

Alabama House Bill 658 Summary & Analysis

SUMMARY

Alabama House Bill (HB) 658 was introduced on April 5, 2012, by Representative Hammon. HB 658 amends 22 of the 34 sections of HB 56, the omnibus immigration enforcement bill the Alabama legislature passed during the 2011 session.

SECTION 1:

Amends HB 56 § 3: Definitions

This section makes changes to the following definitions:

- “Business entity” – must employ one or more persons within Alabama
- “Contractor” -- must be competitively bid or submitted to Joint Legislative Contract Review Oversight Committee; removes contractor that “provides a certain product;” excludes independent contractors
- “Employee” -- excludes state, county or municipal inmates.
- “Lawful presence or lawfully present” – adds to the list of documents that provides a presumption of lawful presence an expired AL driver’s license (if expired in preceding 6 months) and a valid military ID card.
- “Project” – this definition was added.
- “State-funded entity” -- requires the entity receive 50% of its total revenue in one of 3 prior years from state or local monies.
- “Subcontractor” – excludes independent subcontractors.

Amends HB 56 §§ 5 & 6: Anti-Sanctuary (with regard to federal immigration laws and with regard to the Act)

HB 658 eliminates the private right of action in both sections 5 and 6 of HB 56. Under HB 56, a United States citizen or lawfully present alien can bring an action in circuit court to challenge a state or local policy or practice that limits or restricts the enforcement of federal immigration laws or provisions of the Act. HB 658 changes this section to permit citizens or lawfully present aliens to file a petition with a local district attorney or the Attorney General to request that an action be brought against a state or locality. The DA or AG is required to act within 90 days of the petition. The AG may either bring an action or elect not to bring an action, but if he chooses no action he must justify his decision in writing to the public. The AG is required to give the appropriate state or local officials a 30 day notice if he intends to file an action.

Amends HB 56 § 7: Public Benefits

HB 658 would remove the requirement that lawful presence be verified for the renewal of a commercial or professional license after the first license has been issued. (Subsection (e)).

Amends HB 56 § 8: Postsecondary Education

This section eliminates the requirement in HB 56 that public postsecondary students to possess lawful permanent residence or an appropriate nonimmigrant visa.

Amends HB 56 § 9: Public Contractors/Subcontractors

HB 658 maintains the provision in HB 56 that states as a condition to receive state or local contracts, grants or state incentives, employers, including contractors and subcontractors, are (1) prohibited from knowingly employing, hiring or continuing to employ unauthorized aliens and (2) required to participate in E-Verify (Section 9). Section 9 of HB 658 removes the requirement that contractors or subcontractors file a sworn affidavit. (Subsections (a) & (c)).

HB 658 also changes the standard of proof required to establish the liability of a contractor who hires illegal aliens from knowing that the subcontractor is violating the section to (HB 56)“clear and convincing evidence that the contractor had actual knowledge” that the subcontractor was in violation (HB658).

HB 658 changes the penalties for government contractors (including subcontractors) that knowingly hire illegal aliens. The changes to the penalties are as follows.

1st violation – After the court determines there has been a violation, the state or political subdivision may terminate the contract and the employer’s business license may be suspended up to 60 days. These penalties remain the same in HB 658. To this, HB 658 adds a three year probationary period where the business is required to file quarterly reports with the DA regarding all new employees. HB 658 also gives the court discretion not to impose the suspension of a business license if doing so would be in the public interest and provides a list of factors for the court to consider when making that determination.

2nd violation – HB 56 requires the state or political subdivision to terminate the contract and permanently suspend the employer from doing business in the state. HB 658 would only penalize a second violation if it occurs 5 years within the first. For a second violation within 5 years, a court will order the government entity to terminate the contract, suspend the employer from doing business with the state for up to 120 days, and place the employer on 5 years probation. HB 658 also gives the court discretion not to impose the suspension of a business license if doing so would be in the public interest and provides a list of factors for the court to consider when making that determination.

3rd violation – HB 56 only provides penalties for second or subsequent violations. HB 658 would add penalties for a third or subsequent violation, but only penalizes a third violation if it occurs . within 5 years of the second. The court must order the government entity to terminate the contract, “permanently suspend” business license of the contractor, and place the contractor on seven years probation. As for first and second violations HB 658 gives the court discretion not to impose the suspension of a business license if doing so would be in the public interest and provides a list of factors for the court to consider when making that determination. However, if the court finds that there is a public interest not to permanently suspend the employers business license, the license is required to be suspended for at least a year.

The subcontractor violations are separate in HB 56, but under HB 658 subcontractors are subject to the same penalties as contractors.

Amends HB 56 § 10: Willful Failure to Complete/Carry Alien Registration Documents

This section amends the penalty for violation of willful failure to complete or carry alien registration documents. Currently, HB 56 penalizes violations by a fine of up to \$100 and not more than 30 days in jail. HB 658 would merely state that the violation is a Class C misdemeanor. A class C misdemeanor under current Alabama law is punishable by up to three months in jail and there is no specific limit on fines. Ala. Code § 13A-5-7 (2012).

Amends HB 56 § 11: Day Labor

This section removes penalties for violation of day labor provisions. Under current law (HB 56), these penalties include a fine of up to \$500. HB 658 merely states that the violation is a Class C misdemeanor. A class C misdemeanor under current Alabama law is punishable by up to three months in jail and there is no specific limit on fines. Ala. Code § 13A-5-7 (2012).

Amends HB 56 § 12: Law Enforcement Immigration Status Verification

Currently, H.B. 56 requires a law enforcement officer during a *lawful stop, detention, or arrest* to conduct an immigration status check of individuals if the officer reasonably suspects the individual is illegally in the United States. (See H.B. 658, p.37; Ala. Code § 31-13-12) H.B. 658, however, limits the requirement to conduct immigration status checks to only situations where an individual is arrested or issued a traffic ticket. It expressly allows for immigration status checks of the passengers in a car, if the driver has been arrested or issued a traffic ticket. (Subsection (a)). Section 12 also requires an officer to verify the immigration status of anyone arrested or booked into jail *as soon as possible, no later than 48 hours* after the alien's arrest. (Subsection (b)). It also adds to the list of documents that create a presumption of lawful presence an expired AL driver's license (if expired in preceding 6 months) and a valid military ID card. (Subsection (d)(1) & (7)).

Amends HB 56 § 13: Harboring

This section adds "from detection" following the "shielding" in the section of HB 56 that makes it unlawful to conceal, harbor, or shield an alien knowing that the alien is in violation of federal immigration law. (Subsection (a)(1)). This change makes the section more closely mirror federal language. "Shielding *from detection*" is the phrase used within federal law, 8 U.S.C. §1324. This section also moves the bar from 10 to 5 illegal aliens for the offense to trigger an increased penalty and to be considered a felony.

HB 658 eliminates the current law that prohibits encouraging or inducing an alien to come to or reside in the state knowing or in reckless disregard of the fact that the doing so will be in violation of federal immigration law (a)(2). It also removes the harboring provision which prohibits landlords from entering into a rental agreement knowing an alien is unlawfully present (a)(4). HB 658 creates a exemption to this section for a bon fide nonprofit religious organization (Subsection (a)(3)).

Amends HB 56 § 14: False Identification

Currently, under HB 56, it is a felony to deal in false identification documents by knowingly *reproducing*, manufacturing, selling or offering to sell identification which causes others to believe that it is ID and bears fictitious name or false info. HB 658 removes "reproduces" and

makes it a crime to manufacture, sell or offer to sell false IDs. (Subsection (a)). This section also requires the violation to be done intentionally to facilitate an unauthorized alien's employment or presence in the United States.

Amends HB 56 § 15: Prohibition on Hiring Illegal Aliens; Mandatory E-Verify for All Employers

Like HB 56, HB 658 (1) prohibits all employers from knowingly employing, hiring, or continuing to employ an unauthorized alien to work in Alabama and (2) requires all employers to use E-Verify and provides a safe harbor from liability.

HB 658, however, substantially changes the penalty structure for employers who violate either provision. The penalties are as follows.

1st violation – Currently, HB 56 requires the state to impose a 10-day suspension of the employer's business license. HB 658 imposes a suspension of a business license for up to 60 days and a 3 year probationary period. HB 658 also gives the court discretion not to impose penalties if doing so is in the public interest and gives a list of factors the court must consider in making such a determination. All other subsections remain the same between the two bills with regard to the first violation.

2nd violation – Currently, HB 56 requires the state to permanently revoke the business license of an offending employer at the location where the unauthorized alien was employed. In contrast, HB 658 only penalizes a second violation if occurs within 5 years of the first. If the court finds a second violation, it will order the suspension of the employer's business license for up to 120 days and place the employer on 5 years probation. HB 658 also gives the court discretion not to impose penalties if doing so is in the public interest and gives a list of factors the court must consider in making such a determination.

3rd violation – HB 56 only provided for second or subsequent violation which led to the permanent revocation of an employer's business license. HB 658 expands the penalty scheme by providing penalties for a third violation within 5 years of the second. For a third violation, the court will order the state to "permanently suspend" the employer's business license and place the employer on 7 years probation. HB 658 also gives the court discretion not to impose penalties if doing so is in the public interest and gives a list of factors the court must consider in making such a determination. However, if the court finds a public interest exception not to permanently suspend the business license, the business license is required to be suspended for at least a year.

HB 658 makes the provisions regarding violations of the public contractor section uniform with the penalties provisions regarding all employers.

Amends HB 56 § 17: Unlawful Employment Practice

HB 56 currently provides a discriminatory practice for an employer to fail to hire or discharge a US citizen or legal alien while employing or hiring employee who unauthorized. HB 658 requires a person seeking to bring an action against their employer for the *unlawful employment practice* of failing to hire or discharge of a U.S. citizen or authorized alien while employing an

unauthorized alien to show that the unauthorized alien was the proximate cause of the discharge or rejection. It also requires the person to show intention of the employer to discriminate and that the unauthorized alien performed a similar task as the person seeking relief. (Subsection (a)(2)). This section also states that it is not an unlawful practice for an employer to not hire a person if the employer has “a legitimate business reason.” Another change from HB 56 is that this section strikes the clause which would award the losing party attorney’s fees up to amount losing party paid their own attorney. HB 658 provides penalties for a person who files a false complaint under this section. (Subsection (d)).

SECTION 2:

Amends HB 56 § 18: Transfer to Magistrate

HB 56 requires a law enforcement officer to transport a person to the nearest magistrate if the officer arrested a person for not having their driver’s license and the officer is unable to determine that the person has a valid driver’s license. HB 658 would strike the entire section which requires that the person be transported to the nearest magistrate. HB 658 also strikes the clause which requires detention (considered flight risk) until prosecution or handed over to federal immigration authorities.

SECTION 3:

Amends HB 56 § 19: Notification to ICE and AL DHS

HB 56 currently requires an agency responsible for the custody of an illegal alien to notify Immigration and Customs Enforcement and Alabama’s Department of Homeland Security upon releasing the illegal alien within 30 days of release or after a fine has been paid. HB 658 removes the provision which would require notification following the payment of a fine.

Amends HB 56 § 27: Reports on Illegal Alien Students in public schools

HB 658 would eliminate the requirement in HB 56 that school districts collect data on their students’ immigration status and send it to the State Board of Education for inclusion in an annual report. (H.B. 658, p. 67-70) H.B. 658 does include a requirement that the State Department of Education compile a report on the annual fiscal impact of providing free education to the children of illegal aliens. (H.B. 658 p. 66-67) That provision expressly allows the state to contract with scholars, economists, or public research institutions to complete the report.

Amends HB 56 § 28: State Election Board

This section strikes those provisions of HB 56 that created the State Election Board. This section instead creates the county board of registrars.

Amends HB 56 § 29: Business Transaction

HB 56 currently prohibits unlawfully present aliens or persons on behalf of unlawfully present aliens from entering business transactions with the state or locality. HB 56 also requires proof of U.S. citizenship (through a list of documents) or lawful presence (through SAVE) to enter

business transaction with state or locality. HB 658 limits the definition of business transaction to include only applications for license plates, driver's licenses or nondriver ID cards, or a business license. (Subsection (a)). It also strikes the requirement that lawful presence be verified through the SAVE system. Subsection (g) of this section provides a list of documents that create the preemption of lawful presence and are only required for the "initial business transaction." Included in the list is "AL-verify" which is a verification system presumably created by Alabama to verify lawful presence. This would be preempted by federal law, as only the federal government can provide the verification of a person's immigration status.

SECTION 4: Severability

This section allows a provision to be severed from the rest of the act if that provision is found to be unconstitutional.

SECTION 5: Effective

Immediately upon passage.

Updated: 04/10/12