



Office of House Speaker Mike Hubbard

## FACT SHEET: Illegal Immigration Law Revisions

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Every year legislators examine state laws to look for ways to make them better. Alabama's illegal immigration law is no different. Make no mistake: **the law will not be repealed or weakened**. However, technical adjustments can be made to make sure the law is **stronger and works better**.

Proposed revisions are focused on clearing up misconceptions and correcting any portions that might be vague or require additional definitions. Many revisions are merely technical, while some are more substantive. All changes are aimed to maintain the strength of Alabama's illegal immigration law, while making the law more workable for local governments, more enforceable for state and local police, and less burdensome for law-abiding citizens and businesses.

House Bill 658 would:

### ***Keep and strengthen penalties for breaking illegal immigration laws by***

- Increasing the penalty period for suspension of a business license for any business caught hiring illegal immigrants from 10 days to 60 days.
- Introducing a three-tiered penalty scheme that provides for tough but fair consequences for consecutive offenses.
- Heightening penalties for the concealment or harboring of illegal immigrants for offenses involving five or more aliens.

### ***Make the law more workable and user-friendly for law-abiding citizens, local municipalities and businesses by***

- Simplifying the verification process for public benefits and services, while maintaining strict standards.
- Clarifying potentially vague language and providing additional definitions to eliminate uncertainty for businesses and local governments in everyday dealings.
- Aligning language applying to public and private sector transactions to ensure consistency in enforcement.

### ***Help state and local law enforcement better utilize the law to crackdown on illegal immigration, per their recommendation, by***

- Strengthening the role of the Attorney General and local district attorneys in bringing legal action against accused lawbreakers.
- Allowing officers more flexibility in verifying the status of a suspected illegal immigrant in a traffic stop.
- Extending "reasonable suspicion" beyond the driver of a vehicle to include passengers in the event of a traffic citation or arrest.

### ***Adjust certain sections in accordance with federal law so they may be enforced***

- Simple revisions to section 8 will allow the state to ensure illegal immigrants cannot attend public colleges and universities.
- Aligning the concealment and harboring provisions in section 13 to federal law will allow the state to enforce that critical section as well.
- Clarifying the contracts provisions in section 27 to apply prospectively could lead to an injunction being lifted and allow that section to be enforced.

An exhaustive section-by-list of proposed bill revisions is on the following pages.

## Specific proposed revisions to Alabama's illegal immigration law

**Section 3:** Provides definitions for certain words and phrases used in the bill.

- Revisions:
  - Narrowing the scope of “Contractor” to exclude those who merely “provide a certain product” in exchange for consideration.
  - Clarifying that the agreements a “Contractor” enters into must either be required to be competitively bid (i.e., over \$7,500) or submitted to the Joint Legislative Contract Review Oversight Committee (i.e., personal or professional services).
  - Changing the definition of “Lawful Presence or Lawfully Present” to include a Military ID and an Alabama driver’s license that expired within the then preceding six months.
  - Defining a “Project” as the providing or creating or delivering of a tangible good (yet not including a transaction in goods).
  - Clarifying the definition of “State-Funded Entity” to mean only those entities that received 50 percent of their revenue in one of the preceding three years from a public source.
  - Clarifying that “Business Entity,” “Contractor,” “Employee,” “Employer,” and “Subcontractor” apply only to those persons employed in or performing a labor or service in the state.
  - Clarifying that “Employee” does not include any inmate in the legal custody of the state, a county, or a municipality.

**Sections 5 & 6:** Provides for the enforcement of federal and state immigration laws.

- Revisions:
  - Providing that persons have the right to petition the Attorney General or the appropriate local district attorney to bring an action against an official for that official’s failure to act, rather than have the power to bring an action on their own. And requiring a district attorney or the Attorney General who does not file an action to publicly state their justification for such a decision.
  - Providing that any petition be signed under oath and under penalty of perjury, and allege any facts with specificity. And requiring that the Attorney General give the official or agency head 30 days notice of intent to file an action.
  - Eliminating language stating that each side on any litigation considered within this act shall bear their own litigation costs unless otherwise ordered by the court.
  - Clarifying that “official or agency head” does not include a law enforcement officer or personnel employed in a jail, except for a sheriff or a chief of police.

**Section 7:** Prohibits an unlawfully present alien from receiving a state or local public benefit.

- Revisions:
  - Clarifying that the entity charged with verifying the lawful presence of an applicant should be the entity that both funds and administers a state or local public benefit.
  - Clarifying this section would only apply to the first issuance after the effective date of this act of a commercial or business license that is a state or local public benefit; verification would not be required for subsequent renewals of such licenses.

**Section 8:** Prohibits illegal immigrants from receiving public postsecondary educational benefits.

- Revisions:
  - Deleting the section’s second sentence – “An alien attending any public postsecondary institution in this state must either possess lawful permanent residence or an appropriate nonimmigrant visa under 8 U.S.C. § 1101, et seq.” – to be consistent with the state’s litigation position on this section.
  - With that sentence deleted, the court’s reason for enjoining the section is eliminated. This change should lift the injunction and allow the section to be enforced.

**Section 9:** Requires contractors doing business with public entities to enroll in “E-Verify” and prohibits them from employing an illegal worker.

- Revisions:
  - Providing that a contractor would not be liable for his direct subcontractor unless it is shown by clear and convincing evidence that the contractor had actual knowledge that the direct subcontractor violated the section.
  - Clarifying that any compliance verification can be performed by either the contracting authority or by the Attorney General at any time.
  - Implementing a three-tier penalty scheme, with the second and subsequent penalty provisions being triggered only if the offenses fall within five years of the previous offense. The penalties would include terminating employees, terminating a contract, subjecting the business entity to probation, and suspending the licenses or permits of the business.
  - Providing that this section shall not apply to agreements by the state, any political subdivision thereof, or any state-funded entity relating to debt obligations by such entities.

**Sections 10 & 11:** Provides that failing to carry an alien registration document is a Class C misdemeanor, and prohibits an unauthorized alien from applying for, soliciting, or performing work.

- Revisions:
  - Clarifying that official records received from the federal government require no additional authenticity in order to be admissible in court.
  - Clarifying that the penalties for violating these sections are Class C misdemeanors.

**Section 12:** Authorizes state, county, or municipal law enforcement officers to attempt to determine a person’s citizenship status if reasonable suspicion exists that the person is unlawfully present in the United States.

- Revisions:
  - Expanding the verification window from 24 hours to “as soon as reasonably possible, but not later than 48 hours after the arrest.”
  - Clarifying that the “reasonable suspicion” calculations occur upon the issuance of any traffic citation or upon any lawful arrest, rather than upon any lawful stop, detention, or arrest.
  - Extending the “reasonable suspicion” calculation beyond the driver to the passengers in a vehicle where the driver has been issued a traffic citation or has been lawfully arrested.

**Section 13:** Prohibits concealing, harboring, transporting, renting property to or encouraging the entry into the state of an illegal immigrant.

- Revisions:
  - Eliminating the specification that renting to an illegal alien is the same as harboring an illegal alien.
  - Making the subsection exempting religious activities mirror federal law.
  - Eliminating the vague provision that encouraging/inducing an alien to come to the state is a crime.
  - Clarifying that this section will be interpreted in the same manner that federal courts interpret the parallel federal harboring provision.
  - Establishing heightened penalties for situations involving five or more aliens (the legislation currently heightens certain penalties when there are ten or more aliens involved).

**Section 14:** Prohibits dealing in false identification and other vital records.

- Revisions:
  - Clarifying that merely reproducing a false identification document is not a violation of the statute.

- Clarifying that for a violation to occur, the prohibited actions must be taken to intentionally further a scheme to facilitate an unauthorized alien's employment or presence in the United States.

**Section 15:** Prohibits businesses from knowingly employing an unauthorized alien while also requiring every employer to enroll in the federal E-verify program.

- Revisions:
  - Making the contracting, compliance, and penalty portions of this section the same as in Section 9.
  - Clarifying that this section shall not apply to debt obligations by public entities.
  - Providing that this section become effective immediately upon passage and approval by the Governor, rather than on April 1, 2012.

**Section 17:** Prohibits the discriminatory practice of failing to hire or firing a legal resident while retaining or hiring an illegal immigrant.

- Revisions:
  - Requiring petitioners to show further cause that the decision to fire or not to hire is because the employer intended to discriminate against the person bringing the action.
  - Further clarifying that it is not unlawful to fire or not hire someone for a legitimate business reason.
  - Providing that a person that files a frivolous claim under this section would be guilty of a Class C misdemeanor.

**Section 18:** Requires law enforcement officers to verify the immigration status of a person failing to present a drivers' license.

- Revisions:
  - Clarifying that a person who violates Section 32-6-1 (driving without a license) or 32-6-9 (a licensee that cannot produce his license) shall have their citizenship determined as soon as possible, but not later than within 48 hours.
  - Deleting the requirement of transporting the person to the nearest and most accessible magistrate.

**Section 19:** This section provides that persons charged with a crime for which bail or confinement is required must have their immigration status verified within 48 hours

- Revision: Specifying that the verification window discussed in this section (48 hours) be changed to "as soon as reasonably possible, but not later than 48 hours after the arrest."

**Section 20:** Provides that the federal government shall be notified within thirty days prior to an unlawful alien's release from custody or when an unlawful alien has paid any fine as required by operation of law, and also provides that the Department of Corrections must maintain custody of the individual during the transfer of custody to the federal government.

- Revisions:
  - Eliminating the words "or has paid any fine as required by operation of law" so as to clarify that this section was intended to concern illegal aliens who are already lawfully in custody.
  - Clarifying that, instead of a referring only to the Department of Corrections, refer to the "agency responsible" for the person's incarceration.

**Section 21:** This section provides that proceedings brought under this act shall be stayed if the person against whom charges are brought is a crime victim, the child of a crime victim, a critical witness in any prosecution, or the child of such a witness.

- Revisions: Expanding this exception to include the parents of a victim of a crime or a critical witness of a crime, if the witness is a minor.

**Section 24:** Requires the Alabama Department of Homeland Security to file quarterly reports with the Legislature on the progress being made regarding the enforcement of the statute, as well as the status of the progress being made in the effort to reduce the number of illegal aliens in the state.

- Revisions:
  - Requiring annual reports, rather than quarterly reports.
  - Authorizing the department to request proof of E-verify enrollment from a business that is the subject of a written complaint alleging violations of this act.
  - Requiring the department to maintain a toll free telephone hotline or website for the purpose of receiving tips from the general public regarding possible violations of this act.

**Section 27:** Prohibits the enforcement of a contract between a party and an unlawful alien, with certain exceptions.

- Revisions:
  - Specifying that this section apply prospectively, i.e., only to contracts entered into after the effective date of the act; and
  - Clarifying that this section be amended so that it does not apply to the appointment or retention of legal counsel in legal matters.

**Section 28:** Requires school districts to obtain data, to be aggregated and disseminated by the State Board of Education, regarding the numbers of United States citizens believed to be enrolled in the public schools of the state.

- Revisions:
  - Requiring the State Superintendent, rather than each local school system, to attempt to ascertain the fiscal impact to our state's educational system of educating students who are the children or, or in the custody and care of, persons unlawfully present in the United States.
  - Requiring the Superintendent's analysis to be published in an annual report.

**Section 29:** Requires the Secretary of State to create a process for local elections officials ensure those registering to vote provide information verifying their U.S. citizenship. This section also created a three-person State Election Board empowered to assess information provided by any applicant for voter registration as evidence of citizenship.

- Revision: Eliminating the State Election Board and replacing references to a "county election officer" with references to the "county Board of Registrars."

**Section 30:** Prohibits business transactions between the state and an unlawful alien.

- Revisions:
  - Clarifying that "business transaction" applies the first issuance of a license plate, driver's license, identification card, or business license after the effective date of this act.
  - Amending the list of documents that can be provided in order to enter into a business transaction be amended to include the following:
    - A driver's license or identification card issued by any state's DMV provided that the other state's DMV requires proof of lawful presence as a condition of issuance;
    - The state's AL-Verify system; and
    - Military ID; and
  - Allowing the Alabama Department of Revenue to promulgate regulatory authority to allow additional forms of identification to serve as proof of citizenship or legal residence, so long as those forms require proof of lawful presence as a condition of issuance.

**Section 34:** Provides for effective dates of the various sections of the act.

- Revision: Providing that the act, in its entirety, become effective immediately upon passage and approval by the Governor.