

MEMORANDUM

TO: AAR Members

FROM: Ham Wilson

DATE: October 3, 2011

RE: Summary of Judge Blackburn's Opinion
Concerning the new Alabama Immigration Law

Alabama Immigration Law

The Alabama Legislature recently enacted the **Beason-Hammon Alabama Taxpayer and Citizen Protection Act**. This legislation requires proof of citizenship or verification that a person is lawfully in the State before becoming employed, enrolling in school, and receiving other government benefits.

The following identification entitles a person to a presumption that they are lawfully in the USA:

- valid unexpired Alabama identification card
- valid tribal enrollment card or other form of tribal identification
- any valid federal or state issued identification document bearing a photograph or other biometric identifier, if issued by an entity that requires proof of lawful presence in the US before issuance
- foreign passport with an unexpired US Visa
- foreign passport issued by a Visa waiver country or an I-94W form.

On September 28, 2011, Federal Judge Sharon Blackburn issued an opinion regarding the constitutionality of the Beason-Hammon Alabama Taxpayer and Citizen Act. This opinion was in response to the action brought by the United States against the State of Alabama, seeking to enjoin the enforcement of various provisions of the Act. Judge Blackburn held that only four Sections are unconstitutional. Therefore, pursuant to the Court's Order Sections (11(a), 13, 16, and 17) have been enjoined from enforcement.

Enjoined Provisions:

Section 11(a) states: "It is 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 this state." As this provision is enjoined, the focus of the penalty is not on the unauthorized alien, but rather on the employer.

Section 13 prohibits citizens from concealing or harboring undocumented aliens, with the knowledge or reckless disregard that the alien has come to, has entered, or remains in the United States in violation of federal law. Acts of encouragement, inducement, transportation of an alien, as well as entering into a rental agreement with an alien to provide accommodations were also included in this provision as “concealing” or “harboring.” Although this provision has been enjoined, it is advisable that landlords **do not involve any employment of unauthorized aliens while providing rental housing** to them.

Section 16 prohibits a business from taking any wages or compensation paid to an unauthorized alien as a deductible business expense. As this provision is enjoined, businesses are no longer prohibited from taking a deductible business expense for those wages, and will not be subject to a penalty.

Section 17 makes it a discriminatory practice for an employer to fail to hire a US citizen or an authorized alien while retaining or hiring an employee who the employer knows, or reasonably should have known, is an unauthorized alien. This provision is enjoined, and this practice is no longer a discriminatory.

THE FOLLOWING PROVISIONS SURVIVED THE UNITED STATE’S CHALLENGE

Section 10 requires non-US citizens to carry their registration documents.

Section 12(a) gives law enforcement authority to verify citizenship upon any lawful stop. Upon any lawful stop, detention, or arrest made by a law enforcement officer in the enforcement of any state law or ordinance, where reasonable suspicion exists that the person is an alien who is unlawfully present in the US, the police officer shall make a reasonable attempt, when practicable, to determine the citizenship and immigration status of the person, except if the determination may hinder or obstruct and investigation

A person is not presumed to be an unlawful alien if he provides to the law enforcement officer any of the following:

- valid, unexpired Alabama’s driver’s license
- valid unexpired Alabama identification card
- valid tribal enrollment card or other form of tribal identification
- any valid federal or state issued identification document bearing a photograph or other biometric identifier, if issued by an entity that requires proof of lawful presence in the US before issuance
- foreign passport with an unexpired US Visa
- foreign passport issued by a Visa waiver country or an I-94W form.

Section 18 requires possession of a driver's license when operating a motor vehicle. All persons licensed to drive a motor vehicle must have their license in their possession when driving and must display their license upon demand of a judge, peace officer, or state trooper.

Section 27 prohibits an Alabama court from enforcing the terms of a contract between a party and an unlawfully present alien if the party had direct or constructive knowledge that the person was in the US unlawfully at the time the contract was entered into.

This section does not apply to a contract for lodging for one night, a contract for the purchase of food to be consumed by the alien, a contract for medical services, or a contract for transportation of the alien that is intended to facilitate the alien's return to his or her country of origin.

Section 28 requires all children enrolling in a public elementary or secondary school to provide their birth certificate to a school official. If the birth certificate shows that the student was born outside the US or is the child of an alien not lawfully present in the US, the parent, guardian or legal custodian shall notify the school of the actual citizenship or immigration status within 30 days of the date of the student's enrollment.

Under **Section 30**, a business is prohibited from transacting business with illegal immigrants. An alien not lawfully present in the US may not enter into or attempt to enter into a business transaction with the state or a political subdivision of the state. No person may enter or attempt to enter a business transaction on behalf of an undocumented alien.

Effective Provisions that were not challenged

Section 7 states that an unlawful alien shall not receive any state or local public benefits. State and local agencies must verify with the federal government the lawful presence of each alien who applies for benefits. Verification of lawful presence is not required for:

- primary and secondary school education
- treatment for an emergency medical condition
- short term, noncash emergency disaster relief
- immunizations, Special Supplemental Nutrition Program for Women, Infants, and Children, and for testing and treatment of symptoms of communicable diseases
- programs, services, or assistance such as soup kitchens, crisis counseling and short-term shelter
- prenatal care
- protective Services and domestic violence services.

Any citizen applying for any other public benefits must sign a declaration that he or she is a US citizen. If a person makes a false declaration of citizenship they will be guilty of perjury. Verification that an alien seeking state or local public benefits is lawfully present in the US must

be made through the Systematic Alien Verification for Entitlements (SAVE), operated by the Department of Homeland Security.

Section 8 prohibits an unlawful alien from attending a public postsecondary educational institution in Alabama.

Section 9 requires businesses not to knowingly hire an unauthorized alien in order to qualify for an award of any contract, grant, or incentive by the State of Alabama. As a condition for the award of any contract, grant, or incentive, the business must provide documentation establishing that its business is enrolled in the E-Verify program.

Section 14 prohibits persons from dealing in false identification documents.

Section 15 prohibits businesses from employing undocumented aliens and requires businesses to implement the E-Verify System. No business entity, employer, or public employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Alabama.

Effective April 1, 2012, every business entity or employer in Alabama must enroll in E-Verify in order to verify the employment eligibility of employees.

This law does not apply to casual domestic labor performed within a household. Further this law provides for criminal penalties for violations of the provisions of the Act.

AN APPEAL OF JUDGE BLACKBURN'S DECISION HAS BEEN FILED WITH THE UNITED STATES COURT OF APPEALS, 11th CIRCUIT.