

## Alabama Enacts Sweeping and Controversial Immigration Law

The illegal immigration problem facing this country continues to be a pressing issue. However, a pattern is emerging among state lawmakers pushing for stricter laws and penalties for illegal immigrants. The recent Immigration Bill signed by Governor Robert Bentley on June 9, 2011, is the Alabama Legislature's attempt at addressing this concern, and it has caused considerable controversy. On Thursday, June 2, 2011, the Alabama Legislature passed what is being labeled as the most stringent immigration enforcement legislation in the country's history. House Bill 56, titled the "Beason-Hammon Alabama Taxpayer and Citizen Protection Act" (the "Act") of 2011, includes a complex and ground-breaking collection of solutions in an attempt to help Alabama deal with illegal immigration, employing an approach similar to that used in the Arizona immigration law passed in 2010. The Alabama Act covers issues as diverse as employment, contracts, education, law enforcement, and voting. Advocates for the bill view it as being a compilation of sustainable and fair enforcement procedures, while others believe the Act to be a vehicle for racial profiling, claiming that by signing this bill Governor Bentley codified discrimination in the State of Alabama.

The new Act may affect UAHuntsville in numerous ways, but the most relevant provisions involve employment, contracts, and student admissions. Under the Act, employers in the state of Alabama may not knowingly employ, hire for employment, or continue to employ an unauthorized alien. Moreover, every employer will be required to enroll in E-Verify and use this service to verify the eligibility of its employees. A three-strike system is to be used to punish violators, with the last strike involving business license revocation throughout the state of Alabama indefinitely. Unfortunately, government surveys have found that the E-verify system has an error rate as high as 54 percent for unlawful workers, meaning that the program catches less than half of all people without status. Additionally, as a condition of receiving a contract, contractors and subcontractors will be held to the same standard of verification as employers.

The Act also prohibits undocumented aliens from enrolling in or attending a state university, requiring an applicant to be a lawful permanent residence or possess an appropriate visa. Critics have expressed concern regarding the increased financial burden that universities will shoulder in their efforts to collect this information. Since UAHuntsville already has admission policies relating to immigrant status, this part of the Act may not require significant changes in those policies and associated admissions practices. The greatest fear may be that the Act will have a deterrent effect on students who may otherwise attempt to enroll in postgraduate degree programs.

The reach of the Act extends beyond businesses and government entities by criminalizing certain interactions by individuals with illegal aliens. For example, the Act makes it a crime to encourage any alien to come to or reside in Alabama if the person knows that the alien's entry into the United States will be in violation of federal law. While there has been little discussion as to how this will affect tourists visiting from abroad, travelers might easily be mistaken as illegal aliens and be prosecuted for their presence. The law also makes it a crime for landlords to knowingly rent to an illegal alien, which is intended to make it difficult for an illegal alien to find lodging. Another provision makes it a crime to transport a known illegal alien. Many

organizations have fiercely spoken out about this provision, claiming that the Act would make it a crime to transport illegal aliens to the hospital, to church, to a doctor's appointment, etc.

With regard to employment, employers are not the only parties facing possible prosecution. The Act makes it unlawful for a person who is an unauthorized alien to knowingly apply for work, solicit work in a public or private place, or perform work as an employee or independent contractor in Alabama. It would appear that an undocumented alien has very little chance of securing employment in Alabama after September 1. Additionally, contracts with unauthorized aliens will not be recognized by Alabama courts, which has the potential to impact legal residents who rely on contractual agreements with undocumented aliens.

Alabama's law goes further in requiring public schools (grades K-12) to check the immigration status of their students. However, the measure does not prohibit illegal aliens from attending public school. In a 1982 Supreme Court case, Mexican children who had entered the United States illegally and resided in Texas sought relief against exclusion from public schools pursuant to a Texas statute and school district policy. The Court held that the undocumented status of children of Mexican origin did not establish a sufficient rational basis for denying those children benefits of a public education that the State of Texas chose to afford other residents. *Plyler v. Doe*, 457 U.S. 202, 102 S.Ct. 2382 (1982). However, like all persons who have entered the United States unlawfully, school-age children of Mexican origin in Texas who could not establish that they had been legally admitted into the country were subject to deportation. Alabama lawmakers state the purpose of this part of the law is to gather data on how many are enrolled and how much the state is spending to educate them. Others argue that the underlying aim of the educational components of the Act is to deter families from enrolling their children in public schools for fear that they or their parents would be deported.

Businesses that contract with the State or any State-funded entity are prohibited from knowingly employing an illegal alien. A contracting business is directed to attest, by sworn affidavit, to its compliance with this obligation. Another provision in this section indicates that a "contractor of any tier" can avoid liability with respect to subcontractor violations by requiring submission from the subcontractor of the "compliance" affidavit and by insuring that it has no knowledge of subcontractor violations. The applicability of this latter section to a State-funded entity such as UAHuntsville is unclear, but it appears that it will be prudent for the University to insist on the submission of compliance affidavits from its contractors to avoid any question of complicity in a contractor or subcontractor violation.

Finally, there is a "duty to report" imposed by the Act on State employees. Anyone "working for the State of Alabama" must report violations of the law if there is reasonable cause to believe that a violation is occurring. Failure to do so constitutes the offense of obstructing governmental operations. Whether this provision applies to UAHuntsville employees is by no means certain, since a distinction is usually made between employment by the State and employment by a public university, such as UAHuntsville.

Much of the negative reaction to the Act is derived from the so-called "show me your papers" provision. Under this section, police must detain persons they suspect of being in the

country unlawfully if the person cannot produce proper documentation upon being stopped for any reason. The statutory language requires the checking of a person's visa documents if there is a "reasonable suspicion" that the person is unlawfully present in the United States. No one seems to have a good explanation for what "reasonable suspicion" means in the context of this law, in Alabama or in any other state in which such a standard has been utilized. It has been argued that, due to the ambiguity of this key term, enforcement of the "reasonable suspicion" requirement could invite unconstitutional racial profiling.

Another primary concern that has been identified is the potential cost of implementing this legislation. In particular, three areas are of concern: the general damage to the State's economy, the cost burden of implementation, and the expense of legal fees. First, Alabama may come to be regarded as hostile to immigrants, resulting in the loss of tourist revenue and a reluctance of some individuals to reside in the state because of its perceived unwelcoming environment. For example, according to the Institute for Taxation and Economic Policy, the tax revenue from undocumented aliens in 2010 for Alabama was approximately \$130 million. As has occurred in Arizona, third-party protests and boycotts could take place, putting the State at a disadvantage in attracting business and trade. Secondly, the burden of implementing the Act will require considerable resources to be deployed by the state and local governments in turning local police into immigration officers, detracting from their normal law enforcement duties. Lastly, it is anticipated that the state will incur extensive legal fees associated with defending the legislation from the raft of lawsuits that may be filed against it.

The Act is already being challenged as the result of the recent filing of a lawsuit by a coalition that includes the Southern Poverty Law Center, the American Civil Liberties Union, the ACLU of Alabama, the National Immigration Law Center, the Asian Law Caucus, and the Asian American Justice Center. The organizations involved in the suit have criticized the law as being "draconian," "mean-spirited," "racist," and unconstitutional, and they have expressed their strong belief that the court will enjoin its implementation. The lawsuit asserts a number of constitutional challenges: it unlawfully interferes with federal control and authority over immigration issues, in violation of the Supremacy Clause of the U.S. Constitution; it subjects Alabamians, including numerous U.S. citizens and lawful permanent residents, to unlawful search and seizure, in violation of the Fourth Amendment; it unlawfully deters immigrant families from enrolling their children in public schools; it unconstitutionally prohibits many lawfully present immigrants from attending public colleges or universities in Alabama; and it radically restricts the right to enter into contracts. On August 1, the U.S. Justice Department also filed suit claiming that Alabama's new law conflicts with federal law and interferes with federal immigration policy. Religious leaders are also mounting a legal challenge to the law claiming that it will hamper their "freedom to minister."

Federal courts around the nation have blocked similar provisions from recently enacted immigration laws in states such as Georgia, Indiana, Utah, and Arizona. After Arizona passed its controversial act in 2010, the courts blocked implementation of a provision allowing police to verify immigration status. The U.S. Supreme Court did, however, recently endorse a separate Arizona law requiring employers to use E-Verify and allowing the state to suspend or revoke business licenses of those companies that knowingly hire unlawful immigrants. Governor Bentley expressed confidence that Alabama's law would withstand legal scrutiny and challenge.

The provisions of the Act dealing with the awarding of contracts are scheduled to take effect January 1, 2012. The employment sections become effective April, 2012. The remainder of the Act goes into effect on September 1, 2011 (though some commentators are asserting a September 9, 2011, effective date).

In summary, the Act accomplishes far-reaching change to the State's approach to and policies regarding the presence of unauthorized aliens in Alabama. It places a substantial, new burden on state and local governments, employers, teachers, school systems, law enforcement, and individuals to prevent the presence of illegal aliens in the state. Businesses and individuals will be required to take affirmative steps to abide by the Act's various provisions and must be aware that violation may have harsh civil and criminal repercussions. With the most controversial sections of Arizona's law having been enjoined, it is not unreasonable to predict that the courts may enjoin or even strike down similar measures in Alabama's law. This legal uncertainty makes it difficult to assess the future ramifications of the Act.