

1 SB77
2 96628-1
3 By Senator Means
4 RFD: Judiciary
5 First Read: 05-FEB-08

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8 SYNOPSIS: This bill would relate to illegal
9 immigration and would: Make it a crime for a person
10 to transport, conceal, harbor, or in any way
11 protect an illegal alien from detection from state
12 or federal authorities; regulate the creation of
13 identification cards and define who may issue the
14 cards, who may be issued the cards, and any
15 exemptions; require that a reasonable effort be
16 made to determine the citizenship status of a
17 person charged with a felony or driving under the
18 influence; require every public employer to
19 register with the federal Status Verification
20 System and require those employers to verify the
21 citizenship status of new employees; require all
22 agencies or political subdivisions to verify the
23 citizenship status of all 14-year-old persons or
24 older who apply for state or federal benefits;
25 require all independent contractors to provide to
26 its contracting entities proof of employment
27 authorization; authorize the Attorney General to

1 draft and sign a Memorandum of Understanding
2 between the State of Alabama and the United States
3 Department of Justice or United States Department
4 of Homeland Security concerning the enforcement of
5 federal immigration and customs laws, detentions,
6 removals, and investigations that take place within
7 the state; restrict the eligibility requirements
8 for scholarships, financial aid, and resident
9 tuition to lawfully present aliens and United
10 States citizens; and establish a Fraudulent
11 Documents Identification Unit, subject to the
12 availability of funding, to investigate and
13 apprehend persons or entities that participate in
14 the sale or distribution of fraudulent documents
15 used for identification purposes.

16 This bill also provides penalties for
17 violating the provisions of this act.

18 Amendment 621 of the Constitution of Alabama
19 of 1901, now appearing as Section 111.05 of the
20 Official Recompilation of the Constitution of
21 Alabama of 1901, as amended, prohibits a general
22 law whose purpose or effect would be to require a
23 new or increased expenditure of local funds from
24 becoming effective with regard to a local
25 governmental entity without enactment by a 2/3 vote
26 unless: it comes within one of a number of
27 specified exceptions; it is approved by the

1 affected entity; or the Legislature appropriates
2 funds, or provides a local source of revenue, to
3 the entity for the purpose.

4 The purpose or effect of this bill would be
5 to require a new or increased expenditure of local
6 funds within the meaning of the amendment. If this
7 bill is not enacted by a 2/3 vote, it will not
8 become effective with regard to a local entity
9 unless approved by the local entity or until, and
10 only as long as, the Legislature appropriates funds
11 or provides for a local source of revenue.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 Relating to illegal immigration; to create the
18 Alabama Taxpayer and Citizen Protection Act of 2008; to state
19 legislative purpose; to make certain acts unlawful; to
20 preserve provision of certain benefits and services; to
21 provide penalties; to regulate issuance of identification
22 documents to certain persons; to require determination of
23 citizenship status for persons charged with certain crimes; to
24 require verification of persons determined to be foreign
25 nationals; to require public employers to participate in a
26 verification system; to direct the Attorney General to
27 negotiate terms of a Memorandum of Understanding with the

1 federal government; to restrict resident tuition, financial
2 aid, and scholarship opportunities to certain persons; to
3 provide for the establishment of a Fraudulent Documents
4 Identification Unit in the Department of Public Safety; and in
5 connection therewith would have as its purpose or effect the
6 requirement of a new or increased expenditure of local funds
7 within the meaning of Amendment 621 of the Constitution of
8 Alabama of 1901, now appearing as Section 111.05 of the
9 Official Recompilation of the Constitution of Alabama of 1901,
10 as amended.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. This act shall be known and may be cited
13 as the Alabama Taxpayer and Citizen Protection Act of 2008.

14 Section 2. The State of Alabama finds that illegal
15 immigration is causing economic hardship and lawlessness in
16 this state and that illegal immigration is encouraged when
17 public agencies within this state provide public benefits
18 without verifying immigration status. The State of Alabama
19 further finds that when illegal immigrants have been harbored
20 and sheltered in this state and encouraged to reside in this
21 state through the issuance of identification cards that are
22 issued without verifying immigration status, these practices
23 impede and obstruct the enforcement of federal immigration
24 law, undermine the security of our borders, and impermissibly
25 restrict the privileges and immunities of the citizens of
26 Alabama. Therefore, the people of the State of Alabama declare
27 that it is a compelling public interest of this state to

1 discourage illegal immigration by requiring all agencies
2 within this state to fully cooperate with federal immigration
3 authorities in the enforcement of federal immigration laws.
4 The State of Alabama also finds that other measures are
5 necessary to ensure the integrity of various governmental
6 programs and services.

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

9 (1) PUBLIC EMPLOYER. Every department, agency, or
10 instrumentality of the state, or a political subdivision of
11 the state.

12 (2) STATUS VERIFICATION SYSTEM. An electronic system
13 operated by the federal government, through which an
14 authorized official of an agency of the State of Alabama or of
15 a political subdivision therein may make an inquiry, by
16 exercise of authority delegated pursuant to 8 U.S.C. Section
17 1373, to verify or ascertain the citizenship or immigration
18 status of any individual within the jurisdiction of the agency
19 for any purpose authorized by Section 7.

20 The Status Verification System shall be deemed to
21 include any of the following:

22 a. The electronic verification of work authorization
23 program of the Illegal Immigration Reform and Immigration
24 Responsibility Act of 1996, P.L. 104-208, Division C, Section
25 403(a); 8 U.S.C. Section 1324a, and operated by the United
26 States Department of Homeland Security, known as the Basic
27 Pilot Program.

1 b. Any equivalent federal program designated by the
2 United States Department of Homeland Security or any other
3 federal agency authorized to verify the work eligibility
4 status of newly hired employees, pursuant to the Immigration
5 Reform and Control Act of 1986 (IRCA), P.L. 99-603.

6 c. Any other independent, third-party system with an
7 equal or higher degree of reliability as the programs,
8 systems, or processes described in this subparagraph.

9 d. The Social Security Number Verification Service,
10 or any similar online verification process implemented by the
11 United States Social Security Administration.

12 (3) SUBCONTRACTOR. A subcontractor, contract
13 employee, staffing agency, or any contractor, regardless of
14 its tier.

15 (4) UNAUTHORIZED ALIEN. An alien as defined in 8
16 U.S.C. Section 1324a(h) (3).

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

23 (b) It shall be unlawful for any person to conceal,
24 harbor, or shelter from detection any alien in any place
25 within this state, including any building or means of
26 transportation, knowing, or in reckless disregard of the fact,

1 that the alien has come to, entered, or remained in the United
2 States in violation of law.

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

8 (d) Any person violating the provisions of
9 subsection (a) or (b) shall, upon conviction, be guilty of a
10 Class C felony.

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

18 (1) Businesses, companies, corporations, service
19 organizations, and federal, state, and local governmental
20 agencies for employee identification which is designed to
21 identify the bearer as an employee.

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

25 (3) Federal, state, and local government agencies
26 for purposes authorized or required by law, or any legitimate
27 purpose consistent with the duties of the agency, including,

1 but not limited to, voter identification cards, driver's
2 licenses, nondriver identification cards, passports, birth
3 certificates, and Social Security cards.

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

7 (5) Any professional organization or labor union to
8 identify the bearer as a member of the professional
9 organization or labor union.

10 (6) Businesses, companies, or corporations which
11 manufacture medical-alert identification for the wearer
12 thereof.

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

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

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

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

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

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

1 (5) Approved deferred action status.

2 (6) A pending application for adjustment of status
3 to legal permanent resident status or conditional resident
4 status.

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

20 (e) The provisions of subsection (b) shall not apply
21 to an identification document described in subdivision (4) of
22 subsection (a) that is only valid for use on the campus or
23 facility of that educational institution and includes a
24 statement of that restricted validity clearly and
25 conspicuously printed upon the face of the identification
26 document.

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

17 Section 6. (a) When a person charged with a felony
18 or with driving under the influence pursuant to Section
19 32-5A-191, Code of Alabama 1975, is confined, for any period,
20 in the jail of the county, any municipality, or a jail
21 operated by a regional jail authority, a reasonable effort
22 shall be made to determine the citizenship status of the
23 person so confined.

24 (b) If the prisoner is a foreign national, the
25 keeper of the jail or other officer shall make a reasonable
26 effort to verify that the prisoner has been lawfully admitted
27 to the United States, and if lawfully admitted, that lawful

1 status has not expired. If verification of lawful status
2 cannot be made from documents in the possession of the
3 prisoner, verification shall be made within 48 hours through a
4 query to the Law Enforcement Support Center of the United
5 States Department of Homeland Security or other office or
6 agency designated for that purpose by the United States
7 Department of Homeland Security. If the lawful immigration
8 status of the prisoner cannot be verified, the keeper of the
9 jail or other officer shall notify the United States
10 Department of Homeland Security.

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

16 Section 7. (a) Every public employer shall register
17 with and utilize a Status Verification System as defined in
18 this act to verify the federal employment authorization status
19 of all new employees.

20 (b) (1) After July 1, 2009, no public employer shall
21 enter into a contract for the physical performance of services
22 within this state unless the contractor registers and
23 participates in the Status Verification System to verify the
24 work eligibility status of all new employees.

25 (2) After July 1, 2009, no contractor or
26 subcontractor who enters into a contract with a public
27 employer shall enter into a contract or subcontract in

1 connection with the physical performance of services within
2 this state unless the contractor or subcontractor registers
3 and participates in the Status Verification System to verify
4 information of all new employees.

5 (3) The provisions of this subsection shall not
6 apply to any contracts entered into prior to the effective
7 date of this section even though some contracts may involve
8 the physical performance of services within this state after
9 July 1, 2009.

10 (c) (1) It shall be a discriminatory practice for an
11 employing entity to discharge an employee working in Alabama
12 who is a United States citizen or permanent resident alien
13 while retaining an employee who the employing entity knows, or
14 reasonably should have known, is an unauthorized alien hired
15 after July 1, 2009, and who is working in Alabama in a job
16 category that requires equal skill, effort, and
17 responsibility, and which is performed under similar working
18 conditions, as defined in 29 U.S.C. Section 206(d) (1), as the
19 job category held by the discharged employee.

20 (2) An employing entity which, on the date of the
21 discharge in question, was currently enrolled in and used a
22 Status Verification System to verify the employment
23 eligibility of its employees in Alabama hired after July 1,
24 2009, shall be exempt from liability, investigation, or suit
25 arising from any action under this section.

26 Section 8. (a) Except as provided in subsection (c)
27 or where exempted by federal law, every agency or a political

1 subdivision of this state shall verify the lawful presence in
2 the United States of any natural person 14 years of age or
3 older who has applied for state or local public benefits, as
4 defined in 8 U.S.C. Section 1621, or for federal public
5 benefits, as defined in 8 U.S.C. Section 1611, that is
6 administered by an agency or a political subdivision of this
7 state.

8 (b) The provisions of this section shall be enforced
9 without regard to race, religion, gender, ethnicity, or
10 national origin.

11 (c) Verification of lawful presence under the
12 provisions of this section shall not be required for any of
13 the following:

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

17 (2) For assistance for health care items and
18 services that are necessary for the treatment of an emergency
19 medical condition, as defined in 42 U.S.C. Section
20 1396b(v)(3), of the alien involved and are not related to an
21 organ transplant procedure.

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

24 (4) For public health assistance for immunizations
25 with respect to diseases and for testing and treatment of
26 symptoms of communicable diseases whether or not the symptoms
27 are caused by a communicable disease.

1 (5) For programs, services, or assistance such as
2 soup kitchens, crisis counseling and intervention, and
3 short-term shelter specified by the United States Attorney
4 General, in the sole and unreviewable discretion of the United
5 States Attorney General after consultation with appropriate
6 federal agencies and departments which:

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

9 b. Do not condition the provision of assistance, the
10 amount of assistance provided, or the cost of assistance
11 provided on the income or resources of the individual
12 recipient.

13 c. Are necessary for the protection of life or
14 safety.

15 (d) Verification of lawful presence in the United
16 States by the agency or political subdivision required to make
17 the verification shall require that the applicant execute an
18 affidavit under penalty of perjury that has met either of the
19 following requirements:

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

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

26 (e) For any applicant who has executed the affidavit
27 described in subdivision (2) of subsection (d), eligibility

1 for benefits shall be verified through the Systematic Alien
2 Verification for Entitlements (SAVE) Program operated by the
3 United States Department of Homeland Security or an equivalent
4 program designated by the United States Department of Homeland
5 Security. Until eligibility verification is made, the
6 affidavit may be presumed to be proof of lawful presence for
7 the purposes of this section.

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

18 (g) Agencies or political subdivisions of this state
19 may adopt variations to the requirements of the provisions of
20 this section which demonstrably improve the efficiency or
21 reduce delay in the verification process, or to provide for
22 adjudication of unique individual circumstances where the
23 verification procedures in this section would impose unusual
24 hardship on a legal resident of Alabama.

25 (h) It shall be unlawful for any agency or a
26 political subdivision of this state to provide any state,

1 local, or federal benefit, as defined in 8 U.S.C. Section
2 1621, or 8 U.S.C. Section 1611, in violation of this section.

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

18 Section 9. (a) If an individual independent
19 contractor, contracting for the physical performance of
20 services in this state, fails to provide to the contracting
21 entity documentation to verify the independent contractor's
22 employment authorization, pursuant to the prohibition against
23 the use of unauthorized alien labor through contract set forth
24 in 8 U.S.C. Section 1324(a)(4), the contracting entity shall
25 be required to withhold state income tax at the top marginal
26 income tax rate as provided by Alabama law as applied to
27 compensation paid to an individual for the performance of

1 services within this state which exceeds the minimum amount of
2 compensation the contracting entity is required to report as
3 income on United States Internal Revenue Service Form 1099.

4 (b) Any contracting entity who fails to comply with
5 the withholding requirements of this section shall be liable
6 for the taxes required to have been withheld unless the
7 contracting entity is exempt from federal withholding with
8 respect to the individual pursuant to a properly filed
9 Internal Revenue Service Form 8233 or its equivalent.

10 (c) Nothing in this section is intended to create,
11 or should be construed as creating, an employer-employee
12 relationship between a contracting entity and an individual
13 independent contractor.

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

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

25 (c) No local government, whether acting through its
26 governing body or by an initiative, referendum, or any other
27 process, shall enact any ordinance or policy that limits or

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

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

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

14 (2) Maintaining the information.

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

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

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

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

1 (2) Resident tuition.

2 (b) The provisions of subsection (a) shall not apply
3 to a student enrolled in a degree program at a postsecondary
4 educational institution in this state during the 2007-2008
5 school year or any prior year who received a resident tuition
6 benefit pursuant to state law.

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

17 Section 13. This act shall become effective on
18 January 1, 2009, following its passage and approval by the
19 Governor, or its otherwise becoming law.