(1), as the job  
18 category held by the discharged employee.

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

21           "§32-6-9.

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

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

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

9 "(c) The person shall have his or her citizenship  
10 status verified and shall be held pursuant of the act adding  
11 this subsection if his or her lawful presence cannot be  
12 established."

13 Section 21. (a) When a person charged with a crime  
14 for which bail is required, or is confined for any period in a  
15 county or municipal jail, a reasonable effort shall be made to  
16 determine the citizenship status of the person.

17 (b) If the person is a foreign national, the jailor  
18 or other officer having custody of the person shall make a  
19 reasonable effort to verify that the person has been lawfully  
20 admitted to the United States and, if lawfully admitted, that  
21 the lawful status has not expired. If verification of lawful  
22 status cannot be made from documents in the possession of the  
23 person, verification shall be made within 14 days through a  
24 query to the Law Enforcement Support Center of the United  
25 States Department of Homeland Security or other office or  
26 agency designated for that purpose by the United States  
27 Department of Homeland Security. If the lawful immigration

1 status of the person cannot be verified, the jailor or other  
2 officer having custody of the person shall notify the United  
3 States Department of Homeland Security and the person shall be  
4 considered a flight risk and shall be detained until  
5 prosecution or until handed over to federal authorities for  
6 deportation.

7 Section 22. If an alien who is unlawfully present in  
8 the United States is convicted of a violation of state or  
9 local law, on discharge from imprisonment or assessment of any  
10 fine that is imposed, the United States Bureau of Immigration  
11 and Customs Enforcement shall be immediately notified.

12 Section 23. (a) The Alabama Department of Homeland  
13 Security is authorized to hire, appoint, and maintain APOST  
14 certified state police officers to assist with the  
15 implementation and enforcement of this act including, but not  
16 limited to, investigations, spot checks, and arresting  
17 authority in order to fulfill the mission of the Alabama  
18 Department of Homeland Security. Such officers shall have the  
19 same powers and authority and receive the same benefits as  
20 those prescribed to officers employed by the Department of  
21 Public Safety.

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

26 Section 24. The Attorney General shall file a  
27 quarterly report to the Legislature on the progress being made

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

12 Section 25. Nothing in this act is in any way meant  
13 to implement, authorize, or establish the Real ID Act of 2005  
14 (P.L. 109-13, Division D; 119 Stat. 302).

15 Section 26. Although this bill would have as its  
16 purpose or effect the requirement of a new or increased  
17 expenditure of local funds, the bill is excluded from further  
18 requirements and application under Amendment 621, now  
19 appearing as Section 111.05 of the Official Recompilation of  
20 the Constitution of Alabama of 1901, as amended, because the  
21 bill defines a new crime or amends the definition of an  
22 existing crime.

23 Section 27. The provisions of this act are  
24 severable. If any part of this act is declared invalid or  
25 unconstitutional, that declaration shall not affect the part  
26 which remains.

1                   Section 28. This act shall become effective 120 days  
2 following its passage and approval by the Governor, or its  
3 otherwise becoming law.