

## **A Split Decision on Alabama's Immigration Bill**

by

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*Summary: A federal court has issued an order denying the request for an injunction against six key parts of the Alabama immigration bill, but granting an injunction against seven other provisions.*

Three lawsuits challenging Alabama's immigration bill were met with mixed results on motions seeking to block enforcement of the bill pending the result of the cases. On September 28, 2011, the United States District Court for the Northern District of Alabama made three separate rulings amounting to a split decision – the Court denied an injunction against six key provisions but granted an injunction against seven others.

In what has become a subject of nationwide interest, the Alabama Legislature passed HB56, the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (“the Act”), which was signed into law by Governor Bentley on June 9. After three different groups, including the U.S. Government, filed lawsuits seeking to enjoin the Act from going into effect it was temporarily enjoined from August 29 until September 29, 2011, at which time a more permanent ruling was promised. The rulings, which were released a day earlier than promised, extended the injunction at least until the end of the lawsuits with respect to several key provisions.

Importantly for Alabama businesses and employers, the Court's rulings did not impact the requirement to begin using E-Verify. Thus, business entities that receive any state contract, grant, or incentive must enroll and use E-Verify no later than January 1, 2012, and all Alabama employers are required to enroll and use E-Verify no later than April 1, 2012. Further, the penalties for violating the Act remain intact. These penalties include probationary periods and reporting requirements for businesses that violate the Act and business license revocations for businesses that violate the Act more than once. Accordingly, these provisions, among the others that were not affected by the Court's rulings, will go into effect as provided in the Act. For example, the provision that requires state contractors, as a condition to receiving a contract, grant, or incentive by the state or local government, to attest by sworn affidavit that they have not knowingly employed, hired, or continued to employ any unauthorized alien was set to go into effect on September 1 and thus is now effective immediately.

In summary, the Court denied an injunction against the following sections, meaning that these sections are effective as described in the Act:

- § 10, which creates a criminal misdemeanor violation under Alabama law for willful failure to complete or carry an alien registration document if the person is in violation of 8 U.S.C. § 1304(e) or 8 U.S.C. § 1306(a) and is unlawfully present in the United States.

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- § 12(a), which requires a law enforcement officer to make a reasonable attempt, when practicable, to determine the citizenship and immigration status of a person stopped, detained or arrested when reasonable suspicion exists that the person is an alien who is unlawfully present in the United States.
- § 18, which amends Alabama law to include a provision that if a person is arrested for driving without a license, and the officer is unable to determine that the person has a valid driver's license, the person must be transported to the nearest magistrate; a reasonable effort shall be made to determine the citizenship of the driver, and if found to be unlawfully present in the United States the driver shall be detained until prosecution or until handed over to federal immigration authorities.
- § 27, which bars Alabama courts from enforcing a contract to which a person who is unlawfully present in the United States is a party. This section does not apply to contracts for lodging for one night, contracts for the purchase of food, contracts for medical services, or contracts for transportation for an alien to return to his or her country of origin.
- § 28, which requires every public elementary and secondary school in Alabama to determine if an enrolling student was born outside the jurisdiction of the United States or is the child of an unlawfully present alien and qualifies for assignment to an English as second language class or other remedial program.
- § 30, which makes it a felony for an alien not lawfully present in the United States to enter into a "business transaction" with the State of Alabama or any political subdivision thereof.

The Court granted an injunction against the following seven provisions, meaning that these sections of the Act will not go into effect, if ever, until after the lawsuit is finally decided:

- § 8, which would prohibit an unlawful alien from attending or enrolling in a public postsecondary education institution and requiring any alien attending such institution to possess either a lawful permanent residence card or appropriate non-immigrant visa.
- §§ 10(e), 11(e), and 13(h), which would limit a court to considering as evidence of lawful presence in the United States only the federal government's verification of such.
- § 11(a), which makes it a misdemeanor crime for an unauthorized alien to apply for, solicit, or perform work.

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- § 11(f) and (g), which was aimed at combating the practice of day labor by criminalizing the pickup and hiring of passengers on a public roadway for transportation to work. These sections also criminalized the conduct of the passenger entering the vehicle.
- § 13, which makes it unlawful for a person to 1) conceal, harbor or shield an alien unlawfully present in the United States, or attempt or conspire to do so; 2) encourage an unlawful alien to come to the State of Alabama; or 3) to transport (or attempt or conspire to transport) an unlawful alien.
- § 16, which forbids employers from claiming as business tax deductions any wages paid to an unauthorized alien.
- § 17, which establishes a civil cause of action against an employer who fails to hire or discharges a U.S. citizen or an alien who is authorized to work while hiring, or retaining, an unauthorized alien.

Accordingly, much of the Act is in effect immediately while the fate of these seven provisions is still undecided pending the final resolution of the lawsuits. Appeals of these decisions are possible which may change the outcome. However, for the short term future it appears that many provisions of the Act will be law. Any questions regarding the impact of the Court's rulings on your organization or necessary changes to your current policies may be directed to Tom Scroggins at (205) 633-0227 or Brooke Nixon at (205) 633-0236.

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