

1 SB256
2 109424-4
3 By Senator Beason
4 RFD: Economic Expansion and Trade
5 First Read: 14-JAN-10

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8 SYNOPSIS: This bill would relate to illegal
9 immigration and would: Require a law officer to
10 transport a person to the nearest magistrate if the
11 law officer arrests the person for driving without
12 a license and the law officer cannot verify the
13 person has a valid driver's license; make it a
14 crime for a person to transport, conceal, harbor,
15 or in any way protect an illegal alien from
16 detection from state or federal authorities;
17 regulate the creation of identification cards and
18 define who may issue the cards, who may be issued
19 the cards, and any exemptions; require that a
20 reasonable effort be made to determine the
21 citizenship status of a person charged with a
22 felony or driving under the influence; create a new
23 form of identification called the Alabama verified
24 employee identification card; require employers to
25 verify the proof of legal status of an employee
26 through one of three ways and provide penalties for
27 violating this requirement; make it a

1 discriminatory practice for an employer to
2 discharge an employee working in this state who is
3 a United States citizen or permanent resident alien
4 while retaining an employee who the employer knows
5 or reasonably should have known is an unauthorized
6 alien and who is working in a job category
7 requiring equal skill, effort, and responsibility,
8 and which is performed under similar working
9 conditions as the job category held by the
10 discharged employee; require all agencies or
11 political subdivisions to verify the citizenship
12 status of all 14-year-old persons or older who
13 apply for state or federal benefits; require all
14 employers contracting with other employers to
15 provide to the employer with which the contract is
16 made proof of its employees' employment
17 authorization; authorize the Attorney General to
18 draft and sign a Memorandum of Understanding
19 between the State of Alabama and the United States
20 Department of Justice or United States Department
21 of Homeland Security concerning the enforcement of
22 federal immigration and customs laws, detentions,
23 removals, and investigations that take place within
24 the state; restrict the eligibility requirements
25 for scholarships, financial aid, and resident
26 tuition to lawfully present aliens and United
27 States citizens; establish a Fraudulent Documents

1 Identification Unit, subject to the availability of
2 funding, to investigate and apprehend persons or
3 entities that participate in the sale or
4 distribution of fraudulent documents used for
5 identification purposes; and provide for a fine on
6 any person caught creating or possessing a
7 falsified Alabama verified employee identification
8 card.

9 This bill also provides penalties for
10 violating the provisions of this act.

11 Amendment 621 of the Constitution of Alabama
12 of 1901, now appearing as Section 111.05 of the
13 Official Recompilation of the Constitution of
14 Alabama of 1901, as amended, prohibits a general
15 law whose purpose or effect would be to require a
16 new or increased expenditure of local funds from
17 becoming effective with regard to a local
18 governmental entity without enactment by a 2/3 vote
19 unless: it comes within one of a number of
20 specified exceptions; it is approved by the
21 affected entity; or the Legislature appropriates
22 funds, or provides a local source of revenue, to
23 the entity for the purpose.

24 The purpose or effect of this bill would be
25 to require a new or increased expenditure of local
26 funds within the meaning of the amendment. If this
27 bill is not enacted by a 2/3 vote, it will not

1 become effective with regard to a local entity
2 unless approved by the local entity or until, and
3 only as long as, the Legislature appropriates funds
4 or provides for a local source of revenue.

5
6 A BILL
7 TO BE ENTITLED
8 AN ACT

9
10 Relating to illegal immigration; to make it a crime
11 for a person to transport, conceal, harbor, or in any way
12 protect an illegal alien from detection from state or federal
13 authorities; to regulate the creation of identification cards
14 and define who may issue the cards, who may be issued the
15 cards, and any exemptions; to require that a reasonable effort
16 be made to determine the citizenship status of a person
17 charged with a felony or driving under the influence; to
18 create a new form of identification called the Alabama
19 verified employee identification card; to require employers to
20 verify the legal status of employees in one of three ways and
21 to provide penalties for violating this requirement; to make
22 it a discriminatory practice for an employer to discharge, in
23 certain circumstances, an employee who is a United States
24 citizen or permanent resident alien while retaining an
25 employee who the employer knows or reasonably should have
26 known is an unauthorized alien; to require all agencies or
27 political subdivisions to verify the citizenship status of all

1 14-year-old persons or older who apply for state or federal
2 benefits; to require all employers contracting with other
3 employers to provide to the employer with which the contract
4 is made proof of its employees' employment authorization; to
5 authorize the Attorney General to negotiate terms of a
6 Memorandum of Understanding with the federal government; to
7 restrict resident tuition, financial aid, and scholarship
8 opportunities to lawfully present aliens and United States
9 citizens; to establish a Fraudulent Documents Identification
10 Unit, subject to the availability of funding, to investigate
11 and apprehend persons or entities that participate in the sale
12 or distribution of fraudulent documents used for
13 identification purposes; to provide for a fine on any person
14 caught creating or possessing a falsified Alabama verified
15 employee identification card; to amend Section 32-6-9, Code of
16 Alabama 1975, relating to driver's licenses, to require a law
17 officer to transport a person to the nearest magistrate if the
18 law officer arrests the person for driving without a license
19 and the law officer cannot verify the person has a valid
20 driver's license; and in connection therewith would have as
21 its purpose or effect the requirement of a new or increased
22 expenditure of local funds within the meaning of Amendment 621
23 of the Constitution of Alabama of 1901, now appearing as
24 Section 111.05 of the Official Recompilation of the
25 Constitution of Alabama of 1901, as amended.
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall be known and may be cited
2 as the Alabama Taxpayer and Citizen Protection Act.

3 Section 2. The State of Alabama finds that illegal
4 immigration is causing economic hardship and lawlessness in
5 this state and that illegal immigration is encouraged when
6 public agencies within this state provide public benefits
7 without verifying immigration status. The State of Alabama
8 further finds that when illegal immigrants have been harbored
9 and sheltered in this state and encouraged to reside in this
10 state through the issuance of identification cards that are
11 issued without verifying immigration status, these practices
12 impede and obstruct the enforcement of federal immigration
13 law, undermine the security of our borders, and impermissibly
14 restrict the privileges and immunities of the citizens of
15 Alabama. Therefore, the people of the State of Alabama declare
16 that it is a compelling public interest of this state to
17 discourage illegal immigration by requiring all agencies
18 within this state to fully cooperate with federal immigration
19 authorities in the enforcement of federal immigration laws.
20 The State of Alabama also finds that other measures are
21 necessary to ensure the integrity of various governmental
22 programs and services.

23 Section 3. For the purposes of this act, the
24 following words shall have the following meanings:

25 (1) ALIEN. Any person who is not a citizen or
26 national of the United States, as described in Title 8,

1 Section 1101 of the United States Code, et seq., and any
2 amendments thereto.

3 (2) BUSINESS ENTITY. Any person or group of persons
4 performing or engaging in any activity, enterprise,
5 profession, or occupation for gain, benefit, advantage, or
6 livelihood, whether for profit or not-for-profit. "Business
7 entity" shall include, but not be limited to the following:

8 a. Self-employed individuals, business entities
9 filing articles of incorporation, partnerships, limited
10 partnerships, limited liability companies, foreign
11 corporations, foreign limited partnerships, foreign limited
12 liability companies authorized to transact business in this
13 state, business trusts, and any business entity that registers
14 with the Secretary of State.

15 b. Any business entity that possesses a business
16 license, permit, certificate, approval, registration, charter
17 or similar form of authorization issued by the state, any
18 business entity that is exempt by law from obtaining such a
19 business license, and any business entity that is operating
20 unlawfully without a business license.

21 (3) EMPLOYEE. Any person directed, allowed, or
22 permitted to perform labor or service of any kind by an
23 employer, with the exception of casual domestic labor hired to
24 work in or around the personal abode of an individual. The
25 employees of an independent contractor working for a business
26 entity shall not be regarded as the employees of the business
27 entity, for the purposes of this act.

1 (4) EMPLOYER. Any person, firm, corporation,
2 partnership, joint stock association, agent, manager,
3 representative, foreman, or other person having control or
4 custody of any employment, place of employment, or of any
5 employee.

6 (5) E-VERIFY. The electronic verification of federal
7 employment authorization program of the Illegal Immigration
8 Reform and Immigrant Responsibility Act of 1996, P.L. 104-208,
9 Division C, Section 403(a); 8 U.S.C. 1324(a), and operated by
10 the United States Department of Homeland Security, or its
11 successor program.

12 (6) PUBLIC EMPLOYER. Every department, agency, or
13 instrumentality of the state or a political subdivision of the
14 state.

15 (7) SUBCONTRACTOR. A subcontractor, contract
16 employee, staffing agency, or any contractor, regardless of
17 its tier.

18 (8) UNAUTHORIZED ALIEN. An alien (who is not
19 authorized to work in the United States) as defined in Title
20 8, Section 1324a(h) (3) of the United States Code.

21 Section 4. (a) It shall be unlawful for any person
22 to transport, move, or attempt to transport in this state any
23 alien in furtherance of the illegal presence of the alien in
24 the United States, knowing, or in reckless disregard of the
25 fact, that the alien has come to, entered, or remained in the
26 United States in violation of law.

1 (b) It shall be unlawful for any person to conceal,
2 harbor, or shelter from detection any alien in any place
3 within this state, including any building or means of
4 transportation, knowing, or in reckless disregard of the fact,
5 that the alien has come to, entered, or remained in the United
6 States in violation of law.

7 (c) Nothing in this section shall be construed so as
8 to prohibit or restrict the provision of any state or local
9 public benefit described in 8 U.S.C. Section 1621(b), or
10 regulated public health services provided by a private charity
11 using private funds.

12 (d) Any person violating the provisions of
13 subsection (a) or (b) shall, upon conviction, be guilty of a
14 Class C felony.

15 Section 5. (a) Any of the following entities may
16 create, publish, or otherwise manufacture an identification
17 document, identification card, or identification certificate
18 and may possess an engraved plate or other device for the
19 printing of the identification provided the name of the
20 issuing entity is clearly printed upon the face of any
21 identification:

22 (1) Businesses, companies, corporations, service
23 organizations, and federal, state, and local governmental
24 agencies for employee identification which is designed to
25 identify the bearer as an employee.

1 (2) Businesses, companies, corporations, and service
2 organizations for customer identification which is designed to
3 identify the bearer as a customer or member.

4 (3) Federal, state, and local government agencies
5 for purposes authorized or required by law, or any legitimate
6 purpose consistent with the duties of the agency, including,
7 but not limited to, voter identification cards, driver's
8 licenses, nondriver identification cards, passports, birth
9 certificates, and Social Security cards.

10 (4) Any public school or state or private
11 educational institution to identify the bearer as an
12 administrator, faculty member, student, or employee.

13 (5) Any professional organization or labor union to
14 identify the bearer as a member of the professional
15 organization or labor union.

16 (6) Businesses, companies, or corporations which
17 manufacture medical-alert identification for the wearer
18 thereof.

19 (b) All identification documents as provided for in
20 subdivision (3) or (4) of subsection (a) shall be issued only
21 to United States citizens, nationals, and legal permanent
22 resident aliens.

23 (c) The provisions of subsection (b) shall not apply
24 when an applicant presents, in person, valid documentary
25 evidence of any of the following:

26 (1) A valid, unexpired immigrant or nonimmigrant
27 visa status for admission into the United States.

1 (2) A pending or approved application for asylum in
2 the United States.

3 (3) Admission into the United States in refugee
4 status.

5 (4) A pending or approved application for temporary
6 protected status in the United States.

7 (5) Approved deferred action status.

8 (6) A pending application for adjustment of status
9 to legal permanent resident status or conditional resident
10 status.

11 (d) Upon approval, the applicant may be issued an
12 identification document provided for in subdivision (3) or (4)
13 of subsection (a). The identification document shall be valid
14 only during the period of time of the authorized stay of the
15 applicant in the United States, or if there is not a definite
16 end to the period of authorized stay, a period of one year.
17 Any identification document issued pursuant to this subsection
18 shall clearly indicate that it is temporary and shall state
19 the date that the identification document expires. The
20 identification document may be renewed only upon presentation
21 of valid documentary evidence that the status by which the
22 applicant qualified for the identification document has been
23 extended by the United States Citizenship and Immigration
24 Services or other authorized agency of the United States
25 Department of Homeland Security.

26 (e) The provisions of subsection (b) shall not apply
27 to an identification document described in subdivision (4) of

1 subsection (a) that is only valid for use on the campus or
2 facility of that educational institution and includes a
3 statement of that restricted validity clearly and
4 conspicuously printed upon the face of the identification
5 document.

6 (f) Any driver's license issued to a person who is
7 not a United States citizen, national, or legal permanent
8 resident alien for which an application has been made for
9 renewal, duplication, or reissuance shall be presumed to have
10 been issued in accordance with the provisions of subsection
11 (c) provided that, at the time the application is made, the
12 driver's license has not expired, been cancelled, suspended,
13 or revoked. The requirements of subsection (c) shall apply to
14 a renewal, duplication, or reissuance if the Department of
15 Public Safety is notified by a local, state, or federal
16 government agency of information in the possession of the
17 agency indicating a reasonable suspicion that the individual
18 seeking renewal, duplication, or reissuance is present in the
19 United States in violation of law. The provisions of this
20 subsection shall not apply to United States citizens,
21 nationals, or legal permanent resident aliens.

22 Section 6. (a) (1) Beginning January 1, 2011, the
23 Department of Public Safety shall begin issuing the Alabama
24 verified employee identification card, with the fee for the
25 card to be set by the Department of Public Safety.

26 (2) Beginning January 1, 2011, every person employed
27 in this state who is not a legal resident of this state shall

1 have a verified employee identification card for proof of
2 legal status to obtain employment.

3 (3) To obtain a verified employee identification
4 card, a person shall show documentation from his or her state
5 of residence or from the United States government indicating
6 his or her legal status in the United States.

7 (b) Every employer shall verify proof of legal
8 status of each of its employees through one of the following
9 three ways and shall keep a copy of the proof of
10 identification in the file of the employee:

11 (1) A valid, unexpired Alabama driver's license.

12 (2) A valid, unexpired Alabama nondriver
13 identification card.

14 (3) A valid, unexpired Alabama verified employee
15 identification card.

16 (c) Beginning January 1, 2011, an employer that
17 enters into a contract with another employer for the
18 performance of services within this state shall verify the
19 work eligibility status of all employees of the employer to
20 the employer with which the contract is made.

21 (d) It shall be a discriminatory practice for an
22 employer to discharge an employee working in Alabama who is a
23 United States citizen or permanent resident alien while
24 retaining an employee who the employer knows, or reasonably
25 should have known, is an unauthorized alien hired after
26 January 1, 2011, and who is working in Alabama in a job
27 category that requires equal skill, effort, and

1 responsibility, and which is performed under similar working
2 conditions, as defined in 29 U.S.C. Section 206(d)(1), as the
3 job category held by the discharged employee.

4 (e)(1) Beginning January 1, 2011, an employer
5 charged with a violation of this section shall be subject to a
6 civil penalty of five hundred dollars (\$500) for each person
7 employed that the employer does not have a file containing
8 proof of legal status through one of the three forms of
9 identification in subsection (b).

10 (2) For a second charge, the employer shall be fined
11 five thousand dollars (\$5,000) for each person employed that
12 the employer does not have a file containing proof of legal
13 status through one of the three forms of identification in
14 subsection (b).

15 (3) For a third charge, the employer shall be fined
16 five thousand dollars (\$5,000) for each person employed that
17 the employer does not have a file containing proof of legal
18 status through one of the three forms of identification in
19 subsection (b) and shall have its business license revoked for
20 one year.

21 (f) The civil penalties imposed in subsection (d)
22 shall be distributed 75 percent to the local law enforcement
23 authorities in the area where the violation occurred and 25
24 percent to state law enforcement.

25 (g) It is unlawful for a business entity to
26 knowingly hire or to recruit or refer for a fee for employment

1 in the State of Alabama an unauthorized alien as defined in
2 Title 8, Section 1324a(h)(3) of the United States Code.

3 (h) If any provision of this section is found to be
4 invalid for any reason, on the first day of the next month an
5 employer shall be required to verify the employment
6 eligibility of every employee hired through E-Verify, as
7 defined in this act, as an alternative to the requirements of
8 subsections (a) to (f) of this section and shall be subject to
9 the following requirements and conditions:

10 (1) Every business entity within the State of
11 Alabama that employs one or more employees shall register with
12 and utilize E-Verify to verify the employment authorization of
13 all new employees.

14 (2) The business entity shall retain all
15 documentation received in connection with its participation in
16 E-Verify that verifies the employment authorization of every
17 employee verified through E-Verify for at least three years
18 after the termination of the employment of the employee. This
19 documentation shall be provided to the Alabama Department of
20 Revenue upon request.

21 (3) Public employers shall not enter into a contract
22 for the performance of services within this state unless the
23 contractor is registered with and utilizing E-Verify to verify
24 the employment authorization of all new employees of the
25 contractor.

1 (4) The provisions of this section may be enforced
2 in the courts of the State of Alabama by any district attorney
3 or by the Attorney General of Alabama.

4 (5) On a finding of the first violation of this
5 subsection by a business entity, the court shall order the
6 suspension of all licenses that are held by the business
7 entity for a minimum of one day and a maximum of 30 days.

8 (6) On a finding of the second violation of this
9 subsection by a business entity, the court shall order the
10 suspension of all licenses that are held by the business
11 entity for a minimum of 30 days and a maximum of one year.

12 (7) On a finding of the third violation of this
13 subsection by a business entity, the court shall order the
14 permanent suspension of all licenses that are held by the
15 business entity as well as the revocation of the business
16 registration of the entity as a corporation in the State of
17 Alabama, if applicable.

18 (8) Every public employer within the State of
19 Alabama shall register with and utilize E-Verify to verify the
20 employment authorization of all new employees.

21 (9) No public employer shall enter into a contract
22 for the performance of services within this state unless the
23 contractor registers and participates in E-Verify to verify
24 the employment authorization of all new employees. This
25 subdivision shall not apply to any contracts entered into
26 prior to the effective date of this subsection even though the

1 contracts may involve the performance of labor within this
2 state after the effective date of this subsection.

3 (10) In enforcing the provisions of this subsection,
4 no state, county, or local official in the State of Alabama
5 shall attempt to independently determine whether an individual
6 is an unauthorized alien or an alien not lawfully present in
7 the United States. The determination shall only be made by
8 verifying the immigration status of the alien with the federal
9 government, pursuant to Title 8, Section 1373(c) of the United
10 States Code.

11 (11) For the purposes of this subsection, when
12 making a determination of whether an employee is an
13 unauthorized alien, a court shall only consider the
14 determination of the federal government pursuant to Title 8,
15 Section 1373(c) of the United States Code. The court shall
16 take judicial notice of any verification of the immigration
17 status previously provided by the federal government. The
18 court may, and at the request of a party shall, request the
19 federal government to provide, in automated, documentary, or
20 testimonial form, a new verification of the immigration status
21 of the employee pursuant to Title 8, Section 1373(c) of the
22 United States Code. The most recent determination of the
23 immigration status of an employee by the federal government
24 shall create a rebuttable presumption as to the immigration
25 status of the employee.

26 (12) For the purposes of this section, a business
27 entity that has complied in good faith with this section

1 through enrollment in E-Verify and has used E-Verify to
2 confirm the employment authorization of any employee in
3 question will benefit from a rebuttable presumption that the
4 business entity did not knowingly employ an unauthorized
5 alien.

6 Section 7. (a) Except as provided in subsection (c)
7 or where exempted by federal law, every agency or a political
8 subdivision of this state shall verify the lawful presence in
9 the United States of any natural person 14 years of age or
10 older who has applied for state or local public benefits, as
11 defined in 8 U.S.C. Section 1621, or for federal public
12 benefits, as defined in 8 U.S.C. Section 1611, that is
13 administered by an agency or a political subdivision of this
14 state.

15 (b) The provisions of this section shall be enforced
16 without regard to race, religion, gender, ethnicity, or
17 national origin.

18 (c) Verification of lawful presence under the
19 provisions of this section shall not be required for any of
20 the following:

21 (1) For any purpose for which lawful presence in the
22 United States is not restricted by law, ordinance, or
23 regulation.

24 (2) For assistance for health care items and
25 services that are necessary for the treatment of an emergency
26 medical condition, as defined in 42 U.S.C. Section

1 1396b(v) (3), of the alien involved and are not related to an
2 organ transplant procedure.

3 (3) For short-term, noncash, in-kind emergency
4 disaster relief.

5 (4) For public health assistance for immunizations
6 with respect to diseases and for testing and treatment of
7 symptoms of communicable diseases whether or not the symptoms
8 are caused by a communicable disease.

9 (5) For programs, services, or assistance such as
10 soup kitchens, crisis counseling and intervention, and
11 short-term shelter specified by the United States Attorney
12 General, in the sole and unreviewable discretion of the United
13 States Attorney General after consultation with appropriate
14 federal agencies and departments which:

15 a. Deliver in-kind services at the community level,
16 including through public or private nonprofit agencies.

17 b. Do not condition the provision of assistance, the
18 amount of assistance provided, or the cost of assistance
19 provided on the income or resources of the individual
20 recipient.

21 c. Are necessary for the protection of life or
22 safety.

23 (d) Verification of lawful presence in the United
24 States by the agency or political subdivision required to make
25 the verification shall require that the applicant execute an
26 affidavit under penalty of perjury that has met either of the
27 following requirements:

1 (1) He or she is a United States citizen.

2 (2) He or she is a qualified alien under the federal
3 Immigration and Nationality Act and is lawfully present in the
4 United States. The agency or political subdivision providing
5 the state or local public benefits shall provide notary public
6 services at no cost to the applicant.

7 (e) For any applicant who has executed the affidavit
8 described in subdivision (2) of subsection (d), eligibility
9 for benefits shall be verified through the Systematic Alien
10 Verification for Entitlements (SAVE) Program operated by the
11 United States Department of Homeland Security or an equivalent
12 program designated by the United States Department of Homeland
13 Security. Until eligibility verification is made, the
14 affidavit may be presumed to be proof of lawful presence for
15 the purposes of this section.

16 (f) Any person who knowingly and willfully makes a
17 false, fictitious, or fraudulent statement of representation
18 in an affidavit executed pursuant to subsection (d) shall be
19 subject to criminal penalties applicable in this state for
20 fraudulently obtaining public assistance program benefits. If
21 the affidavit constitutes a false claim of United States
22 citizenship under 18 U.S.C. Section 911, a complaint shall be
23 filed by the agency requiring the affidavit with the United
24 States Attorney General for the applicable district based upon
25 the venue in which the affidavit was executed.

26 (g) Agencies or political subdivisions of this state
27 may adopt variations to the requirements of the provisions of

1 this section which demonstrably improve the efficiency or
2 reduce delay in the verification process, or to provide for
3 adjudication of unique individual circumstances where the
4 verification procedures in this section would impose unusual
5 hardship on a legal resident of Alabama.

6 (h) It shall be unlawful for any agency or a
7 political subdivision of this state to provide any state,
8 local, or federal benefit, as defined in 8 U.S.C. Section
9 1621, or 8 U.S.C. Section 1611, in violation of this section.

10 (i) Each state agency or department which
11 administers any program of state or local public benefits
12 shall provide an annual report to the Governor, the President
13 Pro Tempore of the Senate, and the Speaker of the House of
14 Representatives with respect to its compliance with the
15 provisions of this section. Each agency or department shall
16 monitor the Systematic Alien Verification for Entitlements
17 Program for application verification errors and significant
18 delays and shall provide an annual public report on errors and
19 significant delays and recommendations to ensure that the
20 application of the Systematic Alien Verification of
21 Entitlements Program is not erroneously denying benefits to
22 legal residents of this state. Errors shall also be reported
23 to the United States Department of Homeland Security by each
24 agency or department.

25 Section 8. (a) If an employer, contracting for the
26 performance of services in this state with another employer,
27 fails to provide to the employer the documentation required by

1 Section 7(c) the employer with which the contract is made
2 shall withhold state income tax at the top marginal income tax
3 rate as provided by Alabama law as applied to compensation
4 paid to an individual for the performance of services within
5 this state which exceeds the minimum amount of compensation
6 the employer is required to report as income on United States
7 Internal Revenue Service Form 1099.

8 (b) Any employer who fails to comply with the
9 withholding requirements of this section shall be liable for
10 the taxes required to have been withheld and a penalty equal
11 to five times the taxes that should have been withheld unless
12 the employer is exempt from federal withholding with respect
13 to the individual pursuant to a properly filed Internal
14 Revenue Service Form 8233 or its equivalent.

15 (c) Nothing in this section is intended to create,
16 or should be construed as creating, an employer-employee
17 relationship between two employers.

18 Section 9. (a) On or after January 1, 2011, no wage
19 or remuneration for the performance of services paid to an
20 individual shall be allowed as a deductible business expense
21 for state income tax purposes by a taxpayer if the individual
22 is an unauthorized alien. This subsection shall apply whether
23 or not an Internal Revenue Service Form 1099 is issued in
24 conjunction with the wages or remuneration.

25 (b) On or after January 1, 2011, a taxpayer shall
26 not be allowed a deductible business expense for state income
27 tax purposes of a wage or remuneration for the performance of

1 services paid to an independent contractor who is not
2 registered with and utilizing E-Verify to verify the federal
3 employment authorization of all new employees under his or her
4 employ.

5 (c) All employers shall submit an affidavit to the
6 Department of Revenue accompanying the annual tax return
7 required under state law. This affidavit shall be signed by
8 the employer under penalty of perjury and shall specifically
9 state the following:

10 (1) Whether the employer utilized a business expense
11 or business loss deduction in determining federal adjusted
12 gross income.

13 (2) Whether the employer employed any employees or
14 independent contractors for the tax year in question and the
15 number of employees or independent contractors.

16 (3) Whether the employer is enrolled in and is
17 actively participating in E-Verify.

18 (4) Whether the employer has used E-Verify to
19 confirm the employment eligibility of every employee of the
20 employer hired on or after the implementation of this section.

21 (5) Whether the employer has confirmed that any
22 independent contractor employed by the employer is an
23 independent contractor who is registered with and utilizing
24 E-Verify to verify the federal employment authorization of all
25 new employees.

26 (6) The identification number of the employer
27 signifying the enrollment of the employer in E-Verify.

1 (d) The Department of Revenue may audit any employer
2 who fails to timely submit the affidavit required under this
3 section. The Department of Revenue may also audit any employer
4 if the department has probable cause to believe the employer
5 is not in compliance with this section.

6 (e) If the Department of Revenue determines that the
7 employer has knowingly made material representations of fact
8 regarding information contained in the affidavit required
9 under this section, the employer shall be required to add back
10 business deductions taken in determining his or her adjusted
11 gross income used to calculate the state tax liability of the
12 employer, to the extent such deductions constitute wages or
13 remuneration paid to employees whose employment authorization
14 was not verified using E-Verify.

15 Section 10. (a) The Attorney General shall negotiate
16 the terms of a Memorandum of Understanding between the State
17 of Alabama and the United States Department of Justice or the
18 United States Department of Homeland Security, as provided in
19 8 U.S.C. Section 1357(g), concerning the enforcement of
20 federal immigration and customs laws, detention and removals,
21 and investigations in the State of Alabama.

22 (b) The Memorandum of Understanding negotiated
23 pursuant to subsection (a) shall be signed on behalf of this
24 state by the Attorney General and the Governor or as otherwise
25 required by the appropriate federal agency.

26 (c) No local government, whether acting through its
27 governing body or by an initiative, referendum, or any other

1 process, shall enact any ordinance or policy that limits or
2 prohibits a law enforcement officer, local official, or local
3 government employee from communicating or cooperating with
4 federal officials with regard to the immigration status of any
5 person within this state.

6 (d) Notwithstanding any other provision of law, no
7 government entity or official within this state may prohibit,
8 or in any way restrict, any government entity or official from
9 sending to, or receiving from, the United States Department of
10 Homeland Security, information regarding the citizenship or
11 immigration status, lawful or unlawful, of any individual:

12 (1) Sending information to or requesting or
13 receiving information from the United States Department of
14 Homeland Security.

15 (2) Maintaining the information.

16 (3) Exchanging the information with any other
17 federal, state, or local government entity.

18 (e) The provisions of this section shall allow for a
19 private right of action by any natural or legal person
20 lawfully domiciled in this state to file for a writ of
21 mandamus to compel any noncooperating local or state
22 governmental agency to comply with the reporting laws.

23 Section 11. (a) Except as otherwise provided by law,
24 an individual who is not lawfully present in the United States
25 shall not be eligible on the basis of residence within the
26 state for either of the following:

1 (1) Any postsecondary education benefit, including,
2 but not limited to, scholarships or financial aid.

3 (2) Resident tuition.

4 (b) The provisions of subsection (a) shall not apply
5 to a student enrolled in a degree program at a postsecondary
6 educational institution in this state during the 2010-2011
7 school year or any prior year who received a resident tuition
8 benefit pursuant to state law.

9 Section 12. (a) Subject to the availability of
10 funding, the Department of Public Safety shall establish a
11 Fraudulent Documents Identification (FDI) Unit for the primary
12 purpose of investigating and apprehending persons or entities
13 that participate in the sale or distribution of fraudulent
14 documents used for identification purposes. The unit shall
15 additionally specialize in fraudulent identification documents
16 created and prepared for persons who are unlawfully residing
17 within this state. The department shall employ sufficient
18 employees to investigate and implement the unit.

19 (b) Any person caught creating or possessing
20 falsified Alabama verified employee identification cards shall
21 be fined five thousand dollars (\$5,000) for every card he or
22 she creates or possesses.

23 Section 13. (a) It shall be unlawful for an
24 unauthorized alien to be present in this state.

25 (b) An unauthorized alien who has not prior
26 conviction for being unlawfully in this state shall be subject
27 to a fine of not more than five hundred dollars (\$500) and a

1 term of imprisonment of not more than 13 months, or a choice
2 to be deported to his or her country of citizenship.

3 Section 14. (a) It shall be unlawful for an
4 unauthorized alien to be present in this state.

5 (b) An unauthorized alien who has not prior
6 conviction for being unlawfully in this state shall be subject
7 to a fine of not more than five hundred dollars (\$500) and a
8 term of imprisonment of not more than 13 months, or a choice
9 to be deported to his or her country of citizenship.

10 Section 15. Notwithstanding any provision of law,
11 each person who registers to vote shall present proof that he
12 or she is a United States citizen and a resident of this state
13 before he or she is allowed to register to vote.

14 Section 16. Notwithstanding any provision of law, a
15 person who cannot present proof that he or she is a United
16 States citizen or a lawful resident of this county may not be
17 granted a license by any licensing authority of this state, a
18 county or municipality.

19 Section 17. Section 32-6-9, Code of Alabama 1975, is
20 amended to read as follows:

21 "§32-6-9.

22 "(a) Every licensee shall have his or her license in
23 his or her immediate possession at all times when driving a
24 motor vehicle and shall display the same, upon demand of a
25 judge of any court, a peace officer or a state trooper.
26 However, no person charged with violating this section shall
27 be convicted if he or she produces in court or the office of

1 the arresting officer a driver's license theretofore issued to
2 him or her and valid at the time of his or her arrest.

3 "(b) Notwithstanding the provisions of Section
4 32-1-4, if a law officer arrests a person for a violation of
5 this section and the officer is unable to determine by any
6 other means that the person has a valid driver's license, the
7 officer shall transport the person to the nearest or most
8 accessible magistrate."

9 Section 18. (a) When a person charged with a felony
10 or with driving under the influence pursuant to Section
11 32-5A-191, Code of Alabama 1975, is confined, for any period,
12 in the jail of the county, any municipality, or a jail
13 operated by a regional jail authority, a reasonable effort
14 shall be made to determine the citizenship status of the
15 person so confined.

16 (b) If the prisoner is a foreign national, the
17 keeper of the jail or other officer shall make a reasonable
18 effort to verify that the prisoner has been lawfully admitted
19 to the United States, and if lawfully admitted, that lawful
20 status has not expired. If verification of lawful status
21 cannot be made from documents in the possession of the
22 prisoner, verification shall be made within 48 hours through a
23 query to the Law Enforcement Support Center of the United
24 States Department of Homeland Security or other office or
25 agency designated for that purpose by the United States
26 Department of Homeland Security. If the lawful immigration
27 status of the prisoner cannot be verified, the keeper of the

1 jail or other officer shall notify the United States
2 Department of Homeland Security.

3 (c) For the purpose of determining the grant of or
4 issuance of bond, it shall be a rebuttable presumption that a
5 person whose citizenship status has been verified pursuant to
6 subsection (b) to be a foreign national who has not been
7 lawfully admitted to the United States is at risk of flight.

8 Section 19. Although this bill would have as its
9 purpose or effect the requirement of a new or increased
10 expenditure of local funds, the bill is excluded from further
11 requirements and application under Amendment 621, now
12 appearing as Section 111.05 of the Official Recompilation of
13 the Constitution of Alabama of 1901, as amended, because the
14 bill defines a new crime or amends the definition of an
15 existing crime.

16 Section 20. The provisions of this act are
17 severable. If any part of this act is declared invalid or
18 unconstitutional, that declaration shall not affect the part
19 which remains.

20 Section 21. This act shall become effective
21 immediately following its passage and approval by the
22 Governor, or its otherwise becoming law.