

1 SB40
2 115208-1
3 By Senator Little (Z)
4 RFD: Fiscal Responsibility and Accountability
5 First Read: 12-JAN-10
6 PFD: 11/24/2009

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8 SYNOPSIS: Under existing law, state agencies and
9 other public entities are not specifically
10 prohibited from contracting with an individual or
11 business that hires an unauthorized alien.

12 This bill would require individuals and
13 businesses that contract with the state to certify,
14 as a condition to the contract, that the contractor
15 will not knowingly employ any unauthorized alien in
16 the performance of the contract and would provide
17 that a contractor making the certification who
18 subsequently hires or contracts with an
19 unauthorized alien with actual knowledge that the
20 person is an unauthorized alien is subject to a
21 civil penalty.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 To require certain contractors that contract with
2 the state to certify as a condition to the contract that they
3 will not hire unauthorized aliens; and to provide that certain
4 violations shall result in the payment of a civil penalty
5 equal to three percent of the contract value.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. (a) As used in this act, the following
8 words shall have the following meanings:

9 (1) ACTUAL KNOWLEDGE. Direct and clear subjective
10 knowledge.

11 a. A contractor that establishes that it has
12 complied in good faith with the requirements of 8 U.S.C. §
13 1324a(b) with respect to the employment of any individual in
14 the performance of a contract with a state agency has
15 established an irrebuttable presumption that the contractor
16 did not have actual knowledge that the individual was an
17 unauthorized alien, unless the contractor obtained actual
18 knowledge of an employee's unauthorized status after he or she
19 hired the employee and did not terminate the employee within a
20 reasonable time after gaining such knowledge.

21 b. For purposes of this act, an employee's actual
22 knowledge that his or her employer is employing an
23 unauthorized alien may be imputed to an employer only if the
24 employee possessing such knowledge is responsible for
25 approving job applications of the employer's employees or if
26 the employee is serving in a managerial capacity and has the
27 authority to hire and fire the employer's employees.

1 (2) CONTRACTOR. Any person or entity who enters into
2 a contract with a state agency for purposes of doing business
3 that is required to be competitively bid or that is required
4 to be submitted to the Joint Legislative Contract Review
5 Oversight Committee.

6 (3) STATE AGENCY. Any agency, institution,
7 authority, department, board, commission, bureau, or council
8 of the state.

9 (4) UNAUTHORIZED ALIEN. Any person who falls under
10 the definition of "unauthorized alien" at 8 U.S.C. § 1324a.

11 Section 2. (a) No state agency may enter into or
12 renew a contract that is required to be competitively bid or
13 that is required to be submitted to the Joint Legislative
14 Contract Review Oversight Committee unless the prospective
15 contractor certifies in writing that the contractor will not
16 employ any individual in the performance of the contract that
17 the contractor has actual knowledge to be an unauthorized
18 alien. If a contractor, despite making the certification
19 required herein, is subsequently proven, with clear and
20 convincing evidence, to have employed one or more individuals
21 in the performance of the contract with actual knowledge that
22 those individuals are unauthorized aliens, the contractor
23 shall pay a civil penalty equal to three percent of the
24 contract value.

25 (b) Throughout the performance of any particular
26 contract subject to the requirements of this act, the maximum

1 penalty that a contractor may receive shall be no greater than
2 three percent of the contract value.

3 Section 3. A contractor who received written
4 certification of compliance with this act from a subcontractor
5 is not vicariously liable for the penalty pursuant to this act
6 for the failure of that subcontractor to comply with this act.

7 Section 4. This act preempts any ordinance,
8 regulation, or other legislation by any city, county,
9 municipality, or other local government or political
10 subdivision pertaining to the subject of this act.

11 Section 5. A contractor who in good faith complies
12 with the requirements of this act may not be sanctioned or
13 subjected to any civil or administrative action for employing
14 an individual not authorized for employment in the United
15 States.

16 Section 6. Nothing in this act shall be construed as
17 creating or otherwise supporting a private right of action
18 against any person or entity for employing one or more
19 unauthorized aliens.

20 Section 7. All laws or parts of laws which conflict
21 with this act are repealed.

22 Section 8. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.