

1 SB260
2 135222-2
3 By Senator Sanford
4 RFD: Job Creation and Economic Development
5 First Read: 08-FEB-12

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8 SYNOPSIS: Under existing law, business entities and
9 employers in this state, as well as business
10 entities and employers receiving state contracts,
11 grants, or incentives, must enroll in the federal
12 E-Verify program to verify the immigration status
13 and eligibility of employees.

14 Under existing law, subcontractors on a
15 project paid for by state contract, grant, or
16 incentive must enroll in the federal E-Verify
17 program to verify the immigration status and
18 eligibility of employees.

19 Also under existing law, an individual
20 conducting a business transaction with the state
21 must demonstrate his or her United States
22 citizenship or that he or she is lawfully present
23 in the United States. A "business transaction" is
24 defined under existing law to include applying for
25 or renewing a motor vehicle license plate, applying
26 for or renewing a driver's license or nondriver

1 identification card, or applying for or renewing a
2 business license.

3 This bill would provide business entities
4 and employers in this state with an option to use
5 federal E-Verify, the ALVerify program developed by
6 the Center for Advanced Public Safety at the
7 University of Alabama, the E-Verify employer agent
8 service established by the Alabama Department of
9 Homeland Security, or a valid Alabama driver's
10 license or identification card to verify the
11 immigration status and eligibility of an employee.

12 This bill would provide subcontractors on a
13 project paid for by state contract, grant, or
14 incentive with an option to use federal E-Verify,
15 the ALVerify program developed by the Center for
16 Advanced Public Safety at the University of
17 Alabama, the E-Verify employer agent service
18 established by the Alabama Department of Homeland
19 Security, or a valid Alabama driver's license or
20 identification card to verify the immigration
21 status and eligibility of an employee.

22 This bill would substitute "license
23 transaction" for "business transaction" and would
24 specify that a license transaction would not
25 include renewing a motor vehicle license plate, a
26 driver's license or nondriver identification card,
27 or a business or other license.

1 This bill would add an unexpired United
2 States military identification card to the list of
3 acceptable documentation to establish eligibility
4 to enter into a business transaction with the state
5 or a political subdivision.

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To amend Sections 9, 15, and 30 of Act 2011-535,
12 2011 Regular Session, now appearing as Sections 31-13-9,
13 31-13-15, and 31-13-29, Code of Alabama 1975, to allow
14 businesses and employers in this state, as well as
15 subcontractors on projects paid for by state contract, grant,
16 or incentive, to use the federal E-Verify program, the
17 ALVerify program developed by the Center for Advanced Public
18 Safety at The University of Alabama, the E-Verify employer
19 agent service established by the Alabama Department of
20 Homeland Security, or a valid Alabama driver's license or
21 identification card to verify the immigration status and
22 eligibility of an employee; to specify that a person renewing
23 a motor vehicle license plate, a driver's license or nondriver
24 identification card, or a business or other license is not
25 required to demonstrate his or her United States citizenship;
26 and to add an unexpired United States military identification
27 card to the list of acceptable documentation in order to be

1 eligible to enter into a business transaction with the state
2 or a political subdivision.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 9, 15, and 30 of Act 2011-535,
5 2011 Regular Session, now appearing as Sections 31-13-9,
6 31-13-15, and 31-13-29, Code of Alabama 1975, are amended to
7 read as follows:

8 "§31-13-9.

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

17 "(b) As a condition for the award of any contract,
18 grant, or incentive by the state, any political subdivision
19 thereof, or any state-funded entity to a business entity or
20 employer that employs one or more employees, the business
21 entity or employer shall provide documentation establishing
22 that the business entity or employer is enrolled in the
23 E-Verify program or attest that the business entity or
24 employer will use the ALVerify system developed by the Center
25 for Advanced Public Safety at the University of Alabama or the
26 E-Verify employer agent service established by the Alabama
27 Department of Homeland Security or will require employees to

1 produce a valid, unexpired Alabama driver's license or
2 nondriver identification card. During the performance of the
3 contract, the business entity or employer shall participate in
4 the E-Verify program and shall verify every employee that is
5 required to be verified according to the applicable federal
6 rules and regulations or shall use ALVerify, the E-Verify
7 employer agent service, or a valid, unexpired Alabama driver's
8 license or nondriver identification card to verify every
9 employee.

10 "(c) (1) No subcontractor on a project paid for by
11 contract, grant, or incentive by the state, any political
12 subdivision thereof, or any state-funded entity shall
13 knowingly employ, hire for employment, or continue to employ
14 an unauthorized alien and shall attest to such by sworn
15 affidavit signed before a notary.

16 "(2) The subcontractor shall ~~also~~ do any one of the
17 following:

18 "a. ~~enroll~~ Enroll in the E-Verify program prior to
19 performing any work on the project and shall attach to the
20 sworn affidavit documentation establishing that the
21 subcontractor is enrolled in the E-Verify program.

22 b. Verify the employment eligibility of employees
23 using the ALVerify system developed by the Center for Advanced
24 Public Safety at the University of Alabama and provide a sworn
25 affidavit attesting that the subcontractor will use ALVerify
26 to verify employment eligibility.

1 c. Verify the employment eligibility of employees
2 using the E-Verify employment agent service established by the
3 Alabama Department of Homeland Security and provide a sworn
4 affidavit attesting that the subcontractor will use the system
5 to verify employment eligibility.

6 "d. Verify the employment eligibility of employees
7 using a valid, unexpired Alabama driver's license or nondriver
8 identification card.

9 "(d) A contractor of any tier shall not be liable
10 under this section when such contractor contracts with its
11 direct subcontractor who violates subsection (c) (1), if the
12 contractor receives a sworn affidavit from the subcontractor
13 signed before a notary attesting to the fact that the direct
14 subcontractor, in good faith, has complied with subsection
15 (c) (2) with respect to verifying each of its employee's
16 eligibility for employment, unless the contractor knows the
17 direct subcontractor is violating subsection (c) (1).

18 "(e) (1) Upon the first violation of subsection (a)
19 by any business entity or employer awarded a contract by the
20 state, any political subdivision thereof, or any state-funded
21 entity the business entity or employer shall be deemed in
22 breach of contract and the state, political subdivision
23 thereof, or state-funded entity may terminate the contract
24 after providing notice and an opportunity to be heard. Upon
25 application by the state entity, political subdivision
26 thereof, or state-funded entity, the Attorney General may
27 bring an action to suspend the business licenses and permits

1 of the business entity or employer for a period not to exceed
2 60 days, according to the procedures described in Section
3 31-13-15. The court shall order the business entity or
4 employer to file a signed, sworn affidavit with the local
5 district attorney within three days after the order is issued
6 by the court stating that the business entity or employer has
7 terminated the employment of every unauthorized alien and the
8 business entity or employer will not knowingly or
9 intentionally employ an unauthorized alien in this state.
10 Before a business license or permit that has been suspended
11 under this subsection is reinstated, a legal representative of
12 the business entity or employer shall submit to the court a
13 signed, sworn affidavit stating that the business entity or
14 employer is in compliance with the provisions of this chapter
15 and a copy of the memorandum of understanding issued to the
16 business entity or employer at the time of enrollment in
17 E-Verify or other documentation demonstrating that the
18 business entity or employer is using the ALVerify system
19 developed by the Center for Advanced Public Safety at the
20 University of Alabama or the E-Verify employment agent service
21 established by the Department of Homeland Security or other
22 documentation demonstrating that the business entity or
23 employer is requiring employees to produce a valid, unexpired
24 Alabama driver's license or nondriver identification card.

25 "(2) Upon a second or subsequent violation of
26 subsection (a) by any business entity or employer awarded a
27 contract by the state, any political subdivision thereof, or

1 any state-funded entity the business entity or employer shall
2 be deemed in breach of contract and the state, any political
3 subdivision thereof, or any state-funded entity shall
4 terminate the contract after providing notice and an
5 opportunity to be heard. Upon application by the state entity,
6 political subdivision thereof, or state-funded entity, the
7 Attorney General may bring an action to permanently revoke the
8 business licenses and permits of the business entity or
9 employer according to the procedures described in Section
10 31-13-15.

11 "(f) (1) Upon the first violation of subsection
12 (c) (1) by a subcontractor, the state or political subdivision
13 thereof may bar the subcontractor from doing business with the
14 state, any political subdivision thereof, any state-funded
15 entity, or with any contractor who contracts with the state,
16 any political subdivision thereof, or any state-funded entity
17 after providing notice and an opportunity to be heard. Upon
18 application by the state entity or political subdivision
19 thereof, or state-funded entity, the Attorney General may
20 bring an action to suspend the business licenses and permits
21 of the subcontractor for a period not to exceed 60 days,
22 according to the procedures described in Section 31-13-15. The
23 court shall order the subcontractor to file a signed, sworn
24 affidavit with the local district attorney within three days
25 after the order is issued by the court stating that the
26 subcontractor has terminated the employment of every
27 unauthorized alien and the subcontractor will not knowingly or

1 intentionally employ an unauthorized alien in this state.
2 Before a business license or permit that has been suspended
3 under this subsection is reinstated, a legal representative of
4 the subcontractor shall submit to the court a signed, sworn
5 affidavit stating that the subcontractor is in compliance with
6 the provisions of this chapter and a copy of the memorandum of
7 understanding issued to the subcontractor at the time of
8 enrollment in E-Verify or other documentation demonstrating
9 that the subcontractor is using the ALVerify system developed
10 by the Center for Advanced Public Safety at the University of
11 Alabama or the E-Verify employment agent service established
12 by the Department of Homeland Security or other documentation
13 demonstrating that the subcontractor is requiring employees to
14 produce a valid, unexpired Alabama driver's license or
15 nondriver identification card.

16 "(2) Upon a second or subsequent violation of
17 subsection (c) (1) by a subcontractor and upon application by
18 the state entity or political subdivision thereof, or
19 state-funded entity, the Attorney General may bring an action
20 to permanently suspend the business licenses of the business
21 entity or employer according to the procedures described in
22 Section 31-13-15. The determination of a violation shall be
23 according to the procedures described in Section 31-13-15.

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

1 ~~subcontract~~ that complies with subdivision (c)(2) shall not be
2 found to be in violation of subsection (c)(1).

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

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

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

16 "§31-13-15.

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

23 "(b) Effective April 1, 2012, every business entity
24 or employer in this state shall do any one of the following:

25 "(1) enroll ~~enroll~~ Enroll in E-Verify and thereafter,
26 according to the federal statutes and regulations governing

1 E-Verify, ~~shall~~ verify the employment eligibility of the
2 employee through E-Verify.

3 "(2) Verify the employment eligibility of the
4 employee using the ALVerify system developed by the Center for
5 Advanced Public Safety at the University of Alabama.

6 "(3) Verify the employment eligibility of the
7 employee using the E-Verify employment agent service
8 established by the Alabama Department of Homeland Security.

9 "(4) Verify the employment eligibility of the
10 employee using a valid, unexpired Alabama driver's license or
11 nondriver identification card.

12 "(c) A business entity or employer that uses
13 E-Verify, ALVerify, the E-Verify employment agent service
14 established by the department, or a valid, unexpired Alabama
15 driver's license or nondriver identification card to verify
16 the work authorization of an employee shall not be deemed to
17 have violated this section with respect to the employment of
18 that employee.

19 ~~"(c)~~ (d) On a finding of a first violation by a
20 court of competent jurisdiction that a business entity or
21 employer knowingly violated subsection (a), the court shall do
22 all of the following:

23 "(1) Order the business entity or employer to
24 terminate the employment of every unauthorized alien.

25 "(2) Subject the business entity or employer to a
26 three-year probationary period throughout the state. During
27 the probationary period, the business entity or employer shall

1 file quarterly reports with the local district attorney of
2 each new employee who is hired by the business entity or
3 employer in the state.

4 "(3) Order the business entity or employer to file a
5 signed, sworn affidavit with the local district attorney
6 within three days after the order is issued by the court
7 stating that the business entity or employer has terminated
8 the employment of every unauthorized alien and the business
9 entity or employer will not knowingly or intentionally employ
10 an unauthorized alien in this state.

11 "(4) Direct the applicable state, county, or
12 municipal governing bodies to suspend the business licenses
13 and permits, if such exist, of the business entity or employer
14 for a period not to exceed 10 business days specific to the
15 business location where the unauthorized alien performed work.

16 "~~(d) (1)~~ (e) (1) Before a business license or permit
17 that has been suspended under subsection ~~(c)~~ (d) is
18 reinstated, a legal representative of the business entity or
19 employer shall submit to the court a signed, sworn affidavit
20 stating that the business entity or employer is in compliance
21 with the provisions of this chapter and a copy of the
22 memorandum of understanding issued to the business entity or
23 employer at the time of enrollment in E-Verify or other
24 documentation that the business entity or employer is using
25 the ALVerify system developed by the Center for Advanced
26 Public Safety at the University of Alabama or the E-Verify
27 employment agent service established by the Department of

1 Homeland Security or other documentation that the business
2 entity or employer is requiring employees to produce a valid,
3 unexpired Alabama driver's license or nondriver identification
4 card.

5 "(2) The suspension of a business license or permit
6 under subsection ~~(c)~~ (d) shall terminate one business day
7 after a legal representative of the business entity or
8 employer submits a signed, sworn affidavit stating that the
9 business entity or employer is in compliance with the
10 provisions of this chapter to the court.

11 "~~(e)~~ (f) For a second violation of subsection (a) by
12 a business entity or employer, the court shall direct the
13 applicable state, county, or municipal governing body to
14 permanently revoke all business licenses and permits, if such
15 exist, held by the business entity or employer specific to the
16 business location where the unauthorized alien performed work.
17 On receipt of the order, and notwithstanding any other law,
18 the appropriate agencies shall immediately revoke the licenses
19 and permits held by the business entity or employer.

20 "~~(f)~~ (g) For a subsequent violation of subsection
21 (a), the court shall direct the applicable governing bodies to
22 forever suspend the business licenses and permits, if such
23 exist, of the business entity or employer throughout the
24 state.

25 "~~(g)~~ (h) This section shall not be construed to deny
26 any procedural mechanisms or legal defenses included in the
27 E-Verify program or any other federal work authorization

1 program. A person or entity that establishes that it has
2 complied in good faith with the requirements of 8 U.S.C. §
3 1324a(b) establishes an affirmative defense that the business
4 entity or employer did not knowingly hire or employ an
5 unauthorized alien.

6 "~~(h)~~ (i) In proceedings of the court, the
7 determination of whether an employee is an unauthorized alien
8 shall be made by the federal government, pursuant to 8 U.S.C.
9 § 1373(c). The court shall consider only the federal
10 government's determination when deciding whether an employee
11 is an unauthorized alien. The court may take judicial notice
12 of any verification of an individual's immigration status
13 previously provided by the federal government and may request
14 the federal government to provide further automated or
15 testimonial verification.

16 "~~(i)~~ (j) Any business entity or employer that
17 terminates an employee to comply with this section shall not
18 be liable for any claims made against the business entity or
19 employer by the terminated employee, provided that such
20 termination is made without regard to the race, ethnicity, or
21 national origin of the employee and that such termination is
22 consistent with the anti-discrimination laws of this state and
23 of the United States.

24 "~~(j)~~ (k) If any agency of the state or any political
25 subdivision thereof fails to suspend the business licenses or
26 permits, if such exist, as a result of a violation of this
27 section, the agency shall be deemed to have violated

1 subsection (a) of Section 31-13-5 and shall be subject to the
2 penalties thereunder.

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

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

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

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

23 "~~(l)~~ (m) This section does not apply to the
24 relationship between a party and the employees of an
25 independent contractor performing work for the party and does
26 not apply to casual domestic labor performed within a
27 household.

1 "~~(m)~~ (n) It is an affirmative defense to a violation
2 of subsection (a) of this section that a business entity or
3 employer was entrapped.

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

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

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

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

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

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

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

4 "§31-13-29.

5 "(a) For the purposes of this section, the following
6 words shall have the following meanings:

7 "(1) INDIVIDUAL. A single human being. The term does
8 not include a firm, association of individuals, corporation,
9 partnership, joint venture, sole proprietorship, or any other
10 entity.

11 "(2) ~~business transaction~~ LICENSE TRANSACTION.
12 ~~includes any~~ Any transaction between ~~a person~~ an individual
13 and the state or a political subdivision of the state, ~~in~~
14 which the state or political subdivision issues a license to
15 the individual. ~~including, but not limited to, applying~~ The
16 term includes an initial application submitted on or after the
17 effective date of the act adding this clause for ~~or renewing~~ a
18 motor vehicle license plate, ~~applying~~ an initial application
19 submitted on or after the effective date of the act adding
20 this clause for ~~or renewing~~ a driver's license or nondriver
21 identification card, or ~~applying~~ an initial application
22 submitted on or after the effective date of the act adding
23 this clause for ~~or renewing~~ a business or other license.
24 Business License transaction does not include applying for a
25 marriage license or the renewal of a motor vehicle license
26 plate, driver's license or nondriver identification card, or
27 business or other license.

1 "(b) An alien not lawfully present in the United
2 States shall not enter into or attempt to enter into a
3 ~~business~~ license transaction with the state or a political
4 subdivision of the state and no ~~person~~ individual shall enter
5 into a ~~business~~ license transaction or attempt to enter into a
6 ~~business~~ license transaction on behalf of an alien not
7 lawfully present in the United States.

8 "(c) Any ~~person~~ individual entering into a ~~business~~
9 license transaction or attempting to enter into a ~~business~~
10 license transaction with this state or a political subdivision
11 of this state shall be required to demonstrate his or her
12 United States citizenship, or if he or she is an alien, his or
13 her lawful presence in the United States to the person
14 conducting the ~~business~~ license transaction on behalf of this
15 state or a political subdivision of this state. United States
16 citizenship shall be demonstrated by presentation of one of
17 the documents listed in subsection (k) of Section 31-13-28. An
18 alien's lawful presence in the United States shall be
19 demonstrated by this state's or a political subdivision of
20 this state's verification of the alien's lawful presence
21 through the Systematic Alien Verification for Entitlements
22 program operated by the Department of Homeland Security, or by
23 other verification with the Department of Homeland Security
24 pursuant to 8 U.S.C. § 1373(c). In lieu of providing a
25 document listed in subdivision (k) of Section 31-13-28,
26 verification through the Systematic Alien Verification for
27 Entitlements program, or other verification by the Department

1 of Homeland Security pursuant to 8 U.S.C. § 1373(c), an
2 individual may demonstrate eligibility to enter into a license
3 transaction with this state or a political subdivision of this
4 state by presenting an unexpired United States military ID
5 card for active duty, reserve, or retired personnel with
6 identifiable photo to the person conducting the license
7 transaction on behalf of this state or a political subdivision
8 of this state.

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

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

16 "(f) ~~In~~ Except as otherwise provided in this
17 section, in the enforcement of this section, an alien's
18 immigration status shall be determined by verification of the
19 alien's immigration status with the federal government
20 pursuant to 8 U.S.C. § 1373(c). An official of this state or
21 political subdivision of this state shall not attempt to
22 independently make a final determination of whether an alien
23 is lawfully present in the United States."

24 Section 2. This act shall become effective on the
25 first day of the third month following its passage and
26 approval by the Governor, or its otherwise becoming law.