

1 SB75
2 134653-1
3 By Senator Sanford
4 RFD: Fiscal Responsibility and Accountability
5 First Read: 07-FEB-12
6 PFD: 12/01/2011

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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 or a valid Alabama driver's
22 license or identification card to verify the
23 immigration status and eligibility of an employee.

24 This bill would also provide subcontractors
25 on a project paid for by state contract, grant, or
26 incentive with an option to use federal E-Verify or
27 a valid Alabama driver's license or identification

1 card to verify the immigration status and
2 eligibility of an employee.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

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8 To amend Sections 9 and 15 of Act 2011-535, 2011
9 Regular Session (Acts 2011, p. __), now appearing as Sections
10 31-13-9 and 31-13-15, Code of Alabama 1975, to allow
11 businesses and employers in this state, as well as
12 subcontractors on projects paid for by state contract, grant,
13 or incentive, to use the federal E-Verify program or a valid
14 Alabama driver's license or identification card to verify the
15 immigration status and eligibility of an employee.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Sections 9 and 15 of Act 2011-535, 2011
18 Regular Session (Acts 2011, p. __), now appearing as Sections
19 31-13-9 and 31-13-15, Code of Alabama 1975, are amended to
20 read as follows:

21 "§31-13-9.

22 "(a) As a condition for the award of any contract,
23 grant, or incentive by the state, any political subdivision
24 thereof, or any state-funded entity to a business entity or
25 employer that employs one or more employees, the business
26 entity or employer shall not knowingly employ, hire for
27 employment, or continue to employ an unauthorized alien and

1 shall attest to such, by sworn affidavit signed before a
2 notary.

3 "(b) As a condition for the award of any contract,
4 grant, or incentive by the state, any political subdivision
5 thereof, or any state-funded entity to a business entity or
6 employer that employs one or more employees, the business
7 entity or employer shall provide documentation establishing
8 that the business entity or employer is enrolled in the
9 E-Verify program or will require employees to produce a valid,
10 unexpired Alabama driver's license or non-driver
11 identification card. During the performance of the contract,
12 the business entity or employer shall participate in the
13 E-Verify program and shall verify every employee that is
14 required to be verified according to the applicable federal
15 rules and regulations or shall use a valid, unexpired Alabama
16 driver's license or non-driver identification card to verify
17 every employee.

18 "(c) (1) No subcontractor on a project paid for by
19 contract, grant, or incentive by the state, any political
20 subdivision thereof, or any state-funded entity shall
21 knowingly employ, hire for employment, or continue to employ
22 an unauthorized alien and shall attest to such by sworn
23 affidavit signed before a notary.

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

26 "a. enroll Enroll in the E-Verify program prior to
27 performing any work on the project and shall attach to the

1 sworn affidavit documentation establishing that the
2 subcontractor is enrolled in the E-Verify program.

3 "b. Verify the employment eligibility of employees
4 using a valid, unexpired Alabama driver's license or
5 non-driver identification card.

6 "(d) A contractor of any tier shall not be liable
7 under this section when such contractor contracts with its
8 direct subcontractor who violates subsection (c)(1), if the
9 contractor receives a sworn affidavit from the subcontractor
10 signed before a notary attesting to the fact that the direct
11 subcontractor, in good faith, has complied with subsection
12 (c)(2) with respect to verifying each of its employee's
13 eligibility for employment, unless the contractor knows the
14 direct subcontractor is violating subsection (c)(1).

15 "(e) (1) Upon the first violation of subsection (a)
16 by any business entity or employer awarded a contract by the
17 state, any political subdivision thereof, or any state-funded
18 entity the business entity or employer shall be deemed in
19 breach of contract and the state, political subdivision
20 thereof, or state-funded entity may terminate the contract
21 after providing notice and an opportunity to be heard. Upon
22 application by the state entity, political subdivision
23 thereof, or state-funded entity, the Attorney General may
24 bring an action to suspend the business licenses and permits
25 of the business entity or employer for a period not to exceed
26 60 days, according to the procedures described in Section
27 31-13-15. The court shall order the business entity or

1 employer to file a signed, sworn affidavit with the local
2 district attorney within three days after the order is issued
3 by the court stating that the business entity or employer has
4 terminated the employment of every unauthorized alien and the
5 business entity or employer will not knowingly or
6 intentionally employ an unauthorized alien in this state.
7 Before a business license or permit that has been suspended
8 under this subsection is reinstated, a legal representative of
9 the business entity or employer shall submit to the court a
10 signed, sworn affidavit stating that the business entity or
11 employer is in compliance with the provisions of this chapter
12 and a copy of the memorandum of understanding issued to the
13 business entity or employer at the time of enrollment in
14 E-Verify or other documentation demonstrating that the
15 business entity or employer is requiring employees to produce
16 a valid, unexpired Alabama driver's license or non-driver
17 identification card.

18 "(2) Upon a second or subsequent violation of
19 subsection (a) by any business entity or employer awarded a
20 contract by the state, any political subdivision thereof, or
21 any state-funded entity the business entity or employer shall
22 be deemed in breach of contract and the state, any political
23 subdivision thereof, or any state-funded entity shall
24 terminate the contract after providing notice and an
25 opportunity to be heard. Upon application by the state entity,
26 political subdivision thereof, or state-funded entity, the
27 Attorney General may bring an action to permanently revoke the

1 business licenses and permits of the business entity or
2 employer according to the procedures described in Section
3 31-13-15.

4 "(f) (1) Upon the first violation of subsection
5 (c) (1) by a subcontractor, the state or political subdivision
6 thereof may bar the subcontractor from doing business with the
7 state, any political subdivision thereof, any state-funded
8 entity, or with any contractor who contracts with the state,
9 any political subdivision thereof, or any state-funded entity
10 after providing notice and an opportunity to be heard. Upon
11 application by the state entity or political subdivision
12 thereof, or state-funded entity, the Attorney General may
13 bring an action to suspend the business licenses and permits
14 of the subcontractor for a period not to exceed 60 days,
15 according to the procedures described in Section 31-13-15. The
16 court shall order the subcontractor to file a signed, sworn
17 affidavit with the local district attorney within three days
18 after the order is issued by the court stating that the
19 subcontractor has terminated the employment of every
20 unauthorized alien and the subcontractor 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 subcontractor shall submit to the court a signed, sworn
25 affidavit stating that the subcontractor is in compliance with
26 the provisions of this chapter and a copy of the memorandum of
27 understanding issued to the subcontractor at the time of

1 enrollment in E-Verify or other documentation demonstrating
2 that the subcontractor is requiring employees to produce a
3 valid, unexpired Alabama driver's license or non-driver
4 identification card.

5 "(2) Upon a second or subsequent violation of
6 subsection (c) (1) by a subcontractor and upon application by
7 the state entity or political subdivision thereof, or
8 state-funded entity, the Attorney General may bring an action
9 to permanently suspend the business licenses of the business
10 entity or employer according to the procedures described in
11 Section 31-13-15. The determination of a violation shall be
12 according to the procedures described in Section 31-13-15.

13 "(g) A business entity or employer that complies
14 with subsection (b) shall not be found to be in violation of
15 subsection (a). A subcontractor ~~that is enrolled in the~~
16 ~~E-Verify program during the full period of performance of the~~
17 ~~subcontract~~ that complies with subdivision (c) (2) shall not be
18 found to be in violation of subsection (c) (1).

19 "(h) The Secretary of State shall adopt rules to
20 administer this section and shall report any rules adopted to
21 the Legislature.

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

26 "(j) The suspension of a business license or permit
27 under subsection (e) (1) and (f) (1) shall terminate one

1 business day after a legal representative of the business
2 entity, employer, or subcontractor submits a signed, sworn
3 affidavit stating that the business entity, employer, or
4 subcontractor is in compliance with this chapter to the court.

5 "§31-13-15.

6 "(a) No business entity, employer, or public
7 employer shall knowingly employ, hire for employment, or
8 continue to employ an unauthorized alien to perform work
9 within the State of Alabama. Knowingly employ, hire for
10 employment, or continue to employ an unauthorized alien means
11 the actions described in 8 U.S.C. § 1324a.

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

14 "(1) enroll ~~enroll~~ Enroll in E-Verify and thereafter,
15 according to the federal statutes and regulations governing
16 E-Verify, ~~shall~~ verify the employment eligibility of the
17 employee through E-Verify.

18 "(2) Verify the employment eligibility of the
19 employee using a valid, unexpired Alabama driver's license or
20 non-driver identification card.

21 "(c) A business entity or employer that uses
22 E-Verify or a valid, unexpired Alabama driver's license or
23 non-driver identification card to verify the work
24 authorization of an employee shall not be deemed to have
25 violated this section with respect to the employment of that
26 employee.

1 "~~(c)~~ (d) On a finding of a first violation by a
2 court of competent jurisdiction that a business entity or
3 employer knowingly violated subsection (a), the court shall do
4 all of the following:

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

7 "(2) Subject the business entity or employer to a
8 three-year probationary period throughout the state. During
9 the probationary period, the business entity or employer shall
10 file quarterly reports with the local district attorney of
11 each new employee who is hired by the business entity or
12 employer in the state.

13 "(3) Order the business entity or employer to file a
14 signed, sworn affidavit with the local district attorney
15 within three days after the order is issued by the court
16 stating that the business entity or employer has terminated
17 the employment of every unauthorized alien and the business
18 entity or employer will not knowingly or intentionally employ
19 an unauthorized alien in this state.

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

25 "~~(d) (1)~~ (e) (1) Before a business license or permit
26 that has been suspended under subsection ~~(c)~~ (d) is
27 reinstated, a legal representative of the business entity or

1 employer shall submit to the court a signed, sworn affidavit
2 stating that the business entity or employer is in compliance
3 with the provisions of this chapter and a copy of the
4 memorandum of understanding issued to the business entity or
5 employer at the time of enrollment in E-Verify or other
6 documentation that the business entity or employer is
7 requiring employees to produce a valid, unexpired Alabama
8 driver's license or non-driver identification card.

9 "(2) The suspension of a business license or permit
10 under subsection ~~(c)~~ (d) shall terminate one business day
11 after a legal representative of the business entity or
12 employer submits a signed, sworn affidavit stating that the
13 business entity or employer is in compliance with the
14 provisions of this chapter to the court.

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

24 "~~(f)~~ (g) For a subsequent violation of subsection
25 (a), the court shall direct the applicable governing bodies to
26 forever suspend the business licenses and permits, if such

1 exist, of the business entity or employer throughout the
2 state.

3 ~~"(g)~~ (h) This section shall not be construed to deny
4 any procedural mechanisms or legal defenses included in the
5 E-Verify program or any other federal work authorization
6 program. A person or entity that establishes that it has
7 complied in good faith with the requirements of 8 U.S.C. §
8 1324a(b) establishes an affirmative defense that the business
9 entity or employer did not knowingly hire or employ an
10 unauthorized alien.

11 ~~"(h)~~ (i) In proceedings of the court, the
12 determination of whether an employee is an unauthorized alien
13 shall be made by the federal government, pursuant to 8 U.S.C.
14 § 1373(c). The court shall consider only the federal
15 government's determination when deciding whether an employee
16 is an unauthorized alien. The court may take judicial notice
17 of any verification of an individual's immigration status
18 previously provided by the federal government and may request
19 the federal government to provide further automated or
20 testimonial verification.

21 ~~"(i)~~ (j) Any business entity or employer that
22 terminates an employee to comply with this section shall not
23 be liable for any claims made against the business entity or
24 employer by the terminated employee, provided that such
25 termination is made without regard to the race, ethnicity, or
26 national origin of the employee and that such termination is

1 consistent with the anti-discrimination laws of this state and
2 of the United States.

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

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

13 "(1) Any resident of this state may petition the
14 Attorney General to bring an enforcement action against a
15 specific business entity or employer by means of a written,
16 signed petition. A valid petition shall include an allegation
17 that describes the alleged violator or violators, as well as
18 the action constituting the violation, and the date and
19 location where the action occurred.

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

23 "(3) The Attorney General shall respond to any
24 petition under this subsection within 60 days of receiving the
25 petition, either by filing a civil complaint in a court of
26 competent jurisdiction or by informing the petitioner in

1 writing that the Attorney General has determined that filing a
2 civil complaint is not warranted.

3 "~~(1)~~ (m) This section does not apply to the
4 relationship between a party and the employees of an
5 independent contractor performing work for the party and does
6 not apply to casual domestic labor performed within a
7 household.

8 "~~(m)~~ (n) It is an affirmative defense to a violation
9 of subsection (a) of this section that a business entity or
10 employer was entrapped.

11 "(1) To claim entrapment, the business entity or
12 employer must admit by testimony or other evidence the
13 substantial elements of the violation.

14 "(2) A business entity or employer who asserts an
15 entrapment defense has the burden of proving by clear and
16 convincing evidence the following:

17 "a. The idea of committing the violation started
18 with law enforcement officers or their agents rather than with
19 the business entity or employer.

20 "b. The law enforcement officers or their agents
21 urged and induced the business entity or employer to commit
22 the violation.

23 "c. The business entity or employer was not already
24 predisposed to commit the violation before the law enforcement
25 officers or their agents urged and induced the employer to
26 commit the violation.

1 "~~(n)~~ (o) In addition to actions taken by the state
2 or political subdivisions thereof, the Attorney General or the
3 district attorney of the relevant county may bring an action
4 to enforce the requirements of this section in any county
5 district court of this state wherein the business entity or
6 employer does business.

7 "~~(o)~~ (p) The terms of this section shall be
8 interpreted consistently with 8 U.S.C. § 1324a and any
9 applicable federal rules and regulations."

10 Section 2. This act shall become effective on the
11 first day of the third month following its passage and
12 approval by the Governor, or its otherwise becoming law.