SB137

95420-4

By Senator Beason

RFD: Governmental Affairs

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SYNOPSIS: This bill would relate to illegal immigration and would: Make it a crime for a person to transport, conceal, harbor, or in any way protect an illegal alien from detection from state or federal authorities; regulate the creation of identification cards and define who may issue the cards, who may be issued the cards, and any exemptions; require that a reasonable effort be made to determine the citizenship status of a person charged with a felony or driving under the influence; create a new form of identification called the Alabama verified employee identification card; require employers to verify the proof of legal status of an employee through one of three ways and provide penalties for violating this requirement; make it a discriminatory practice for an employer to discharge an employee working in this state who is a United States citizen or permanent resident alien while retaining an employee who the employer knows or reasonably

should have known is an unauthorized alien and who is working in a job category requiring equal skill, effort, and responsibility, and which is performed under similar working conditions as the job category held by the discharged employee; require all agencies or political subdivisions to verify the citizenship status of all 14-year-old persons or older who apply for state or federal benefits; require all employers contracting with other employers to provide to the employer with which the contract is made proof of its employees' employment authorization; authorize the Attorney General to draft and sign a Memorandum of Understanding between the State of Alabama and the United States Department of Justice or United States Department of Homeland Security concerning the enforcement of federal immigration and customs laws, detentions, removals, and investigations that take place within the state; restrict the eligibility requirements for scholarships, financial aid, and resident tuition to lawfully present aliens and United States citizens; establish a Fraudulent Documents Identification Unit, subject to the availability of funding, to investigate and apprehend persons or entities that participate in the sale or distribution of fraudulent documents used for identification purposes; provide for a fine on any

person caught creating or possessing a falsified Alabama verified employee identification card; require a law officer to transport a person to the nearest magistrate if the law officer arrests the person for driving without a license and the law officer cannot verify the person has a valid driver's license; require the verification of legal status of every person charged with a crime for which bail is required; and deny bond of any person whose lawful immigration status cannot be verified.

This bill also provides penalties for violating the provisions of this act.

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, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local

funds within the meaning of the amendment. If this bill is not enacted by a 2/3 vote, it will not become effective with regard to a local entity unless approved by the local entity or until, and only as long as, the Legislature appropriates funds or provides for a local source of revenue.

A BILL

TO BE ENTITLED

AN ACT

Relating to illegal immigration; to make it a crime for a person to transport, conceal, harbor, or in any way protect an illegal alien from detection from state or federal authorities; to regulate the creation of identification cards and define who may issue the cards, who may be issued the cards, and any exemptions; to require that a reasonable effort be made to determine the citizenship status of a person charged with a felony or driving under the influence; to create a new form of identification called the Alabama verified employee identification card; to require employers to verify the legal status of employees in one of three ways and to provide penalties for violating this requirement; to make it a discriminatory practice for an employer to discharge, in certain circumstances, an employee who is a United States citizen or permanent resident alien while retaining an employee who the employer knows or reasonably should have

known is an unauthorized alien; to require all agencies or political subdivisions to verify the citizenship status of all 14-year-old persons or older who apply for state or federal benefits; to require all employers contracting with other employers to provide to the employer with which the contract is made proof of its employees' employment authorization; to authorize the Attorney General to negotiate terms of a Memorandum of Understanding with the federal government; to restrict resident tuition, financial aid, and scholarship opportunities to lawfully present aliens and United States citizens; to establish a Fraudulent Documents Identification Unit, subject to the availability of funding, to investigate and apprehend persons or entities that participate in the sale or distribution of fraudulent documents used for identification purposes; to provide for a fine on any person caught creating or possessing a falsified Alabama verified employee identification card; to amend Section 32-6-9, Code of Alabama 1975, relating to driver's licenses, to require a law officer to transport a person to the nearest magistrate if the law officer arrests the person for driving without a license and the law officer cannot verify the person has a valid driver's license; to require the verification of legal status of every person charged with a crime for which bail is required; to deny bond of any person whose lawful immigration status cannot be verified; 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. This act shall be known and may be cited as the Alabama Taxpayer and Citizen Protection Act of 2008.

Section 2. The State of Alabama finds that illegal immigration is causing economic hardship and lawlessness in this state and that illegal immigration is encouraged when public agencies within this state provide public benefits without verifying immigration status. The State of Alabama further finds that when illegal immigrants have been harbored and sheltered in this state and encouraged to reside in this state through the issuance of identification cards that are issued without verifying immigration status, these practices impede and obstruct the enforcement of federal immigration law, undermine the security of our borders, and impermissibly restrict the privileges and immunities of the citizens of Alabama. Therefore, the people of the State of Alabama declare that it is a compelling public interest of this state to discourage illegal immigration by requiring all agencies within this state to fully cooperate with federal immigration authorities in the enforcement of federal immigration laws. The State of Alabama also finds that other measures are necessary to ensure the integrity of various governmental programs and services.

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

(1) EMPLOYER. Any person, firm, corporation, partnership, joint stock association, agent, manager, representative, foreman, or other person having control or custody of any employment, place of employment, or of any employee.

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

(3) UNAUTHORIZED ALIEN. An alien as defined in 8 U.S.C. Section 1324a(h)(3).

Section 4. (a) It shall be unlawful for any person to transport, move, or attempt to transport in this state any alien in furtherance of the illegal presence of the alien in the United States, knowing, or in reckless disregard of the fact, that the alien has come to, entered, or remained in the United States in violation of law.

(b) It shall be unlawful for any person to conceal, harbor, or shelter from detection any alien in any place within this state, including any building or means of transportation, knowing, or in reckless disregard of the fact, that the alien has come to, entered, or remained in the United States in violation of law.

(c) Nothing in this section shall be construed so as to prohibit or restrict the provision of any state or local public benefit described in 8 U.S.C. Section 1621(b), or

regulated public health services provided by a private charity using private funds.

(d) Any person violating the provisions of subsection (a) or (b) shall, upon conviction, be guilty of a Class C felony.

Section 5. (a) Any of the following entities may create, publish, or otherwise manufacture an identification document, identification card, or identification certificate and may possess an engraved plate or other device for the printing of the identification provided the name of the issuing entity is clearly printed upon the face of any identification:

(1) Businesses, companies, corporations, service organizations, and federal, state, and local governmental agencies for employee identification which is designed to identify the bearer as an employee.

(2) Businesses, companies, corporations, and service organizations for customer identification which is designed to identify the bearer as a customer or member.

(3) Federal, state, and local government agencies for purposes authorized or required by law, or any legitimate purpose consistent with the duties of the agency, including, but not limited to, voter identification cards, driver's licenses, nondriver identification cards, passports, birth certificates, and Social Security cards.

(4) Any public school or state or private educational institution to identify the bearer as an administrator, faculty member, student, or employee.

(5) Any professional organization or labor union to identify the bearer as a member of the professional organization or labor union.

(6) Businesses, companies, or corporations which manufacture medical-alert identification for the wearer thereof.

(b) All identification documents as provided for in subdivision (3) or (4) of subsection (a) shall be issued only to United States citizens, nationals, and legal permanent resident aliens.

(c) The provisions of subsection (b) shall not apply when an applicant presents, in person, valid documentary evidence of any of the following:

(1) A valid, unexpired immigrant or nonimmigrant visa status for admission into the United States.

(2) A pending or approved application for asylum in the United States.

(3) Admission into the United States in refugee status.

(4) A pending or approved application for temporary protected status in the United States.

(5) Approved deferred action status.

(6) A pending application for adjustment of status to legal permanent resident status or conditional resident status.

(d) Upon approval, the applicant may be issued an identification document provided for in subdivision (3) or (4) of subsection (a). The identification document shall be valid only during the period of time of the authorized stay of the applicant in the United States, or if there is not a definite end to the period of authorized stay, a period of one year. Any identification document issued pursuant to this subsection shall clearly indicate that it is temporary and shall state the date that the identification document expires. The identification document may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the identification document has been extended by the United States Citizenship and Immigration Services or other authorized agency of the United States Department of Homeland Security.

(e) The provisions of subsection (b) shall not apply to an identification document described in subdivision (4) of subsection (a) that is only valid for use on the campus or facility of that educational institution and includes a statement of that restricted validity clearly and conspicuously printed upon the face of the identification document.

(f) Any driver's license issued to a person who is not a United States citizen, national, or legal permanent

resident alien for which an application has been made for renewal, duplication, or reissuance shall be presumed to have been issued in accordance with the provisions of subsection (c) provided that, at the time the application is made, the driver's license has not expired, been cancelled, suspended, or revoked. The requirements of subsection (c) shall apply to a renewal, duplication, or reissuance if the Department of Public Safety is notified by a local, state, or federal government agency of information in the possession of the agency indicating a reasonable suspicion that the individual seeking renewal, duplication, or reissuance is present in the United States in violation of law. The provisions of this subsection shall not apply to United States citizens, nationals, or legal permanent resident aliens.

Section 6. (a) When a person charged with a felony or with driving under the influence pursuant to Section 32-5A-191, Code of Alabama 1975, is confined, for any period, in the jail of the county, any municipality, or a jail operated by a regional jail authority, a reasonable effort shall be made to determine the citizenship status of the person so confined.

(b) If the prisoner is a foreign national, the keeper of the jail or other officer shall make a reasonable effort to verify that the prisoner has been lawfully admitted to the United States, and if lawfully admitted, that lawful status has not expired. If verification of lawful status cannot be made from documents in the possession of the

prisoner, verification shall be made within 48 hours through a query to the Law Enforcement Support Center of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If the lawful immigration status of the prisoner cannot be verified, the keeper of the jail or other officer shall notify the United States Department of Homeland Security.

(c) For the purpose of determining the grant of or issuance of bond, it shall be a rebuttable presumption that a person whose citizenship status has been verified pursuant to subsection (b) to be a foreign national who has not been lawfully admitted to the United States is at risk of flight.

Section 7. (a)(1) Beginning January 1, 2009, the Department of Public Safety shall begin issuing the Alabama verified employee identification card, with the fee for the card to be set by the Department of Public Safety.

(2) Beginning January 1, 2010, every person employed in this state who is not a legal resident of this state shall have a verified employee identification card for proof of legal status to obtain employment.

(3) To obtain a verified employee identification card, a person shall show documentation from his or her state of residence or from the United States government indicating his or her legal status in the United States.

(b) Every employer shall verify proof of legal status of each of its employees through one of the following

three ways and shall keep a copy of the proof of identification in the file of the employee:

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

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

(3) A valid, unexpired Alabama verified employee identification card.

(c) Beginning January 1, 2010, an employer that enters into a contract with another employer for the performance of services within this state shall verify the work eligibility status of all employees of the employer to the employer with which the contract is made.

(d) It shall be a discriminatory practice for an employer to discharge an employee working in Alabama who is a United States citizen or permanent resident alien while retaining an employee who the employer knows, or reasonably should have known, is an unauthorized alien hired after January 1, 2010, and who is working in Alabama in a job category that requires equal skill, effort, and responsibility, and which is performed under similar working conditions, as defined in 29 U.S.C. Section 206(d)(1), as the job category held by the discharged employee.

(e)(1) Beginning January 1, 2010, an employer charged with a violation of this section shall be subject to a civil penalty of five hundred dollars ($500) for each person employed that the employer does not have a file containing

proof of legal status through one of the three forms of identification in subsection (b).

(2) For a second charge, the employer shall be fined five thousand dollars ($5,000) for each person employed that the employer does not have a file containing proof of legal status through one of the three forms of identification in subsection (b).

(3) For a third charge, the employer shall be fined five thousand dollars ($5,000) for each person employed that the employer does not have a file containing proof of legal status through one of the three forms of identification in subsection (b) and shall have its business license revoked for one year.

(f) The civil penalties imposed in subsection (d) shall be distributed 75 percent to the local law enforcement authorities in the area where the violation occurred and 25 percent to state law enforcement.

Section 8. (a) Except as provided in subsection (c) or where exempted by federal law, every agency or a political subdivision of this state shall verify the lawful presence in the United States of any natural person 14 years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, as defined in 8 U.S.C. Section 1611, that is administered by an agency or a political subdivision of this state.

(b) The provisions of this section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(c) Verification of lawful presence under the provisions of this section shall not be required for any of the following:

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

(2) For assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. Section 1396b(v)(3), of the alien 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 diseases and for testing and treatment of symptoms of communicable diseases whether or not the symptoms are caused by a communicable disease.

(5) For programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United States Attorney General, in the sole and unreviewable discretion of the United States Attorney General after consultation with appropriate federal agencies and departments which:

a. Deliver in-kind services at the community level, including 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.

(d) Verification of lawful presence in the United States by the agency or political subdivision required to make the verification shall require that the applicant execute an affidavit under penalty of perjury that has met either of the following requirements:

(1) He or she is a United States citizen.

(2) He or she is a qualified alien under the federal Immigration and Nationality Act and is lawfully present in the United States. The agency or political subdivision providing the state or local public benefits shall provide notary public services at no cost to the applicant.

(e) For any applicant who has executed the affidavit described in subdivision (2) of subsection (d), eligibility for benefits shall be verified through the Systematic Alien Verification for Entitlements (SAVE) Program operated by the United States Department of Homeland Security or an equivalent program designated by the United States Department of Homeland Security. Until eligibility verification is made, the

affidavit may be presumed to be proof of lawful presence for the purposes of this section.

(f) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to subsection (d) shall be subject to criminal penalties applicable in this state for fraudulently obtaining public assistance program benefits. If the affidavit constitutes a false claim of United States citizenship under 18 U.S.C. Section 911, a complaint shall be filed by the agency requiring the affidavit with the United States Attorney General for the applicable district based upon the venue in which the affidavit was executed.

(g) Agencies or political subdivisions of this state may adopt variations to the requirements of the provisions of this section which demonstrably improve the efficiency or reduce delay in the verification process, or to provide for adjudication of unique individual circumstances where the verification procedures in this section would impose unusual hardship on a legal resident of Alabama.

(h) It shall be unlawful for any agency or a political subdivision of this state to provide any state, local, or federal benefit, as defined in 8 U.S.C. Section 1621, or 8 U.S.C. Section 1611, in violation of this section.

(i) Each state agency or department which administers any program of state or local public benefits shall provide an annual report to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of

Representatives with respect to its compliance with the provisions of this section. Each agency or department shall monitor the Systematic Alien Verification for Entitlements Program for application verification errors and significant delays and shall provide an annual public report on errors and significant delays and recommendations to ensure that the application of the Systematic Alien Verification of Entitlements Program is not erroneously denying benefits to legal residents of this state. Errors shall also be reported to the United States Department of Homeland Security by each agency or department.

Section 9. (a) If an employer, contracting for the performance of services in this state with another employer, fails to provide to the employer the documentation required by Section 7(c) the employer with which the contract is made shall withhold state income tax at the top marginal income tax rate as provided by Alabama law as applied to compensation paid to an individual for the performance of services within this state which exceeds the minimum amount of compensation the employer is required to report as income on United States Internal Revenue Service Form 1099.

(b) Any employer who fails to comply with the withholding requirements of this section shall be liable for the taxes required to have been withheld unless the employer is exempt from federal withholding with respect to the individual pursuant to a properly filed Internal Revenue Service Form 8233 or its equivalent.

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

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

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

(c) No local government, whether acting through its governing body or by an initiative, referendum, or any other process, shall enact any ordinance or policy that limits or prohibits a law enforcement officer, local official, or local government employee from communicating or cooperating with federal officials with regard to the immigration status of any person within this state.

(d) Notwithstanding any other provision of law, no government entity or official within this state may prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the United States Department of Homeland Security, information regarding the citizenship or immigration status, lawful or unlawful, of any individual:

(1) Sending information to or requesting or receiving information from the United States Department of Homeland Security.

(2) Maintaining the information.

(3) Exchanging the information with any other federal, state, or local government entity.

(e) The provisions of this section shall allow for a private right of action by any natural or legal person lawfully domiciled in this state to file for a writ of mandamus to compel any noncooperating local or state governmental agency to comply with the reporting laws.

Section 11. (a) Except as otherwise provided by law, an individual who is not lawfully present in the United States shall not be eligible on the basis of residence within the state for either of the following:

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

(2) Resident tuition.

(b) The provisions of subsection (a) shall not apply to a student enrolled in a degree program at a postsecondary educational institution in this state during the 2007-2008 school year or any prior year who received a resident tuition benefit pursuant to state law.

Section 12. (a) Subject to the availability of funding, the Department of Public Safety shall establish a Fraudulent Documents Identification (FDI) Unit for the primary purpose of investigating and apprehending persons or entities

that participate in the sale or distribution of fraudulent documents used for identification purposes. The unit shall additionally specialize in fraudulent identification documents created and prepared for persons who are unlawfully residing within this state. The department shall employ sufficient employees to investigate and implement the unit.

(b) Any person caught creating or possessing falsified Alabama verified employee identification cards shall be fined five thousand dollars ($5,000) for every card he or she creates or possesses.

Section 13. Section 32-6-9, Code of Alabama 1975, is amended to read as follows:

"§32-6-9.

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

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

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

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

Section 15. 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 16. This act shall become effective on January 1, 2009, following its passage and approval by the Governor, or its otherwise becoming law.