

Proposed Amendments to the Alabama Immigration Law

On April 5, 2012, House Bill 658 was introduced by Micky Hammon in the Alabama House of Representatives to make changes to HB 56, Alabama's toughest-in-the-nation immigration law. Based on the information currently available, a summary of the proposed changes is set forth below. If you have any questions regarding this legislation, please contact:

Edward A. "Ted" Hosp	Governmental Affairs & Compliance	205.254.1077	thosp@maynardcooper.com
Matthew I. Penfield	Employment & Immigration Law	205.254.1114	mpenfield@maynardcooper.com

Section 3. Definitions

- BUSINESS ENTITY is defined to include only those “employing one or more persons within the State of Alabama.” Several changes in the definition section are intended to limit the application of the law to entities that employ one or more persons within the State of Alabama.
- CONTRACTOR is limited to those who enter into an agreement “that is required to be competitively bid or is one that would be required to be submitted to the Joint Legislative Contract Review Oversight Committee.” This change eliminates the application of the law to smaller contracts that are not required to be bid.
- CONTRACTOR is defined to include only those employing a person within the State of Alabama.
- EMPLOYEE is defined as one who is directed, allowed, or permitted to perform labor or service in the State of Alabama.
- EMPLOYER is defined as one having control of any employment or employee within the State of Alabama.
- Adds documents to the list of documents that may be presented to show LAWFUL PRESENCE:
 - An Alabama driver’s license that expired within the preceding six months may be used to demonstrate LAWFUL PRESENCE.
 - A valid Uniformed Services Privileges and Identification Card may be used to demonstrate LAWFUL PRESENCE.

- Adds a definition for PROJECT – an undertaking to provide a service or a thing within this state, but specifically does not include a transaction in the sale of goods.
- STATE-FUNDED ENTITY is redefined as one that has received more than 50% of its total revenue in any one of the preceding three fiscal years from a state, county or any political subdivision thereof.

Sections 5 and 6. Enforcement

- Eliminates the right of a citizen to bring an action in circuit court to enforce federal immigration law or this Act. Instead, a person must file a petition with the Attorney General (or appropriate local district attorney) requesting that he or she bring an action.
- The petition filed with AG or DA must be signed under oath and under penalty of perjury and must allege with specificity the alleged violation of which the person has knowledge.
- The district attorney or Attorney General must either bring an action or publicly state in writing the justification for why no action was brought within 90 days of receiving a petition.
- Attorney General or local district attorney must give 30 days notice to a public official of his or her intent to file an action before doing so.
- Employees of the State of Alabama or any political subdivision have a duty to report violations only “of which the person has knowledge.”

Section 7. Public Benefits

- Only those agencies or political subdivisions that actually fund and administer state or local public benefits are required to verify the lawful presence or eligibility of each person who applies for such state or local benefits.
- The first renewal or issuance of any commercial or professional license requires verification of lawful presence; however subsequent renewals do not require verification.

Section 8. Postsecondary Education

- Removes the requirement that an alien attending a public postsecondary institution must possess proof of lawful permanent residence or an appropriate nonimmigrant visa.
- Aliens not lawfully present in the United States are still prohibited from enrolling in or attending any public postsecondary school.

Section 9. Contracts, Grants or Incentives Awarded by State-Funded Entity

- Removes the requirement that a contractor or subcontractor provide a sworn affidavit attesting that they do not employ, hire for employment, or continue to employ an alien not authorized to work in the United States.
- Requires a contractor and subcontractor to participate in E-Verify, and requires the prime contractor to provide documentation establishing enrollment in E-Verify.
- Contractor will not be liable for violation by subcontractor unless it is shown by clear and convincing evidence that the contractor had actual knowledge that the subcontractor was in violation.
- Violations
 - Court may decide not to suspend the business licenses, permits, or other authorizing document, if the court determines that suspension “is not in the best interest of the public.”
- First violation
 - Contractor will be deemed in breach of contract. The contract may be terminated after notice and opportunity to be heard;
 - The court shall order:
 - the entity to terminate the unauthorized alien;
 - subject business entity to **three-year** probationary period during which the employer must file quarterly reports of each new employee hired in the state;
 - business entity to file a sworn affidavit that all unauthorized aliens have been terminated and stating that the entity will not knowingly or intentionally employ another unauthorized alien in the state;
 - suspension of the business license, permit, or any other authorized documents for a period not to exceed **60** days
 - **unless** the court determines that a suspension of such license, etc., is not in the best interest of the public.
 - Act provides a list of the factors the court should take into consideration:

- (i) The number of unauthorized aliens employed by the business entity or employer.
 - (ii) Any prior misconduct by the business entity or employer.
 - (iii) Whether the business entity or employer made good faith efforts to comply with any applicable requirements.
 - (iv) The duration of the violation.
 - (v) The role of the directors, officers, or principals of the business entity or employer in the violation.
 - (vi) The impact a suspension of business licenses, permits, or other authorizing document would have on the health or safety of the public.
- Court must give written opinion if it suspends business license, etc.
 - Second violation that occurs within 5 years has the same penalty structure except that the probationary period is **five years** and the suspension of business licenses, etc. is for no more than **120** days.
 - Third or subsequent violation that occurs within 5 years has the same penalty structure except that the probationary period is **seven years** and the suspension of business licenses, etc. is permanent.
 - Compliance verified by contracting authority or Attorney General.
 - This section does not apply to debt obligations of any governmental entity.

Section 10. Failure to Carry Alien Registration Document

- Removes requirement that record be certified by federal agency.
- Removes the limitations of a fine not more than \$100 and not more than 30 days in jail.

Section 11. Prohibition of Unauthorized Alien Applying for Work

- Removes requirement that employment authorization documentation be certified by a federal agency.
- Removes the limitation of a fine not more than \$500.

Section 12. Determination of Lawful Status Upon Arrest

- Law enforcement may determine citizenship and immigration status upon “issuance of any traffic citation” or lawful arrest.
- Law enforcement may determine citizenship and immigration status of “a person in the same automobile as the person who was lawfully arrested or issued a traffic citation.”
- Requires verification of alien’s immigration status “as soon as reasonably possible, but not later than 48 hours after the time of the alien’s arrest.”
- Alabama driver’s license that expired within the then preceding six months or a valid Uniformed Services Privileges and Identification Card may be provided to the law enforcement officer to show the person is lawfully present in the United States.

Section 13. Conceal, Harbor or Shield

- Adds “from detection” to “conceal, harbor or shield from detection.” This change makes it clear that a violation of this section requires that a person intend to prevent detection of an alien unlawfully present in the United States.
- Deletes prohibition of encouraging or inducing an alien to come to or reside in this state.
- Adds exemption for “bona fide nonprofit religious organizations.”
- Deletes the prohibition of harboring an alien unlawfully present by entering into a rental agreement.
- Lowers the number of aliens involved in order to increase a violation of this Section from a Class A misdemeanor to a Class C felony from ten to five.

Section 14. Crime of Dealing in False Identification Documents

- Removes crime for merely reproducing false identification.
- Adds the requirement that for a violation of this Section to occur, “the prohibited actions must be taken to intentionally . . . facilitate an unauthorized alien’s employment or presence.”

Section 15. E-Verify for All Employers

- Changes in penalties consistent with Section 9.
- Adds requirements that any citizen petition for an alleged violation of the law filed with the Attorney General by any resident “must be signed under oath and under penalty of perjury,” and the petition must “allege with specificity any alleged violations.”

Section 17. Unlawful Employment Practice

- Adds causation requirement - must show that discharge or rejection was caused by hiring or retention of an unauthorized alien.
- Must prove employer intended to discriminate.
- Adds a defense for business entities and employers. It shall not be unlawful employment practice if the business entity or employer had a legitimate business reason for its decision.
- Removes the provision that required the losing party to pay court costs and reasonable attorneys fees for the prevailing party.
- Adds crime for knowingly filing a false or frivolous complaint.

Section 32-6-9. Failure to Present Driver’s License

- Modifies 32-6-9 requiring a driver to carry his or her driver's license and adds 32-6-1 regarding driving without a license.
- Removes requirement that person be taken to magistrate.
- Citizenship determination to be made as soon as possible but not later than 48 hours.

Section 18. Person Charged with a Crime

- Amends time to conduct verification inquiry. For someone charged with a crime for which bail is required or are confined, verification inquiry should be made as soon as reasonably possible but not later than 48 hours.

Section 19. Notification of ICE when Released from Custody

- Removes requirement that ICE be notified if someone merely pays a fine.
- Removes reference to Department of Corrections and substitutes responsible agency.

Section 20. Stay of Action when Alien is Criminal Victim or Critical Witness

- Allows exception for parent or guardian of a victim of a criminal act who is a minor and parent or guardian of a critical witness in any prosecution who is a minor.

Section 23. Alabama Department of Homeland Security Reports

- Changes the Alabama Department of Homeland Security's reporting requirement from a quarterly to an annual report.
- Gives the Alabama Department of Homeland Security the authority to request proof of enrollment in E-Verify from business entities and employers that are the subject of a complaint.
- Requires the Alabama Department of Homeland Security to operate and maintain a toll free telephone hotline or website to receive tips regarding possible violations.

Section 26. Enforcement of Contract

- This section prohibits the enforcement of a contract entered into with a known unlawfully present alien. The amendment provides that that this prohibition does not apply to contracts entered into prior to the effective date of the law, nor to contracts for legal services.

Section 27. Public School Statistics

- Removes inquiry of students but still allows the State Department of Education to determine cost of educating children of aliens unlawfully present.

Section 28. Voting Provisions

- Puts voter eligibility determination in hands of county board of registrars.
- Broadens evidence that the board may consider to determine citizenship.
- Allows an applicant to appeal denial of their application.

Section 29. Business Transactions

- Modifies the definition of business transaction and limits it to applying for a motor vehicle license plate, a driver's license or nondriver identification card, or a business license. No other transactions included.
- Only requires proof of citizenship for initial business transaction. Verification is not required for renewals.
- Provides list of documents to be considered in verifying citizenship or lawful presence.
 - The following documents may be used to demonstrate lawful presence.
 - a. A valid, unexpired Alabama driver's license or an Alabama driver's license that expired within the then preceding six months.
 - b. A valid, unexpired Alabama nondriver identification card.
 - c. A valid tribal enrollment card or other form of tribal identification bearing a photograph or other biometric identifier.
 - d. Any valid United States federal or state government issued identification document bearing a photograph or other biometric identifier, if issued by an entity that requires proof of lawful presence in the United States before issuance.
 - e. A foreign passport with an unexpired United States Visa and a corresponding stamp or notation by the United States Department of Homeland Security indicating the bearer's admission to the United States.
 - f. A foreign passport issued by a visa waiver country with the corresponding entry stamp and unexpired duration of stay annotation or an I-94W form by the United States Department of Homeland Security indicating the bearer's admission to the United States.
 - g. A valid Uniformed Services Privileges and Identification Card.
 - The following documents may be used to demonstrate United States citizenship.
 - (1) A driver's license or nondriver's identification card issued by the Alabama Department of Public Safety Division of Motor Vehicles or the equivalent governmental agency of another state within the United States, provided that the governmental agency of another state within the United States requires proof of lawful presence in the United States as a condition of issuance of the driver's license or nondriver's identification card.
 - (2) A birth certificate.

- (3) Pertinent pages of a United States valid or expired passport identifying the person and the person's passport number, or the person's United States passport.
- (4) United States naturalization documents or the number of the certificate of naturalization.
- (5) Other documents or methods of proof of United States citizenship issued by the federal government pursuant to the Immigration and Nationality Act of 1952, as amended.
- (6) Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number.
- (7) A consular report of birth abroad of a citizen of the United States of America.
- (8) A certificate of citizenship issued by the United States Citizenship and Immigration Services.
- (9) A certification of report of birth issued by the United States Department of State.
- (10) An American Indian card, with KIC classification, issued by the United States Department of Homeland Security.
- (11) Final adoption decree showing the person's name and United States birthplace.
- (12) An official United States military record of service showing the applicant's place of birth in the United States.
- (13) An extract from a United States hospital record of birth created at the time of the person's birth indicating the place of birth in the United States.
- (14) AL-verify.
- (15) A valid Uniformed Services Privileges and Identification Card.
- (16) Any other form of identification that the Alabama Department of Revenue authorizes, through an administrative rule promulgated pursuant to the Alabama Administrative Procedure Act, to be used to demonstrate or confirm a person's United States citizenship, provided that the identification requires proof of lawful presence in the United States as a condition of issuance.