

1 SB57
2 134365-1
3 By Senator Sanford
4 RFD: Fiscal Responsibility and Accountability
5 First Read: 07-FEB-12
6 PFD: 11/02/2011

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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 Also 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 This bill would provide business entities
20 and employers in this state with an option to use
21 federal E-Verify, the ALVerify program developed by
22 the Center for Advanced Public Safety at the
23 University of Alabama, or the E-Verify employer
24 agent service established by the Alabama Department
25 of Homeland Security to verify the immigration
26 status and eligibility of an employee.

1 This bill would also provide subcontractors
2 on a project paid for by state contract, grant, or
3 incentive with an option to use federal E-Verify,
4 the ALVerify program developed by the Center for
5 Advanced Public Safety at the University of
6 Alabama, or the E-Verify employer agent service
7 established by the Alabama Department of Homeland
8 Security to verify the immigration status and
9 eligibility of an employee.

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT

14
15 To amend Sections 9 and 15 of Act 2011-535, 2011
16 Regular Session (Acts 2011, p. __), now appearing as Sections
17 31-13-9 and 31-13-15, Code of Alabama 1975, to allow
18 businesses and employers in this state, as well as
19 subcontractors on projects paid for by state contract, grant,
20 or incentive, to use E-Verify, ALVerify, or the E-Verify
21 employer agent service to verify the immigration status and
22 eligibility of an employee.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Sections 9 and 15 of Act 2011-535, 2011
25 Regular Session (Acts 2011, p. __), now appearing as Sections
26 31-13-9 and 31-13-15, Code of Alabama 1975, are amended to
27 read as follows:

1 "§31-13-9.

2 "(a) As a condition for the award of any contract,
3 grant, or incentive by the state, any political subdivision
4 thereof, or any state-funded entity to a business entity or
5 employer that employs one or more employees, the business
6 entity or employer shall not knowingly employ, hire for
7 employment, or continue to employ an unauthorized alien and
8 shall attest to such, by sworn affidavit signed before a
9 notary.

10 "(b) As a condition for the award of any contract,
11 grant, or incentive by the state, any political subdivision
12 thereof, or any state-funded entity to a business entity or
13 employer that employs one or more employees, the business
14 entity or employer shall provide documentation establishing
15 that the business entity or employer is enrolled in the
16 E-Verify program or attest that the business entity or
17 employer will use ALVerify system developed by the Center for
18 Advanced Public Safety at the University of Alabama or the
19 E-Verify employer agent service established by the Alabama
20 Department of Homeland Security. During the performance of the
21 contract, the business entity or employer shall participate in
22 the E-Verify program and shall verify every employee that is
23 required to be verified according to the applicable federal
24 rules and regulations or shall use ALVerify or the E-Verify
25 employer agent service to verify every employee.

26 "(c) (1) No subcontractor on a project paid for by
27 contract, grant, or incentive by the state, any political

1 subdivision thereof, or any state-funded entity shall
2 knowingly employ, hire for employment, or continue to employ
3 an unauthorized alien and shall attest to such by sworn
4 affidavit signed before a notary.

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

7 "a. enroll Enroll in the E-Verify program prior to
8 performing any work on the project and shall attach to the
9 sworn affidavit documentation establishing that the
10 subcontractor is enrolled in the E-Verify program.

11 "b. Verify the employment eligibility of employees
12 using the ALVerify system developed by the Center for Advanced
13 Public Safety at the University of Alabama and provide a sworn
14 affidavit attesting that the subcontractor will use ALVerify
15 to verify employment eligibility.

16 "c. Verify the employment eligibility of employees
17 using the E-Verify employment agent service established by the
18 Alabama Department of Homeland Security and provide a sworn
19 affidavit attesting that the subcontractor will use the system
20 to verify employment eligibility.

21 "(d) A contractor of any tier shall not be liable
22 under this section when such contractor contracts with its
23 direct subcontractor who violates subsection (c)(1), if the
24 contractor receives a sworn affidavit from the subcontractor
25 signed before a notary attesting to the fact that the direct
26 subcontractor, in good faith, has complied with subsection
27 (c)(2) with respect to verifying each of its employee's

1 eligibility for employment, unless the contractor knows the
2 direct subcontractor is violating subsection (c) (1).

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

1 business entity or employer at the time of enrollment in
2 E-Verify or other documentation demonstrating that the
3 business entity or employer is using ALVerify system developed
4 by the Center for Advanced Public Safety at the University of
5 Alabama or the E-Verify employment agent service established
6 by the Department of Homeland Security.

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

20 "(f) (1) Upon the first violation of subsection
21 (c) (1) by a subcontractor, the state or political subdivision
22 thereof may bar the subcontractor from doing business with the
23 state, any political subdivision thereof, any state-funded
24 entity, or with any contractor who contracts with the state,
25 any political subdivision thereof, or any state-funded entity
26 after providing notice and an opportunity to be heard. Upon
27 application by the state entity or political subdivision

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

22 "(2) Upon a second or subsequent violation of
23 subsection (c) (1) by a subcontractor and upon application by
24 the state entity or political subdivision thereof, or
25 state-funded entity, the Attorney General may bring an action
26 to permanently suspend the business licenses of the business
27 entity or employer according to the procedures described in

1 Section 31-13-15. The determination of a violation shall be
2 according to the procedures described in Section 31-13-15.

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

9 "(h) The Secretary of State shall adopt rules to
10 administer this section and shall report any rules adopted to
11 the Legislature.

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

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

22 "§31-13-15.

23 "(a) No business entity, employer, or public
24 employer shall knowingly employ, hire for employment, or
25 continue to employ an unauthorized alien to perform work
26 within the State of Alabama. Knowingly employ, hire for

1 employment, or continue to employ an unauthorized alien means
2 the actions described in 8 U.S.C. § 1324a.

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

5 "(1) enroll ~~enroll~~ Enroll in E-Verify and thereafter,
6 according to the federal statutes and regulations governing
7 E-Verify, ~~shall~~ verify the employment eligibility of the
8 employee through E-Verify.

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

12 "(3) Verify the employment eligibility of the
13 employee using the E-Verify employment agent service
14 established by the Alabama Department of Homeland Security.

15 "(c) A business entity or employer that uses
16 E-Verify, ALVerify, or the E-Verify employment agent service
17 established by the department to verify the work authorization
18 of an employee shall not be deemed to have violated this
19 section with respect to the employment of that employee.

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

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

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

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

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

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

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

1 agent service established by the Department of Homeland
2 Security.

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

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

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

23 "~~(g)~~ (h) This section shall not be construed to deny
24 any procedural mechanisms or legal defenses included in the
25 E-Verify program or any other federal work authorization
26 program. A person or entity that establishes that it has
27 complied in good faith with the requirements of 8 U.S.C. §

1 1324a(b) establishes an affirmative defense that the business
2 entity or employer did not knowingly hire or employ an
3 unauthorized alien.

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

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

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

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

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

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

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

21 "~~(i)~~ (m) This section does not apply to the
22 relationship between a party and the employees of an
23 independent contractor performing work for the party and does
24 not apply to casual domestic labor performed within a
25 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
21 or 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 Section 2. This act shall become effective on the
5 first day of the third month following its passage and
6 approval by the Governor, or its otherwise becoming law.