



Immigration Legislative Overview





Beason-Hammon
Alabama Taxpayer
and
Citizen Protection
Act



Act
2011-535
Signed by
Governor Bentley
June 9, 2011



Notice

This presentation is designed to serve as an overview of Alabama's Immigration Law. It is not intended, nor should it be relied upon, as the complete authority on issues of immigration. The reader is strongly encouraged to verify the information provided in this document before relying upon its contents.



Due to pending federal and state litigation, which may or may not affect the implementation or application of all or portions of the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, this document does not propose to provide any legal training, interpretation or evaluation of the Act.



Effective Dates of Act

- June 9, 2011
- September 1, 2011
- December 1, 2011
- January 1, 2012
- April 1, 2012



June 9, 2011

- Alabama Department of Homeland Security shall have authority to coordinate with state and local enforcement agencies the practices and methods required to enforce this Act in cooperation with federal immigration authorities



September 1, 2011

- All sections of the Act become effective on this date, other than:
 - Section 22 & 23
 - Effective June 9, 2011
 - Section 26 (2)
 - Effective December 1, 2011
 - Requires Alabama Department of Homeland Security to provide E-Verify Agent service for employers with 25 or fewer employees
 - Section 9
 - Effective January 1, 2012
 - Deals with “contracting” or receiving incentives from a public agency or the state
 - Section 15
 - Effective April 1, 2012
 - Every employer shall enroll in E-Verify and verify employment eligibility
 - No business of employer shall hire or continue to employ unauthorized aliens



Prerequisite for Enforcement Action



- Adhere to the U.S. Constitution
- Lawful stop/detention/arrest
- Reasonable suspicion that a person is an illegal alien



Generally Applicable Provisions

- Reasonable attempt when practical to determine citizenship and immigration status
- A person's immigration status shall be determined solely and exclusively by the federal government
No state or local official may make an independent verification of someone's status



Generally Applicable Provisions



- Law enforcement officers may not use race, color, or national origin in enforcing this Act



Definition

Alien:

Any person who is not a citizen or national of the United States



Federal Definitions

NONIMMIGRANT ALIEN:

An alien in possession of a valid nonimmigrant visa, issued by the United States Department of State. Such nonimmigrants are admitted to the United States for a specified temporary period of time and include but are not limited to visitors for pleasure and business, temporary workers, crewman, and a variety of other specific visa required circumstances.

IMMIGRANT ALIEN:

An alien lawfully admitted for permanent residence. Lawfully admitted aliens for permanent residence are authorized employment and may naturalize as United States Citizens after completing naturalization requirements.

UNDOCUMENTED ALIEN:

An alien within the boundaries of the United States who has not been admitted or paroled by authorized US Government Officials.



Definition

Employer:

Term does not include the occupant of a household contracting with another person to perform casual domestic labor within the household



Definition

Knows or Knowingly:

A person acts knowingly or with knowledge with respect to either of the following:

- Person's conduct or to attendant circumstances when person is aware of the nature of person's conduct or that those circumstances exist
- A result of person's conduct when the person is reasonably aware that the person's conduct is likely to cause that result



Definition

Lawful Presence or Lawfully Present:

Person shall be regarded as an alien unlawfully present in the United States only if person's unlawful immigration status has been verified by the federal government. No officer shall attempt to independently make a final determination of an alien's immigration status.



Definition

Alien possessing self-identification in any of the following forms is entitled to presumption that he or she is an alien lawfully present in the United States.

- A valid, unexpired Alabama driver's license
- A valid, unexpired Alabama non-driver identification card
- A valid tribal enrollment card or other form of tribal identification bearing a photo or biometric identifier
- Any valid U.S. federal or state government issued I.D. bearing a photo or other biometric identifier, if issued by an entity that requires proof of lawful presence in U.S.
- A foreign passport with an unexpired U.S. Visa with the corresponding entry stamp of and unexpired duration of stay annotation by the U.S. Department of Homeland Security indicating the bearer's date of admission to the United States and a valid form I-94 (white).
- A foreign passport issued by a Visa waiver country with the corresponding entry stamp and unexpired duration of stay annotation or an I-94W (green) form by the U.S. Department of Homeland Security indicating bearer's admission to the United States.



Examples of Valid Immigration Documents



Employment Authorization card bearer is authorized to work, but is a non immigrant



Another example of an employment authorization document

Some immigrants may not be in possession of a form I-551 but may instead have their passport and a form I-94 with their picture on it as proof of alien registration. This may occur for newly admitted immigrants and for immigrants awaiting new documents from U.S. Citizenship and Immigrant Services.



Examples of Valid Nonimmigrant Documents

Citizens of countries in visa waiver program are allowed to enter the United States with their passport only and are issued the I-94W. There are currently 36 countries in the visa waiver program. They can be admitted for a maximum of 90 days and only for the purpose of visiting.

Departure Number
695349308 12

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection
VISA WAIVER

14. Family Name
SAMPLE

15. First (Given) Name
JOHN

16. Birth Date (day/month/year)
190772

17. Country of Citizenship
UNITED KINGDOM

Stamp: ADMITTED AT ATL JUN 25 2006 WT Sept. 24, 2006

OMB No. 1651-0113
CBF Form I-94W (1004)
See Other Side Staple Here

Form I-94W

UNITED STATES OF AMERICA
★ B1/B2 VISA / BORDER CROSSING CARD ★

B
C
C
C
C
C

Surname EXEMPLAR **
VIAJERA DE LA FRONTERA

Given Names 2
FELICIA 7

Date of Birth 3
05 MAY 1981

Nationality 4
MEXICAN

Sex 1
FEMALE 2

Date of Issue Expires On
07 AUG 2008 06 AUG 2018

X328195 7-180131-2
UNITED STATES DEPARTMENT OF STATE

The Border Crossing Card is issued to citizens of Mexico residing in the immediate border area. Outside the immediate border area the card should be accompanied by a properly issued form I-94.

THE DOCUMENTS SHOWN HERE ARE SOME BUT NOT ALL OF THE ACCEPTABLE FORMS OF IMMIGRATION DOCUMENTS.



Exceptions for Aliens in Removal Proceedings



Aliens who are found by authorized US Government Officials to be amenable to Administrative Removal from the United States are afforded certain legal rights:

- 1.The right to a hearing in front of an Immigration Judge.
- 2.Unless the alien fits the classification of an alien who must be held without bond the alien has the right to post bond to assure his or her appearance at the Immigration hearing.
- 3.Aliens amenable to Administrative Removal may also be released on recognizance until their Immigration hearing.

When an alien is released on bond or ROR they will be provided documents stating the conditions of their release. These documents then effectively become evidence of alien registration and the alien is allowed to remain in the United States until the conclusion of the removal proceedings. Aliens in such status are not automatically granted employment authorization but may apply.



Fraudulent Identification



INTERNATIONAL DRIVERS LICENSE –

At the present time there are no legally issued International Drivers License. Such documents can be found for sale in a variety of places but have no legal authority and are not recognized by US Immigration Officials as proof of alien registration.



Generally Applicable Provisions



- Records related to the employment authorization of a person are admissible in court, i.e., not hearsay



Generally Applicable Provisions



- Courts shall only consider the federal government's immigration status determination



Section 5 and Section 6

- No practice or policy that limits or restricts enforcement may be adopted by any agent or political subdivision of the state, including an officer of court
 - Offending entity shall be ineligible to receive funds from the state until offense has ended



Those lawfully present in the United States and a resident of this state may bring action in circuit court to challenge any official or head of an agency of this state or political subdivision that restricts enforcement of this Act. Agency heads or officials shall be sued in their official capacity.



Official or head of an agency of this state shall not include a law enforcement officer or other personnel employed in a jail who is acting within the line and scope of his or her duty.



Every person working in public sector,
including law enforcement, has a duty
to report violations of this act or face
crime of obstructing justice



Section 7

Unlawfully present aliens not otherwise granted eligibility under federal law shall not receive any state or local public benefits



Agencies shall verify an applicant's status with the federal government before providing benefits not otherwise granted eligibility under federal law



Examples of benefits that can be provided without verification:



- Education
- Health Care required for emergency medical conditions
- Short term, noncash, in-kind emergency disaster relief
- Public Health assistance for immunizations
- Special Supplemental Nutrition Program for Women, Infants and Children
- Testing and treatment for symptoms of communicable diseases
- Prenatal care
- Child protective services
- Adult protective services
- Domestic violence service workers



Any U.S. citizen applying for state or local public benefits, other than those exempted, shall sign a declaration that he or she is a U.S. citizen

Person knowingly making a false, fictitious or fraudulent statement or representation shall be guilty of perjury in second degree



Section 8

- Unlawfully present aliens may not receive public post secondary education benefits, nor be able to enroll in such institution
- No scholarships or grants allowed



Section 9

- Contractors & subcontractors must enroll in E-Verify as a condition to contracting with or receiving an incentive from a public agency or state
 - First violation: termination of contract and possible 60-day suspension of business license
 - Second violation: termination of contract and possible permanent suspension of business license



E-Verify “Safe Harbor Provision”



If a business entity complies with E-Verify requirements business shall not be in violation



Section 10

Failure to complete an alien registration document or failure to carry an alien registration document is a Class C misdemeanor



Section 11

- Unauthorized alien prohibited from applying for, soliciting, or performing work



Unlawful for a person to enter a vehicle that is stopped on a street, roadway or highway in order to be hired by an occupant and to be transported to work at a different location if vehicle blocks or impedes normal movement of traffic



Violations are a
Class C misdemeanor
(maximum jail time: up to 3 months)



Section 12

Upon a lawful stop, detention or arrest where reasonable suspicion exists that a person is unlawfully present in the state, a reasonable attempt shall be made when practical to determine the citizenship and immigration status of the person



If arrested and booked, the determination of immigration status shall occur before release



Immigration Information for State and Local Law Enforcement

U.S. Immigration and Customs
Enforcement (ICE)

Law Enforcement Support Center (LESC)
Williston, Vermont

24 hours day – 7 days week – 365 days year



Contact LESC

- Query via NLETS (AlaCop)
- Call LESC: 802-872-6050
- For more timely response after a NLETS query a follow up call to LESC may expedite the process



ICE Homeland Security Investigations (HSI)



- Three ICE HSI offices in state:
 1. Mobile: 251-441-6146
 2. Montgomery: small office with ABI
 3. Birmingham: 205-290-7150



Customs and Border Protection /
Office of Border Patrol
(CBP/Office of Border Patrol)



- Mobile Station: 251-660-1445
- New Orleans Sector: 504-376-2800
(after hours)



CBP/ICE Communications Branch in Orlando, FL

1-800-973-2867

(after hours can contact all ICE and CBP
components)



Section 13

- It shall be unlawful for a person to do any of the following ***if the person knows or recklessly disregards the fact that the alien is unlawfully present in the United States:***



-
1. Conceal, harbor, or shield or attempt to conceal, harbor or conspire to conceal, harbor or shield an illegal alien from detection in any place in state including any building or any means of transportation



-
2. Encourage or induce an illegal alien to come to or reside in this state



-
3. Transport or attempt to transport, or conspire to transport in this state an illegal alien



-
4. Harbor an illegal alien unlawfully present in the United States by entering into a rental agreement with an illegal alien to provide accommodations



Class A misdemeanor for each
illegal alien present unless 10+
involved, then Class C felony



Exceptions:

- Law Enforcement officer can transport an illegal alien from a state facility to a federal facility in state



Exceptions:

- Law enforcement may transport illegal alien to federal facility out of state with judicial or executive authorization



Exceptions:

- First responders or protective services providers may harbor, shelter, move, or transport illegal aliens



Forfeiture Provision

- Any conveyance, including any vessel, vehicle, or aircraft used in the commission of a violation of this section, or proceeds of such a violation, are subject to civil forfeiture



Section 14

- Creates crimes of dealing in false identification documents and vital records identity fraud and provides that these crimes are Class C felonies



Provisions of this Section do not apply to:



1. Person less than 21 years of age who uses the I.D. of another person to acquire alcoholic beverages

2. Person less than 19 who uses I.D. to acquire:
 - a) Tobacco products
 - b) Communication media that depicts nudity
 - c) Admittance to performance that prohibits attendance based on age
 - d) Item that is prohibited for use or consumption by such person



Section 15

- No business shall knowingly employ an unauthorized alien



Effective April 1, 2012 every employer shall enroll in E-Verify and after hiring employee shall verify employment eligibility using E-Verify



Using E-Verify is a safe harbor

FOR INFORMATIONAL PURPOSES ONLY



Penalty

- First Violation:
 - Termination of unauthorized employment
 - 3 year state-wide probationary period
 - Business license suspended 10 days (location of business only)



Penalty

- Second Violation:
 - Permanent revocation of license in business location only
- Subsequent Violation:
 - Permanent revocation of licenses throughout the state



Section 17

It shall be discriminatory practice to not hire or fire a legal resident while retaining an illegal alien



Section 18

Amending 32-6-9 and 32-1-4

If a person fails to present their driver's license upon the request of a peace officer, judge, or state trooper, verification into person's immigration status must be made within 48 hours



Section 18

Amending 32-6-9 and 32-1-4

If officer is unable to determine by any means that person has a valid driver's license, the officer shall transport person to the nearest or most accessible magistrate



Section 19

Persons charged with a crime requiring a stay in jail must have immigration status verified within 48 hours



Section 20

Federal government shall be notified within 30 days prior to an illegal alien's release from jail



Alabama Department of Homeland Security shall assist in coordinating the transfer of illegal alien to appropriate federal authorities when released from jails in the state



Alabama Department of
Corrections shall always maintain
custody of illegal alien during
transfer



Section 21

- Proceedings under this Act shall be stayed if illegal alien is a:
 - Crime victim
 - Child of a victim of criminal act
 - Critical witness in any prosecution
 - Child of critical witness in any prosecution



Section 25

Solicitation, conspiracy, or attempt to violate any criminal provision of this act shall have the same penalty as the corresponding violation



Section 27

- No court shall enforce a contract between a party and an illegal alien.
Except:
 - Contract for lodging for one night
 - Contract for food to be consumed by alien
 - Contract for medical services
 - Contract for transportation to facilitate alien's return to country of origin
 - Contract authorized by federal law



Section 28

Public elementary and secondary schools shall determine whether an enrollee was born outside the United States



School districts shall annually submit data obtained pursuant to this section to Alabama State Department of Education, and department shall release a public report itemizing fiscal cost of providing educational services to illegal aliens



Section 29

The Secretary of State shall create a process for the county election officer or chief state election official to check to indicate whether an applicant to vote has provided with the application the information necessary to assess the eligibility of the applicant, including the applicant's U.S. citizenship



Persons registered in this state on the effective date of this act are deemed to have provided evidence of citizenship



Section 30

No business transactions can occur between state and an illegal alien



Business Transaction

- Including, but not limited to:
 - Applying for or renewing a motor vehicle license plate
 - Applying for or renewing a driver's license or non-driver I.D.
 - Applying for or renewing a business license
 - Does not apply to marriage license



Legislative Oversight

- Attorney General, Alabama Department of Homeland Security, and AL Department of Education has reporting requirements to the Alabama Legislature regarding implementation of this Act



Section 33

Severability Clause



Penalties for Beason-Hammon Alabama Taxpayer and Citizen Protection Act

FOR INFORMATIONAL PURPOSES ONLY



Class C Felony

Section 13 – Harboring Ten or More Unlawfully Present Aliens

For Acts that involve ten or more unlawfully present aliens, knowingly or recklessly disregarding the fact that the aliens are unlawfully present and committing any of the following acts:

- Concealing, harboring, or shielding the unlawfully present aliens
- Attempting or conspiring to conceal, harbor, or shield the unlawfully present aliens
- Encouraging or inducing the unlawfully present aliens to come or reside in Alabama
- Transporting the unlawfully present aliens
- Attempting or conspiring to transport the unlawfully present aliens, including conspiracy to be transported
- Entering into a rental agreement for accommodations with the unlawfully present aliens

The following are excluded from this section:

- A law enforcement agency transporting an alien to a state or federal facility or for transfer to federal custody
- A first responder or protective services provider harboring, sheltering, moving, or transporting an alien



Class C Felony

Section 14 – Fake Identification Documents and Records

Dealing in false identification documents, which involves knowingly reproducing, manufacturing, selling, or offering for sale any identification document that does both of the following:

- Simulates, purports to be, or is designed so as to cause others reasonably to believe it to be an identification document
- Bears a fictitious name or other information

A person who deals in false identification documents shall be fined up to \$1,000 per document

Committing vital records identity fraud related to birth, death, marriage, and divorce certificates by doing any of the following:

- Supplies false information intending that the information be used to obtain a certified copy of a vital record
- Makes, counterfeits, alters, amends, or mutilates any certified copy of a vital record without lawful authority and with intent to deceive
- Obtains, possesses, uses, sells, or furnishes, or attempts to obtain, possess, or furnish to another a certified copy of a vital record, with the intent to deceive

The following are excluded from this section:

- A person under 21 who uses the identification to purchase alcohol
- A person under 19 who uses the identification to acquire tobacco or adult material, or to gain admittance to a film or live performance



Class C Felony

Section 30 – Business Transactions with the State

An unlawfully present alien – or a person acting on the alien’s behalf – entering into or attempting to enter into a business transaction with the state or with a political subdivision of the state. “Business transaction” includes applying for a license plate or driver’s license but excludes applying for a marriage license.



Class A Misdemeanor

Section 5 (see also Section 6) – State Employees’ Affirmative Duty to Report Violations

A person who works for the state or political subdivision failing to report a violation of this act is guilty of obstructing governmental operations as defined in section 13A-10-2 of the Code of Alabama



Class A Misdemeanor

Section 7 – Fraudulent Statements Regarding Immigration Status

A person who applies for state or local benefits – other than the enumerated excepted benefits – knowingly making a false, fictitious, or fraudulent statement or representation regarding immigrant status.

Guilty of perjury in the second degree as defined in section 13A-10-102 of the Code of Alabama.



Class A Misdemeanor

Section 13 – Harboring an Unlawfully Present Alien

Knowingly or recklessly disregarding the fact that an alien is unlawfully present and committing any of the following acts:

- Concealing, harboring, or shielding the unlawfully present alien
- Attempting or conspiring to conceal, harbor, or shield the unlawfully present alien
- Encouraging or inducing the unlawfully present alien to come to or reside in Alabama
- Transporting the unlawfully present alien
- Attempting or conspiring to transport the unlawfully present alien, including conspiracy to be transported
- Entering into a rental agreement for accommodations with the unlawfully present alien

The following are excluded from this section:

- A law enforcement agency transporting an alien to a state or federal facility or for transfer to federal custody
- A first responder or protective services provider harboring, sheltering, moving, or transporting an alien



Class C Misdemeanor

Section 10 – Alien Registration and Identification

An unlawfully present alien failing to carry an alien registration document in violation of federal law

Subject to a fine not exceeding \$100 and not more than 30 days in jail



Class C Misdemeanor

Section 11 – Employment

An unauthorized alien knowingly applying for work, soliciting work, or performing work as an employee or independent contractor.

An occupant of a motor vehicle that is stopped on a street, roadway, or highway attempting to hire or hiring and picking up passengers for work if the motor vehicle blocks or impedes the normal movement of traffic.

Entering a motor vehicle stopped on the street, roadway, or highway to be hired by an occupant of the motor vehicle and transported to work at a different location if the motor vehicle blocks or impedes traffic.

Subject to a fine not exceeding \$500.



Additional Provisions

Section 5 (see also Section 6) – State Agency Liability

No official or agency of this state or any political subdivision thereof – including an officer of a court of this state – may adopt a policy or practice that limits or restricts the enforcement of federal immigration laws by limiting communication between its officers and federal immigration officials or that restricts its officers in the enforcement of this act.

A violating agency may not receive any funds, grants or appropriations from the state until the Attorney General certifies that the violation has ceased.

A U.S. citizen or lawfully present alien who resides in Alabama may bring an action in circuit court to challenge any official or head of an agency – excluding jail employees acting within the scope of the duty- that adopts or implements a policy or practice that limits communications with federal immigration officials regarding alien immigration status. Any official found in violation is subject to a civil penalty of no less than \$1,000 and no more than \$5,000 for each day the policy or practice is in effect.



Additional Provisions

Section 21 – Stay of Act

If an unlawfully present alien is a victim of a criminal act, is the child of a victim of a criminal act, is a critical witness in any prosecution, or is the child of a critical witness in any prosecution of a state or federal crime, all provisions of this act shall be stayed until all of the related legal proceedings are concluded. However, the relevant state, county, or local law enforcement agency shall comply with any request by federal immigration officers to take custody of the person.



Additional Provisions

Section 25 – Inchoate Offenses

A solicitation to violate any criminal provision of this act, an attempt to violate any criminal provision of this act, or a conspiracy to violate any criminal provision of this act shall have the same penalty as a violation of this act.

For the purposes of this section, solicitation shall have the same principles of liability and defenses as criminal solicitation under subsections (b) through (e) of Section 13A-4-1, Code of Alabama 1975, and Section 13A-4-5, Code of Alabama 1975

For the purposes of this section, attempt shall have the same principles of liability and defenses as attempt under subsections (b) and (c) of Section 13A-4-2, Code of Alabama 1975, and Section 13A-4-5, Code of Alabama 1975.

For the purposes of this section, conspiracy shall have the same principles of liability and defenses as criminal conspiracy under subsections (b) through (f) of Section 13A-4-3, Code of Alabama 1975, and Sections 13A-4-4 and 13A-4-5, Code of Alabama 1975.



Alabama Felony Class

- Class A:
 - Imprisonment of life or not more than 99 years or less than 10 years and a \$60,000 fine
- Class B:
 - Imprisonment of not more than 20 years or less than 2 years and a \$30,000 fine
- Class C:
 - Imprisonment of not more than 10 years or less than 1 year and 1 day and a \$15,000 fine



Alabama Misdemeanor Class



- Class A:
 - Fine of not more than \$6,000
- Class B:
 - Fine of not more than \$3,000
- Class C:
 - Fine of not more than \$500



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Discussion

Questions?