



Tanner & Guin, LLC  
COUNSELORS AT LAW

**Commercial  
and  
Litigation  
Group Members**

D. W. Wilson  
(205) 633-0216  
dwilson@tannerguin.com

David E. Rains  
(205) 633-0236  
drains@tannerguin.com

Carol A. Entelisano  
(205) 633-0268  
centelisano@tannerguin.com

Thomas W. Scroggins  
(205) 633-0227  
tscroggins@tannerguin.com

Justin G. Williams  
(205) 633-0218  
jwilliams@tannerguin.com

Paula S. Beams  
Senior Paralegal  
(205) 633-0214  
pbeams@tannerguin.com

Wendy M. Pinner  
Senior Paralegal  
(205) 633-0237  
wpinner@tannerguin.com

Melanie Morgan Burgett  
Paralegal  
(205) 633-0213  
mburgett@tannerguin.com

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**This Just In—New Law Requires Disposal of Personal Information**

Beginning June 1, 2005, businesses — regardless of size or industry — must comply with new federal regulations (FACTA) designed to protect financial and other personal information. These new regulations address disposal of the personal information of customers and employees.

Some of the acceptable methods of destruction are burning, shredding, and other “reasonable measures” to protect against unauthorized access or use of the personal information. In addition to sensitive customer

information, information that should be disposed of includes credit reports, background screening reports, and criminal record checks that many employers routinely use to screen job applicants.

Stay tuned for the next issue of our newsletter, which will give you steps your company can take to comply with this new federal law. If you have questions in the interim, please contact D.W. Wilson at (205) 633-0216.

**IRA’s are Beyond the Reach of Creditors in Bankruptcy**

The U.S. Supreme Court recently decided that Individual Retirement Accounts (commonly known as IRA’s) are out of the reach of creditors when a debtor files for bankruptcy protection. With this decision, IRA’s now join Social Security benefits, pensions, and 401(k) plans in being protected during bankruptcy. This is an important decision, due to the fact that many people rely on IRAs as their primary retirement savings option.

Currently, many people keep their retirement money in qualified plans because of

the bankruptcy protection. By expanding the types of accounts that can be exempted, the Supreme Court created a greater incentive for establishment of IRA’s as the choice for long-term savings accounts. The relief this decision provides to IRA holders coincides with the protections provided under the new bankruptcy statute discussed below.

If you would like a copy of this Supreme Court decision, please contact D.W. Wilson at (205) 633-0216 or Justin G. Williams at (205) 633-0218.

**Living Wills—Avoiding a “Schiavo” in Alabama**

Like many other states, Alabama law allows you to make your wishes known as to what medical treatment or other care you want if you become too sick to speak for yourself. If you choose, you may make advance written decisions about whether you want to receive

“life sustaining treatment” such as drugs, machines, or other medical procedures that would keep you alive, but not cure you. You may also make advance decisions about whether you would want to receive

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## Living Wills—Avoiding a “Schiavo” in Alabama

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“artificially provided food and hydration” (food and water through a tube or an IV).

However, these decisions apply only in limited circumstances. A person must be either “terminally ill or injured” or “permanently unconscious” in order for the decisions to be effective. There are also requirements that call for judgments to be made by your physician.

If you choose to execute a living will, you must comply with certain statutory requirements for your living will to be

effective under Alabama law. Those requirements include use of a special form and execution of the living will in the presence of two witnesses who meet certain criteria. You must also be emotionally and mentally competent to make the living will, and you may revoke your living will at any time. Living wills are ineffective during any period of pregnancy.

If you need information in preparing your living will or other estate plan documents, please contact Carol A. Entelisano at (205) 633-0268 or Steven M. Wyatt at (205) 633-0267.



## Bankruptcy Reform is Here—Are You Ready?

Congress has passed a sweeping bankruptcy reform bill designed to prevent abuse of our nation’s bankruptcy laws. The new Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 will make filing for bankruptcy protection more difficult and will generally make it easier for creditors to get paid. This is the first bankruptcy overhaul since 1978 and is the result of years of lobbying by large banks, credit card companies, and retailers.

Under current bankruptcy law, most individuals who file for bankruptcy protection do so either under Chapter 7 or under Chapter 13 of the bankruptcy code. In a Chapter 13 bankruptcy case, the debtor is put on a court-administered repayment plan, meaning some of the debts get paid over time. In a Chapter 7 bankruptcy case, the debtor’s assets (with some exceptions) are sold and the proceeds distributed to creditors, the debtor’s remaining debts are cancelled, and the debtor gets a fresh start.

For business bankruptcies, a Chapter 11 filing is typically used. Chapter 11 allows businesses to reorganize themselves, giving them an opportunity to restructure debt and terminate certain burdensome leases and contracts.

Some important provisions of the new bankruptcy laws, most of which take effect on October 17, 2005, are as follows:

- ◆ **Judge’s Discretion.** The new statute takes away much of the discretion bankruptcy judges have in deciding who can file under Chapter 7 and who should be forced into filing under Chapter 13. Instead judges are now required to calculate eligibility by applying median income and means tests. Fewer people will now be able to file liquidation cases under Chapter 7.
- ◆ **Credit Counseling.** An individual filing for bankruptcy protection is now required to attend and pay for credit counseling including a budget analysis modeled after the approach by the National Foundation for Credit Counseling. The individual(s) contemplating bankruptcy must meet with a credit counselor in the six months prior to filing a bankruptcy case. Further, while their bankruptcy case is pending, they must attend money management classes.
- ◆ **Lawyer liability.** The new statute also puts more responsibility on lawyers. If information about a person’s case is found to be inaccurate, the lawyer representing the debtor may be subject to various fees and fines.



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## Bankruptcy Reform is Here—Are You Ready?

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- ◆ **Chapter 11 Reorganization.** The new law allows businesses filing for Chapter 11 protection 18 months to file a reorganization plan instead of the previous four months. Further, companies would have to decide within 210 days whether to continue to lease business space.
- ◆ **Individual Retirement Accounts.** The new law clarified that IRA's are

protected even if you file Chapter 7 bankruptcy. An individual electing the federal bankruptcy exemptions will be able to protect the assets in his or her IRA when seeking bankruptcy protection.

If you would like to discuss how this new law will affect your business, or if you would like a copy of the new law, please contact Justin G. Williams at (205) 633-0218.



## Federal Immigration Reform—Will it Happen?

The current political climate could be favorable for a comprehensive overhaul of our country's immigration system, and an immigration reform bill was introduced in May to address some of the problems that have long plagued the U.S.'s immigration system.

Among other things, the "Secure America and Orderly Immigration Act of 2005" would:

1. Create a national strategy for border security and enhanced border intelligence;
2. Hinder document fraud by requiring that all immigration documents are biometric, machine-readable, and tamper resistant; and
3. Establish a new Employment Eligibility Confirmation System to replace the current I-9 system.

The bill also provides for increased investigative authority for the Department of Labor, including random audits of employers to ensure compliance with employment and immigration laws and increased fines for illegal employer practices.

Employers who use unskilled laborers could also benefit from the proposed changes under the bill. A new "essential worker visa program" would allow foreign workers to temporarily enter the U.S. to fill available jobs that require little or no skills. The essential worker visa would be valid for up to 6 years, and at the end of that period, the worker would either be required to return home or have begun

proceedings to obtain a permanent resident card ("green card").

The bill would also allow a form of amnesty for certain undocumented immigrants who were present in the U.S. on the date of the bill's introduction. Applicants would undergo criminal and security background checks, pay a fine, and establish a previous work history. If approved, the immigrants would obtain an initial approved stay of 6 years. Subsequent to that 6 year period, the immigrant would be required to fulfill additional eligibility criteria, including payment of an additional fine, in order to obtain approval for permanent residency.

Companies who may have employed undocumented workers could be at risk of having that employment disclosed under the proposed program. As a result, it is increasingly important to comply with the current Form I-9 requirements and review original employment and identity documents of all new workers. Current immigration law provides a "good faith" defense against charges of employing an unauthorized worker IF the employer complied with the I-9 requirements and the documents produced by the employee reasonably appeared on the face of the documents to be genuine and to relate to that employee.

Companies should confirm that their I-9 files are up to date and accurate and that



***"...would allow foreign workers to temporarily enter the U.S. to fill available jobs that require little or no skills. The essential worker visa would be valid for up to 6 years,"***

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## Federal Immigration Reform—Will it Happen?

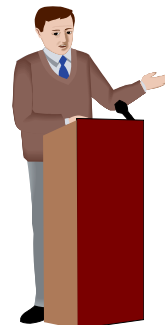
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their current procedures comply with immigration and employment law requirements. If you need assistance with an

internal audit of your company's files and procedures, you can contact Carol A. Entelisano at (205) 633-0268.

## Seminars

Members of the Tanner & Guin, LLC regularly speak before trade associations, business groups, and clients. If you would like to arrange a speaker for an upcoming program or have questions about a seminar you have previously attended, please contact us at (205) 633-0200 or [info@tannerguin.com](mailto:info@tannerguin.com).



## Newsletter Registration

Tanner & Guin currently publishes newsletters covering several practice areas. These include the *Alabama "SALT" Newsletter*, *Workplace Law Alert*, *Environmental Special Report*, *Health Law Update*, and *Alabama Business Law and Litigation Alert*.

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**Tanner & Guin, LLC**  
COUNSELORS AT LAW

Capitol Park Center  
2711 University Boulevard (35401-1465)  
P.O. Box 3206  
Tuscaloosa, Alabama 35403-3206  
Telephone: (205) 633-0200  
Facsimile: (205) 633-0290  
E-mail: [info@tannerguin.com](mailto:info@tannerguin.com)

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