

1 HB226
2 135232-1
3 By Representative Hubbard (J)
4 RFD: Public Safety and Homeland Security
5 First Read: 08-FEB-12

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8 SYNOPSIS: This bill would make revisions to the
9 Beason-Hammon Alabama Taxpayer and Citizen
10 Protection Act, the comprehensive immigration law
11 passed during the 2011 Regular Session and signed
12 by the Governor on June 9, 2011.

13 This bill would clarify the provision
14 barring aliens who are unlawfully present from
15 attending a public postsecondary institution.

16 This bill would repeal the provisions making
17 the rental of a dwelling to an alien who is
18 unlawfully present criminal harboring, create an
19 exemption for certain religious activities from the
20 criminal harboring and transporting provisions,
21 repeal the provision making it a crime to encourage
22 or induce an alien to reside in this state, repeal
23 the provisions making it a crime to conspire to
24 transport an unauthorized alien, and require the
25 harboring provision to be interpreted in the same
26 manner that federal courts interpret the parallel
27 harboring provision.

1 This bill would allow an alien who is
2 unlawfully present to make bail if detained after a
3 stop for failure to demonstrate lawful presence or
4 citizenship.

5 This bill would provide business entities
6 and employers in this state with an option to use
7 federal E-Verify or a valid Alabama driver's
8 license or identification card to verify the
9 immigration status and eligibility of an employee.

10 This bill would also provide subcontractors
11 on a project paid for by state contract, grant, or
12 incentive with an option to use federal E-Verify or
13 a valid Alabama driver's license or identification
14 card to verify the immigration status and
15 eligibility of an employee.

16 This bill would clarify that the provision
17 governing the transfer of aliens who are unlawfully
18 present to federal custody only applies to
19 unauthorized aliens already in custody.

20 This bill would specify that the provision
21 barring the state from contracting with aliens who
22 are unlawfully present applies prospectively to
23 contracts entered into after the effective date of
24 the provision.

25 This bill would repeal the provisions
26 relating to voter eligibility requirements and
27 require the Secretary of State's office to educate

1 and provide information to the district attorneys
2 regarding state and federal laws and requirements,
3 including criminal penalties, associated with
4 attempts to register to vote by noncitizens.

5 This bill would require district attorneys
6 to notify the Secretary of State of prosecutions
7 brought against noncitizens who attempt to register
8 to vote and would require the Secretary of State to
9 compile an annual report regarding issues related
10 to this issue, including the information provided
11 by the district attorneys.

12 This bill would clarify which "business
13 transactions" unlawfully present aliens are
14 prohibited from entering into with the state or a
15 political subdivision of the state.

16 This bill also would repeal sections of the
17 act relating to authorization of private lawsuits
18 against public officials to compel enforcement of
19 immigration laws, failure to complete or carry
20 alien registration documents, and alien public
21 education enrollment data.

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
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20 To amend Sections 8, 9, 13, 15, 19, 20, 27, 29, and
21 30 of Act 2011-535, 2011 Regular Session, now appearing as
22 Sections 31-13-8, 31-13-9, 31-13-13, 31-13-15, 31-13-18,
23 31-13-19, 31-13-26, 31-13-28, and 31-13-29, Code of Alabama
24 1975, and Section 32-6-9, Code of Alabama 1975, to: clarify
25 the provision prohibiting illegal aliens from attending a
26 public postsecondary institution; to repeal the provisions
27 making the rental of a dwelling to an illegal alien criminal

1 harboring; exempt certain religious activities from the
2 criminal harboring and transporting provisions; allow
3 businesses and employers in this state, as well as
4 subcontractors on projects paid for by state contract, grant,
5 or incentive, to use the federal E-Verify program or a valid
6 Alabama driver's license or identification card to verify the
7 immigration status and eligibility of an employee; repeal the
8 provisions making it a crime to encourage or induce an alien
9 to reside in this state; repeal the provisions making it a
10 crime to conspire to transport an unauthorized alien; require
11 the harboring provisions to be interpreted in the same manner
12 that federal courts interpret parallel harboring provision;
13 allow an unlawfully present alien to make bail if detained
14 after a stop for failure to demonstrate lawful presence or
15 citizenship; clarify that the provision governing the transfer
16 of unlawfully present aliens to federal custody applies only
17 to unauthorized aliens already in custody; specify that the
18 provision barring the state from contracting with unauthorized
19 aliens applies prospectively to contracts entered into after
20 the effective date of the provision; delete provisions
21 relating to voter eligibility requirements; require the
22 Secretary of State's office to educate and provide information
23 to the district attorneys regarding attempts to vote by
24 noncitizens; require district attorneys to notify the
25 Secretary of State of prosecutions brought against noncitizens
26 who attempt to register to vote; require the Secretary of
27 State to report to the Legislature regarding voting and

1 immigration issues; modify the definition of "business
2 transaction"; and repeal Sections 5 and 6, relating to the
3 authorization of private lawsuits against public officials to
4 compel enforcement of immigration laws, 10, relating to
5 failure to complete or carry alien registration documents, and
6 28, relating to alien public education enrollment data, of Act
7 2011-535, 2011 Regular Session, now appearing as Sections
8 31-13-5, 31-13-6, 31-13-10, and 31-13-27, Code of Alabama
9 1975; and in connection therewith would have as its purpose or
10 effect the requirement of a new or increased expenditure of
11 local funds within the meaning of Amendment 621 of the
12 Constitution of Alabama of 1901, now appearing as Section
13 111.05 of the Official Recompilation of the Constitution of
14 Alabama of 1901, as amended.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 8, 9, 13, and 15 of Act
17 2011-535, 2011 Regular Session, now appearing as Sections
18 31-13-8, 31-13-9, 31-13-13, and 31-13-15, Code of Alabama
19 1975, are amended to read as follows:

20 "§31-13-8.

21 "An alien who is not lawfully present in the United
22 States shall not be permitted to enroll in or attend any
23 public postsecondary education institution in this state. ~~An~~
24 ~~alien attending any public postsecondary institution in this~~
25 ~~state must either possess lawful permanent residence or an~~
26 ~~appropriate nonimmigrant visa under 8 U.S.C. § 1101, et seq.~~
27 For the purposes of this section, a public postsecondary

1 education institution officer may seek federal verification of
2 an alien's immigration status with the federal government
3 pursuant to 8 U.S.C. § 1373(c). A public postsecondary
4 education institution officer or official shall not attempt to
5 independently make a final determination of whether an alien
6 is lawfully present in the United States. Except as otherwise
7 provided by law, an alien who is not lawfully present in the
8 United States shall not be eligible for any postsecondary
9 education benefit, including, but not limited to,
10 scholarships, grants, or financial aid.

11 "§31-13-9.

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

20 "(b) As a condition for the award of any contract,
21 grant, or incentive by the state, any political subdivision
22 thereof, or any state-funded entity to a business entity or
23 employer that employs one or more employees, the business
24 entity or employer shall provide documentation establishing
25 that the business entity or employer is enrolled in the
26 E-Verify program or will require employees to produce a valid,
27 unexpired Alabama driver's license or nondriver identification

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

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

14 "(2) The subcontractor shall ~~also~~ do either of the
15 following with respect to each employee:

16 "a. enroll Enroll ~~in the E-Verify program prior to~~
17 ~~performing any work on the project and shall attach to the~~
18 ~~sworn affidavit documentation establishing that the~~
19 ~~subcontractor is enrolled in the E-Verify program and~~
20 thereafter, according to the federal statutes and regulations
21 governing E-Verify, verify the employment eligibility of the
22 employee through E-Verify.

23 "b. Verify the employment eligibility of employees
24 using a valid, unexpired Alabama driver's license or nondriver
25 identification card.

26 "(d) A contractor of any tier shall not be liable
27 under this section when such contractor contracts with its

1 direct subcontractor who violates subsection (c)(1), if the
2 contractor receives a sworn affidavit from the subcontractor
3 signed before a notary attesting to the fact that the direct
4 subcontractor, in good faith, has complied with subsection
5 (c)(2) with respect to verifying each of its employee's
6 eligibility for employment, unless the contractor knows the
7 direct subcontractor is violating subsection (c)(1).

8 "(e) (1) Upon the first violation of subsection (a)
9 by any business entity or employer awarded a contract by the
10 state, any political subdivision thereof, or any state-funded
11 entity the business entity or employer shall be deemed in
12 breach of contract and the state, political subdivision
13 thereof, or state-funded entity may terminate the contract
14 after providing notice and an opportunity to be heard. Upon
15 application by the state entity, political subdivision
16 thereof, or state-funded entity, the Attorney General may
17 bring an action to suspend the business licenses and permits
18 of the business entity or employer for a period not to exceed
19 60 days, according to the procedures described in Section
20 31-13-15. The court shall order the business entity or
21 employer to file a signed, sworn affidavit with the local
22 district attorney within three days after the order is issued
23 by the court stating that the business entity or employer has
24 terminated the employment of every unauthorized alien and the
25 business entity or employer will not knowingly or
26 intentionally employ an unauthorized alien in this state.
27 Before a business license or permit that has been suspended

1 under this subsection is reinstated, a legal representative of
2 the business entity or employer shall submit to the court a
3 signed, sworn affidavit stating that the business entity or
4 employer is in compliance with the provisions of this chapter
5 and a copy of the memorandum of understanding issued to the
6 business entity or employer at the time of enrollment in
7 E-Verify or other documentation demonstrating that the
8 business entity or employer is requiring employees to produce
9 a valid, unexpired Alabama driver's license or nondriver
10 identification card.

11 "(2) Upon a second or subsequent violation of
12 subsection (a) by any business entity or employer awarded a
13 contract by the state, any political subdivision thereof, or
14 any state-funded entity the business entity or employer shall
15 be deemed in breach of contract and the state, any political
16 subdivision thereof, or any state-funded entity shall
17 terminate the contract after providing notice and an
18 opportunity to be heard. Upon application by the state entity,
19 political subdivision thereof, or state-funded entity, the
20 Attorney General may bring an action to permanently revoke the
21 business licenses and permits of the business entity or
22 employer according to the procedures described in Section
23 31-13-15.

24 "(f) (1) Upon the first violation of subsection
25 (c) (1) by a subcontractor, the state or political subdivision
26 thereof may bar the subcontractor from doing business with the
27 state, any political subdivision thereof, any state-funded

1 entity, or with any contractor who contracts with the state,
2 any political subdivision thereof, or any state-funded entity
3 after providing notice and an opportunity to be heard. Upon
4 application by the state entity or political subdivision
5 thereof, or state-funded entity, the Attorney General may
6 bring an action to suspend the business licenses and permits
7 of the subcontractor for a period not to exceed 60 days,
8 according to the procedures described in Section 31-13-15. The
9 court shall order the subcontractor to file a signed, sworn
10 affidavit with the local district attorney within three days
11 after the order is issued by the court stating that the
12 subcontractor has terminated the employment of every
13 unauthorized alien and the subcontractor will not knowingly or
14 intentionally employ an unauthorized alien in this state.
15 Before a business license or permit that has been suspended
16 under this subsection is reinstated, a legal representative of
17 the subcontractor shall submit to the court a signed, sworn
18 affidavit stating that the subcontractor is in compliance with
19 the provisions of this chapter and a copy of the memorandum of
20 understanding issued to the subcontractor at the time of
21 enrollment in E-Verify or other documentation demonstrating
22 that the subcontractor is requiring employees to produce a
23 valid, unexpired Alabama driver's license or nondriver
24 identification card.

25 "(2) Upon a second or subsequent violation of
26 subsection (c) (1) by a subcontractor and upon application by
27 the state entity or political subdivision thereof, or

1 state-funded entity, the Attorney General may bring an action
2 to permanently suspend the business licenses of the business
3 entity or employer according to the procedures described in
4 Section 31-13-15. The determination of a violation shall be
5 according to the procedures described in Section 31-13-15.

6 "(g) A business entity or employer that complies
7 with subsection (b) shall not be found to be in violation of
8 subsection (a). A subcontractor ~~that is enrolled in the~~
9 ~~E-Verify program during the full period of performance of the~~
10 ~~subcontract~~ that complies with subdivision (c) (2) shall not be
11 found to be in violation of subsection (c) (1).

12 "(h) The Secretary of State shall adopt rules to
13 administer this section and shall report any rules adopted to
14 the Legislature.

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

19 "(j) The suspension of a business license or permit
20 under subsection (e) (1) and (f) (1) shall terminate one
21 business day after a legal representative of the business
22 entity, employer, or subcontractor submits a signed, sworn
23 affidavit stating that the business entity, employer, or
24 subcontractor is in compliance with this chapter to the court.

25 "§31-13-13.

26 "(a) It shall be unlawful for a person to do any of
27 the following:

1 "(1) Conceal, harbor, or shield or attempt to
2 conceal, harbor, or shield or conspire to conceal, harbor, or
3 shield an alien from detection in any place in this state,
4 including any building or any means of transportation, if the
5 person knows or recklessly disregards the fact that the alien
6 has come to, has entered, or remains in the United States in
7 violation of federal law.

8 "~~(2) Encourage or induce an alien to come to or~~
9 ~~reside in this state if the person knows or recklessly~~
10 ~~disregards the fact that such coming to, entering, or residing~~
11 ~~in the United States is or will be in violation of federal~~
12 ~~law.~~

13 "~~(3)~~ (2) Transport, or attempt to transport, or
14 conspire to transport in this state an alien in furtherance of
15 the unlawful presence of the alien in the United States,
16 knowingly, or in reckless disregard of the fact, that the
17 alien has come to, entered, or remained in the United States
18 in violation of federal law. ~~Conspiracy to be so transported~~
19 ~~shall be a violation of this subdivision.~~

20 "~~(4) Harbor an alien unlawfully present in the~~
21 ~~United States by entering into a rental agreement, as defined~~
22 ~~by Section 35-9A-141, with an alien to provide accommodations,~~
23 ~~if the person knows or recklessly disregards the fact that the~~
24 ~~alien is unlawfully present in the United States.~~

25 "(b) Any person violating this section is guilty of
26 a Class A misdemeanor for each unlawfully present alien, the
27 illegal presence of which in the United States and the State

1 of Alabama, he or she is facilitating or is attempting to
2 facilitate.

3 "(c) A person violating this section is guilty of a
4 Class C felony when the violation involves 10 or more aliens,
5 the illegal presence of which in the United States and the
6 State of Alabama, he or she is facilitating or is attempting
7 to facilitate.

8 "(d) Notwithstanding any other law, a law
9 enforcement agency may securely transport an alien whom the
10 agency has received verification from the federal government
11 pursuant to 8 U.S.C. § 1373(c) is unlawfully present in the
12 United States and who is in the agency's custody to a state
13 approved facility, to a federal facility in this state, or to
14 any other point of transfer into federal custody that is
15 outside the jurisdiction of the law enforcement agency. A law
16 enforcement agency shall obtain judicial or executive
17 authorization from the Governor before securely transporting
18 an alien who is unlawfully present in the United States to a
19 point of transfer that is outside this state.

20 "(e) Notwithstanding any other law, any person
21 acting in his or her official capacity as a first responder or
22 protective services provider may harbor, shelter, move, or
23 transport an alien unlawfully present in the United States
24 pursuant to state law.

25 "(f) Any conveyance, including any vessel, vehicle,
26 or aircraft, that has been or is being used in the commission
27 of a violation of this section, and the gross proceeds of such

1 a violation, shall be subject to civil forfeiture under the
2 procedures of Section 20-2-93.

3 "(g) 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). A law enforcement officer
7 shall not attempt to independently make a final determination
8 of whether an alien is lawfully present in the United States.

9 "(h) Any record that relates to the immigration
10 status of a person is admissible in any court of this state
11 without further foundation or testimony from a custodian of
12 records if the record is certified as authentic by the federal
13 government agency that is responsible for maintaining the
14 record. A verification of an alien's immigration status
15 received from the federal government pursuant to 8 U.S.C. §
16 1373(c) shall constitute proof of that alien's status. A court
17 of this state shall consider only the federal government's
18 verification in determining whether an alien is lawfully
19 present in the United States.

20 "(i) This section does not apply to a person who
21 encourages or induces an alien to come to or enter the United
22 States for a religious denomination having a bona fide
23 nonprofit, religious organization in the United States, or the
24 agents or officers of such denomination or organization, to
25 encourage, invite, call, allow, or enable an alien who is
26 present in the United States to perform the vocation of a
27 minister or missionary for the denomination or organization in

1 the United States as a volunteer who is not compensated as an
2 employee, notwithstanding the provision of room, board,
3 travel, medical assistance, and other basic living expenses,
4 provided the minister or missionary has been a member of the
5 denomination for at least one year.

6 "(j) This section shall be interpreted in a manner
7 consistent with federal courts' interpretation of 8 U.S.C. §
8 1324."

9 "§31-13-15.

10 "(a) No business entity, employer, or public
11 employer shall knowingly employ, hire for employment, or
12 continue to employ an unauthorized alien to perform work
13 within the State of Alabama. Knowingly employ, hire for
14 employment, or continue to employ an unauthorized alien means
15 the actions described in 8 U.S.C. § 1324a.

16 "(b) Effective April 1, 2012, every business entity
17 or employer in this state shall do either of the following
18 with regard to each employee:

19 "(1) ~~enroll~~ Enroll in E-Verify and thereafter,
20 according to the federal statutes and regulations governing
21 E-Verify, ~~shall~~ verify the employment eligibility of the
22 employee through E-Verify.

23 "(2) Verify the employment eligibility of the
24 employee using a valid, unexpired Alabama driver's license or
25 nondriver identification card.

26 "(c) A business entity or employer that uses
27 E-Verify or a valid, unexpired Alabama driver's license or

1 nondriver identification card to verify the work authorization
2 of an employee shall not be deemed to have violated this
3 section with respect to the employment of that employee.

4 "~~(c)~~(d) On a finding of a first violation by a court
5 of competent jurisdiction that a business entity or employer
6 knowingly violated subsection (a), the court shall do all of
7 the following:

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

10 "(2) Subject the business entity or employer to a
11 three-year probationary period throughout the state. During
12 the probationary period, the business entity or employer shall
13 file quarterly reports with the local district attorney of
14 each new employee who is hired by the business entity or
15 employer in the state.

16 "(3) Order the business entity or employer to file a
17 signed, sworn affidavit with the local district attorney
18 within three days after the order is issued by the court
19 stating that the business entity or employer has terminated
20 the employment of every unauthorized alien and the business
21 entity or employer will not knowingly or intentionally employ
22 an unauthorized alien in this state.

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

1 "~~(d) (1)~~(e) (1) Before a business license or permit
2 that has been suspended under subsection (c) is reinstated, a
3 legal representative of the business entity or employer shall
4 submit to the court a signed, sworn affidavit stating that the
5 business entity or employer is in compliance with the
6 provisions of this chapter and a copy of the memorandum of
7 understanding issued to the business entity or employer at the
8 time of enrollment in E-Verify or other documentation that the
9 business entity or employer is requiring employees to produce
10 a valid, unexpired Alabama driver's license or nondriver
11 identification card.

12 (2) The suspension of a business license or permit
13 under subsection ~~(c)~~ (d) shall terminate one business day
14 after a legal representative of the business entity or
15 employer submits a signed, sworn affidavit stating that the
16 business entity or employer is in compliance with the
17 provisions of this chapter to the court.

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

1 "~~(f)~~ (g) For a subsequent violation of subsection
2 (a), the court shall direct the applicable governing bodies to
3 forever suspend the business licenses and permits, if such
4 exist, of the business entity or employer throughout the
5 state.

6 "~~(g)~~ (h) This section shall not be construed to deny
7 any procedural mechanisms or legal defenses included in the
8 E-Verify program or any other federal work authorization
9 program. A person or entity that establishes that it has
10 complied in good faith with the requirements of 8 U.S.C. §
11 1324a(b) establishes an affirmative defense that the business
12 entity or employer did not knowingly hire or employ an
13 unauthorized alien.

14 "~~(h)~~ (i) In proceedings of the court, the
15 determination of whether an employee is an unauthorized alien
16 shall be made by the federal government, pursuant to 8 U.S.C.
17 § 1373(c). The court shall consider only the federal
18 government's determination when deciding whether an employee
19 is an unauthorized alien. The court may take judicial notice
20 of any verification of an individual's immigration status
21 previously provided by the federal government and may request
22 the federal government to provide further automated or
23 testimonial verification.

24 "~~(i)~~ (j) Any business entity or employer that
25 terminates an employee to comply with this section shall not
26 be liable for any claims made against the business entity or
27 employer by the terminated employee, provided that such

1 termination is made without regard to the race, ethnicity, or
2 national origin of the employee and that such termination is
3 consistent with the anti-discrimination laws of this state and
4 of the United States.

5 "~~(j)~~(k) If any agency of the state or any political
6 subdivision thereof fails to suspend the business licenses or
7 permits, if such exist, as a result of a violation of this
8 section, the agency shall be deemed to have violated
9 subsection (a) of Section 31-13-5 and shall be subject to the
10 penalties thereunder.

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

15 "(1) Any resident of this state may petition the
16 Attorney General to bring an enforcement action against a
17 specific business entity or employer by means of a written,
18 signed petition. A valid petition shall include an allegation
19 that describes the alleged violator or violators, as well as
20 the action constituting the violation, and the date and
21 location where the action occurred.

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

25 "(3) The Attorney General shall respond to any
26 petition under this subsection within 60 days of receiving the
27 petition, either by filing a civil complaint in a court of

1 competent jurisdiction or by informing the petitioner in
2 writing that the Attorney General has determined that filing a
3 civil complaint is not warranted.

4 "~~(1)~~ (m) This section does not apply to the
5 relationship between a party and the employees of an
6 independent contractor performing work for the party and does
7 not apply to casual domestic labor performed within a
8 household.

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

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

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

18 "a. The idea of committing the violation started
19 with law enforcement officers or their agents rather than with
20 the business entity or employer.

21 "b. The law enforcement officers or their agents
22 urged and induced the business entity or employer to commit
23 the violation.

24 "c. The business entity or employer was not already
25 predisposed to commit the violation before the law enforcement
26 officers or their agents urged and induced the employer to
27 commit the violation.

1 "~~(n)~~ (o) In addition to actions taken by the state or
2 political subdivisions thereof, the Attorney General or the
3 district attorney of the relevant county may bring an action
4 to enforce the requirements of this section in any county
5 district court of this state wherein the business entity or
6 employer does business.

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

10 Section 2. Section 17 of Act 2011-535 of the 2011
11 Regular Session, amending Section 32-6-9, Code of Alabama
12 1975, is amended to read as follows:

13 "§32-6-9.

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

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

1 "(c) A reasonable effort shall be made to determine
2 the citizenship of the person and if an alien, whether the
3 alien is lawfully present in the United States by verification
4 with the federal government pursuant to 8 U.S.C. § 1373(c). An
5 officer shall not attempt to independently make a final
6 determination of whether an alien is lawfully present in the
7 United States.

8 "(d) A verification inquiry, pursuant to 8 U.S.C. §
9 1373(c), shall be made within 48 hours to the Law Enforcement
10 Support Center of the United States Department of Homeland
11 Security or other office or agency designated for that purpose
12 by the federal government. ~~If the person is determined to be
13 an alien unlawfully present in the United States, the person
14 shall be considered a flight risk and shall be detained until
15 prosecution or until handed over to federal immigration
16 authorities."~~

17 Section 3. Sections 19, 20, 27, 29, and 30 of Act
18 2011-535, 2011 Regular Session, now appearing as Sections
19 31-13-18, 31-13-19, 31-13-26, 31-13-28, and 31-13-29, Code of
20 Alabama 1975, are amended to read as follows:

21 "§31-13-18.

22 "(a) When a person is charged with a crime for which
23 bail is required, or is confined for any period in a state,
24 county, or municipal jail, a reasonable effort shall be made
25 to determine if the person is an alien unlawfully present in
26 the United States by verification with the federal government
27 pursuant to 8 U.S.C. § 1373(c).

1 "(b) A verification inquiry, pursuant to 8 U.S.C. §
2 1373(c), shall be made within 48 hours to the Law Enforcement
3 Support Center of the United States Department of Homeland
4 Security or other office or agency designated for that purpose
5 by the federal government. ~~If the person is determined to be
6 an alien unlawfully present in the United States, the person
7 shall be considered a flight risk and shall be detained until
8 prosecution or until handed over to federal immigration
9 authorities.~~

10 "§31-13-19.

11 "If an alien who is unlawfully present in the United
12 States is convicted of a violation of state or local law and
13 is within 30 days of release ~~or has paid any fine as required
14 by operation of law~~, the agency responsible for his or her
15 incarceration shall notify the United States Bureau of
16 Immigration and Customs Enforcement and the Alabama Department
17 of Homeland Security, pursuant to 8 U.S.C. § 1373. The Alabama
18 Department of Homeland Security shall assist in the
19 coordination of the transfer of the prisoner to the
20 appropriate federal immigration authorities; however, the
21 ~~Alabama Department of Corrections~~ agency responsible for his
22 or her incarceration shall maintain custody during any
23 transfer of the individual.

24 "§31-13-26.

25 "(a) No court of this state shall enforce the terms
26 of, or otherwise regard as valid, any contract between a party
27 and an alien unlawfully present in the United States, if the

1 party had direct or constructive knowledge that the alien was
2 unlawfully present in the United States at the time the
3 contract was entered into, and the performance of the contract
4 required the alien to remain unlawfully present in the United
5 States for more than 24 hours after the time the contract was
6 entered into or performance could not reasonably be expected
7 to occur without such remaining.

8 "(b) This section shall not apply to a contract for
9 lodging for one night, a contract for the purchase of food to
10 be consumed by the alien, a contract for medical services, or
11 a contract for transportation of the alien that is intended to
12 facilitate the alien's return to his or her country of origin.

13 "(c) This section shall not apply to a contract
14 authorized by federal law.

15 "(d) In proceedings of the court, the determination
16 of whether an alien is unlawfully present in the United States
17 shall be made by the federal government, pursuant to 8 U.S.C.
18 § 1373(c). The court shall consider only the federal
19 government's determination when deciding whether an alien is
20 unlawfully present in the United States. The court may take
21 judicial notice of any verification of an individual's
22 immigration status previously provided by the federal
23 government and may request the federal government to provide
24 further automated or testimonial verification.

25 "(e) This section only applies to contracts entered
26 into after September 1, 2011.

27 "§31-13-28.

1 ~~"(a) Applications for voter registration shall~~
2 ~~contain voter eligibility requirements and such information as~~
3 ~~is necessary to prevent duplicative voter registrations and~~
4 ~~enable the relevant election officer to assess the eligibility~~
5 ~~of the applicant and to administer voter registration,~~
6 ~~identify the applicant and to determine the qualifications of~~
7 ~~the applicant as an elector and the facts authorizing such~~
8 ~~person to be registered. Applications shall contain a~~
9 ~~statement that the applicant shall be required to provide~~
10 ~~qualifying identification when voting.~~

11 ~~"(b) The Secretary of State shall create a process~~
12 ~~for the county election officer to check to indicate whether~~
13 ~~an applicant has provided with the application the information~~
14 ~~necessary to assess the eligibility of the applicant,~~
15 ~~including the applicant's United States citizenship. This~~
16 ~~section shall be interpreted and applied in accordance with~~
17 ~~federal law. No eligible applicant whose qualifications have~~
18 ~~been assessed shall be denied registration.~~

19 ~~"(c) The county election officer or Secretary of~~
20 ~~State's office shall accept any completed application for~~
21 ~~registration, but an applicant shall not be registered until~~
22 ~~the applicant has provided satisfactory evidence of United~~
23 ~~States citizenship. Satisfactory evidence of United States~~
24 ~~citizenship shall be provided in person at the time of filing~~
25 ~~the application for registration or by including, with a~~
26 ~~mailed registration application, a photocopy of one of the~~
27 ~~documents listed as evidence of United States citizenship in~~

1 ~~subsection (k). After a person has submitted satisfactory~~
2 ~~evidence of citizenship, the county election officer shall~~
3 ~~indicate this information in the person's permanent voter~~
4 ~~file.~~

5 ~~"(d) Any person who is registered in this state on~~
6 ~~September 1, 2011, is deemed to have provided satisfactory~~
7 ~~evidence of United States citizenship and shall not be~~
8 ~~required to submit evidence of citizenship.~~

9 ~~"(e) For purposes of this section, proof of voter~~
10 ~~registration from another state is not satisfactory evidence~~
11 ~~of United States citizenship.~~

12 ~~"(f) A registered voter who moves from one residence~~
13 ~~to another within the state or who modifies his or her voter~~
14 ~~registration records for any other reason shall not be~~
15 ~~required to submit evidence of United States citizenship.~~

16 ~~"(g) If evidence of United States citizenship is~~
17 ~~deemed to be unsatisfactory due to an inconsistency between~~
18 ~~the document submitted as evidence and the name or sex~~
19 ~~provided on the application for registration, such applicant~~
20 ~~may sign an affidavit containing both of the following:~~

21 ~~"(1) Stating the inconsistency or inconsistencies~~
22 ~~related to the name or sex, and the reason therefor.~~

23 ~~"(2) Swearing under oath that, despite the~~
24 ~~inconsistency, the applicant is the individual reflected in~~
25 ~~the document provided as evidence of citizenship.~~

26 ~~"(h) There shall be no inconsistency between the~~
27 ~~date of birth on the document provided as evidence of~~

1 citizenship and the date of birth provided on the application
2 for registration. If such an affidavit is submitted by the
3 applicant, the county election officer or Secretary of State
4 shall assess the eligibility of the applicant without regard
5 to any inconsistency stated in the affidavit.

6 "(i) All documents submitted as evidence of United
7 States citizenship shall be kept confidential by the county
8 election officer or the Secretary of State and maintained as
9 provided by record retention laws.

10 "(j) Nothing in this section shall prohibit an
11 applicant from providing, or the Secretary of State or county
12 election officer from obtaining, satisfactory evidence of
13 United States citizenship, as described in this section, at a
14 different time or in a different manner than an application
15 for registration is provided, as long as the applicant's
16 eligibility can be adequately assessed by the Secretary of
17 State or county election officer as required by this section.

18 "(k) Evidence of United States citizenship shall be
19 demonstrated by one of the following documents, or a legible
20 photocopy of one of the following documents:

21 "(1) The applicant's driver's license or nondriver's
22 identification card issued by the division of motor vehicles
23 or the equivalent governmental agency of another state within
24 the United States if the agency indicates on the applicant's
25 driver's license or nondriver's identification card that the
26 person has provided satisfactory proof of United States
27 citizenship.

1 ~~"(2) The applicant's birth certificate that verifies~~
2 ~~United States citizenship to the satisfaction of the county~~
3 ~~election officer or Secretary of State.~~

4 ~~"(3) Pertinent pages of the applicant's United~~
5 ~~States valid or expired passport identifying the applicant and~~
6 ~~the applicant's passport number, or presentation to the county~~
7 ~~election officer of the applicant's United States passport.~~

8 ~~"(4) The applicant's United States naturalization~~
9 ~~documents or the number of the certificate of naturalization.~~
10 ~~If only the number of the certificate of naturalization is~~
11 ~~provided, the applicant shall not be included in the~~
12 ~~registration rolls until the number of the certificate of~~
13 ~~naturalization is verified with the United States Bureau of~~
14 ~~Citizenship and Immigration Services by the county election~~
15 ~~officer or the Secretary of State, pursuant to 8 U.S.C. §~~
16 ~~1373(c).~~

17 ~~"(5) Other documents or methods of proof of United~~
18 ~~States citizenship issued by the federal government pursuant~~
19 ~~to the Immigration and Nationality Act of 1952, and amendments~~
20 ~~thereto.~~

21 ~~"(6) The applicant's Bureau of Indian Affairs card~~
22 ~~number, tribal treaty card number, or tribal enrollment~~
23 ~~number.~~

24 ~~"(7) The applicant's consular report of birth abroad~~
25 ~~of a citizen of the United States of America.~~

1 ~~"(8) The applicant's certificate of citizenship~~
2 ~~issued by the United States Citizenship and Immigration~~
3 ~~Services.~~

4 ~~"(9) The applicant's certification of report of~~
5 ~~birth issued by the United States Department of State.~~

6 ~~"(10) The applicant's American Indian card, with KIC~~
7 ~~classification, issued by the United States Department of~~
8 ~~Homeland Security.~~

9 ~~"(11) The applicant's final adoption decree showing~~
10 ~~the applicant's name and United States birthplace.~~

11 ~~"(12) The applicant's official United States~~
12 ~~military record of service showing the applicant's place of~~
13 ~~birth in the United States.~~

14 ~~"(13) An extract from a United States hospital~~
15 ~~record of birth created at the time of the applicant's birth~~
16 ~~indicating the applicant's place of birth in the United~~
17 ~~States.~~

18 ~~"(1) There is hereby established the State Election~~
19 ~~Board, consisting of the Secretary of State, the Attorney~~
20 ~~General, and the Lieutenant Governor. The State Election Board~~
21 ~~shall meet on the call of the Secretary of State. The State~~
22 ~~Election Board shall do both of the following:~~

23 ~~"(1) Assess information provided by any applicant~~
24 ~~for voter registration as evidence of citizenship pursuant to~~
25 ~~subsection (m).~~

26 ~~"(2) Adopt rules to implement subsection (m).~~

1 ~~"(m) (1) If an applicant is a United States citizen~~
2 ~~but does not have any of the documentation listed in this~~
3 ~~section as satisfactory evidence of United States citizenship,~~
4 ~~the applicant may submit any evidence that the applicant~~
5 ~~believes demonstrates the applicant's United States~~
6 ~~citizenship.~~

7 ~~"(2) Any applicant seeking an assessment of evidence~~
8 ~~under this section may directly contact the office of the~~
9 ~~Secretary of State by submitting a voter registration~~
10 ~~application or the national voter registration form and any~~
11 ~~supporting evidence of United States citizenship. Upon receipt~~
12 ~~of this information, the Secretary of State shall notify the~~
13 ~~State Election Board that such application is pending.~~

14 ~~"(3) The State Election Board shall give the~~
15 ~~applicant an opportunity for a hearing, upon the applicant's~~
16 ~~request in writing, and an opportunity to present any~~
17 ~~additional evidence to the State Election Board. Notice of~~
18 ~~such hearing shall be given to the applicant at least five~~
19 ~~days prior to the hearing date. An applicant shall have the~~
20 ~~opportunity to be represented by counsel at such hearing.~~

21 ~~"(4) The State Election Board shall assess the~~
22 ~~evidence provided by the applicant to determine whether the~~
23 ~~applicant has provided satisfactory evidence of United States~~
24 ~~citizenship. A decision of the State Election Board shall be~~
25 ~~determined by a majority vote of the board.~~

26 ~~"(5) If an applicant submits an application and any~~
27 ~~supporting evidence prior to the close of registration for an~~

1 ~~election cycle, a determination by the State Election Board~~
2 ~~shall be issued at least five days before such election date.~~

3 ~~"(6) If the State Election Board finds that the~~
4 ~~evidence presented by the applicant constitutes satisfactory~~
5 ~~evidence of United States citizenship, the applicant shall~~
6 ~~meet the requirements under this section to provide~~
7 ~~satisfactory evidence of United States citizenship.~~

8 ~~"(7) If the State Election Board finds that the~~
9 ~~evidence presented by an applicant does not constitute~~
10 ~~satisfactory evidence of United States citizenship, the~~
11 ~~applicant shall have the right to appeal such determination by~~
12 ~~the State Election Board by instituting an action under 8~~
13 ~~U.S.C. § 1503. Any negative assessment of an applicant's~~
14 ~~eligibility by the State Election Board shall be reversed if~~
15 ~~the applicant obtains a declaratory judgment pursuant to 8~~
16 ~~U.S.C. § 1503, demonstrating that the applicant is a national~~
17 ~~of the United States.~~

18 ~~"(n) (1) The Department of Public Health shall not~~
19 ~~charge or accept any fee for a certified copy of a birth~~
20 ~~certificate if the certificate is requested by any person who~~
21 ~~is 17 years of age or older for purposes of meeting the voter~~
22 ~~registration requirements of this chapter. The person~~
23 ~~requesting a certified copy of a birth certificate shall swear~~
24 ~~under oath to both of the following:~~

25 ~~"a. That the person plans to register to vote in~~
26 ~~this state.~~

1 ~~"b. That the person does not possess any of the~~
2 ~~documents that constitute evidence of United States~~
3 ~~citizenship as defined in this chapter.~~

4 ~~"(2) The affidavit shall specifically list the~~
5 ~~documents that constitute evidence of United States~~
6 ~~citizenship as defined in this chapter.~~

7 "(a) The Secretary of State's office shall educate
8 and provide information to the district attorneys regarding
9 state and federal laws and requirements, including criminal
10 penalties, associated with noncitizens attempting to register
11 to vote in this state.

12 "(b) (1) The district attorneys shall notify the
13 Secretary of State of any prosecutions for perjury brought
14 against noncitizens who attempt to register to vote in
15 violation of the Official Recompilation of the Constitution of
16 Alabama of 1901, as amended, and Section 17-3-525.

17 "(2) The Secretary of State shall compile an annual
18 report regarding issues related to noncitizens attempting to
19 register to vote, including the information provided by the
20 district attorneys under subdivision (1), to the Legislature
21 by October 1 of each year.

22 "§31-13-29.

23 "(a) For the purposes of this section, business
24 transaction includes ~~any transaction~~ all of the following
25 license transactions between a person and the state or a
26 political subdivision of the state, ~~including, but not limited~~
27 ~~to, applying for or renewing a motor vehicle license plate,~~

1 ~~applying for or renewing a driver's license or nondriver~~
2 ~~identification card, or applying for or renewing a business~~
3 ~~license. Business transaction does not include applying for a~~
4 ~~marriage license.:~~

5 "(1) Driver's license or nondriver identification
6 card.

7 "(2) Motor vehicle license plate.

8 "(3) Business license.

9 "(b) An alien not lawfully present in the United
10 States shall not enter into or attempt to enter into a
11 business transaction with the state or a political subdivision
12 of the state and no person shall enter into a business
13 transaction or attempt to enter into a business transaction on
14 behalf of an alien not lawfully present in the United States.

15 "(c) Any person entering into a business transaction
16 or attempting to enter into a business transaction with this
17 state or a political subdivision of this state shall be
18 required to demonstrate his or her United States citizenship,
19 or if he or she is an alien, his or her lawful presence in the
20 United States to the person conducting the business
21 transaction on behalf of this state or a political subdivision
22 of this state. ~~United States citizenship shall be demonstrated~~
23 ~~by presentation of one of the documents listed in subsection~~
24 ~~(k) of Section 31-13-28.~~ An alien's lawful presence in the
25 United States shall be demonstrated by this state's or a
26 political subdivision of this state's verification of the
27 alien's lawful presence through the Systematic Alien

1 Verification for Entitlements program operated by the
2 Department of Homeland Security, or by other verification with
3 the Department of Homeland Security pursuant to 8 U.S.C. §
4 1373(c). United States citizenship shall be demonstrated by
5 presentation of one of the following documents:

6 "(1) The applicant's driver's license or nondriver's
7 identification card issued by the division of motor vehicles
8 or the equivalent governmental agency of another state within
9 the United States if the agency indicates on the applicant's
10 driver's license or nondriver's identification card that the
11 person has provided satisfactory proof of United States
12 citizenship.

13 "(2) The applicant's birth certificate that verifies
14 United States citizenship to the satisfaction of the county
15 election officer or Secretary of State.

16 "(3) Pertinent pages of the applicant's United
17 States valid or expired passport identifying the applicant and
18 the applicant's passport number, or presentation to the county
19 election officer of the applicant's United States passport.

20 "(4) The applicant's United States naturalization
21 documents or the number of the certificate of naturalization.
22 If only the number of the certificate of naturalization is
23 provided, the applicant shall not be included in the
24 registration rolls until the number of the certificate of
25 naturalization is verified with the United States Bureau of
26 Citizenship and Immigration Services by the county election

1 officer or the Secretary of State, pursuant to 8 U.S.C. §
2 1373(c).

3 "(5) Other documents or methods of proof of United
4 States citizenship issued by the federal government pursuant
5 to the Immigration and Nationality Act of 1952, and amendments
6 thereto.

7 "(6) The applicant's Bureau of Indian Affairs card
8 number, tribal treaty card number, or tribal enrollment
9 number.

10 "(7) The applicant's consular report of birth abroad
11 of a citizen of the United States of America.

12 "(8) The applicant's certificate of citizenship
13 issued by the United States Citizenship and Immigration
14 Services.

15 "(9) The applicant's certification of report of
16 birth issued by the United States Department of State.

17 "(10) The applicant's American Indian card, with KIC
18 classification, issued by the United States Department of
19 Homeland Security.

20 "(11) The applicant's final adoption decree showing
21 the applicant's name and United States birthplace.

22 "(12) The applicant's official United States
23 military record of service showing the applicant's place of
24 birth in the United States.

25 "(13) An extract from a United States hospital
26 record of birth created at the time of the applicant's birth

1 indicating the applicant's place of birth in the United
2 States.

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

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

10 "(f) In the enforcement of this section, an alien's
11 immigration status shall be determined by verification of the
12 alien's immigration status with the federal government
13 pursuant to 8 U.S.C. § 1373(c). An official of this state or
14 political subdivision of this state shall not attempt to
15 independently make a final determination of whether an alien
16 is lawfully present in the United States."

17 Section 4. Sections 5 and 6 of Act 2011-535, 2011
18 Regular Session, now appearing as Sections 31-13-5 and
19 31-13-6, Code of Alabama 1975, relating to the authorization
20 of private lawsuits against public officials to compel
21 enforcement of immigration laws, are repealed. Section 10,
22 relating to failure to complete or carry alien registration
23 documents, and Section 28, relating to public education
24 enrollment data, of Act 2011-535, 2011 Regular Session, now
25 appearing as Sections 31-13-10 and 31-13-27, Code of Alabama
26 1975, are repealed.

1 Section 5. Although this bill would have as its
2 purpose or effect the requirement of a new or increased
3 expenditure of local funds, the bill is excluded from further
4 requirements and application under Amendment 621, now
5 appearing as Section 111.05 of the Official Recompilation of
6 the Constitution of Alabama of 1901, as amended, because the
7 bill defines a new crime or amends the definition of an
8 existing crime.

9 Section 6. This act shall become effective
10 immediately following its passage and approval by the
11 Governor, or its otherwise becoming law.