



# The Legal Viewpoint

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## Changes to Alabama's Immigration Law: What You Need to Know Now

**D**uring this past Legislative session, the Alabama Legislature passed Act 2012-491 which amends Alabama's Immigration law, otherwise known as the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, which is codified at Sections 31-13-1 et seq. of the Code of Alabama 1975. This amendatory Act made several significant changes to the law.

Many questions remain regarding the status of the immigration law in Alabama due to the numerous pending lawsuits relating to the previously passed version of the law. For purposes of conducting business at the municipal level, there are several items from this new Act that need to be brought to your municipality's attention.

### E-Verify Requirements

#### Proof of Enrollment with E-Verify – No Affidavit Required

Section 9 of Act 2012-491 amends Section 31-13-9, Code of Alabama 1975 with regard to providing proof of enrollment with the E-Verify program administered by the U.S. Department of Homeland Security. The Act narrows the scope of applicability of Section 31-13-9 to *only employees and employers in Alabama*. Therefore, an out of state company with no employees in Alabama would not have to comply with this section. In addition, this newly passed Act eliminates the requirement that contractors and subcontractors provide sworn affidavits as a condition for the award of a contract, grant or incentive by state, county or municipal governments in Alabama.

While contractors are not required to provide any type of sworn affidavit with regard to enrollment with E-Verify, they will still be required to demonstrate proof of enrollment in E-Verify in order to contract with a municipality. The law does not specify what documentation must be provided but there is little doubt that a copy of the Memorandum of Understanding (MOU) entered into between the contractor/business and the Department of Homeland Security to use the E-Verify system would suffice as sufficient documentation of enrollment.

#### Competitively Bid Contracts

What constitutes a "contract" under this provision of the immigration law? One of the amendments in the new Act was to include a definition of "contract" for purposes of that section of law. A contract under this provision is defined as a "contract awarded by the state, any political subdivision thereof, or any state-funded entity that was competitively bid ...". Act 2012-491, Section 31-

13-9(l), Code of Alabama 1975. Only contractors who are entering into a contract with a municipality pursuant to a competitive bid process must provide documentation of enrollment with E-Verify. Therefore, a municipality does not need to get proof of E-Verify enrollment just to make a purchase at a local store unless the purchase is made pursuant to a competitive bid process.

Because contracts with other governmental entities are not subject to the state bid laws, there is a good argument that the documentation of E-Verify enrollment requirement does not apply to contracts between governmental entities. However, we caution municipalities that if they choose to competitively bid a contract, even if they are not required by law to competitively bid, they should obtain documentation of E-Verify enrollment from the contractor.

The League recommends that for all contracts entered into through a competitive bidding process (through the Competitive Bid Law, the Public Works Law or simply by choice of municipal officials), municipalities should consider including in the invitation to bid a statement advising bidders that they must comply with Section 31-13-9, Code of Alabama 1975. Municipalities should advise that if the bidder employs persons in the State of Alabama, then the bidder must provide documentation that they are enrolled in the E-Verify program along with the bid. Additionally, the bidder should be advised that if they employ persons (anywhere), that the award of the contract is conditioned on the bidder not knowingly employing, hiring for employment or continuing to employ an unauthorized alien within the State of Alabama. And finally, the League recommends advising bidders that any awarded contract will contain a provision, as provided below, whereby the bidder promises not to violate federal immigration law.

#### Required Contract Language

Act 2012-491 requires that all state, county and municipal contracts and agreements contain the following language:

"By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom."

With the definition of contract contained in this section limiting itself to contracts that are competitively bid, there is an

argument that this language is only required for contracts that are competitively bid. However, the language of the law also says “agreements” and therefore, it is the recommendation of the League that this language be included in any written agreement or contract irrespective of whether it was entered into as a result of a competitive bid process.

### **Grants and Incentives**

Although not as prevalent as municipal contracts, Section 31-13-9, Code of Alabama 1975, also applies whenever the City awards any incentives and grants. All municipalities should be on alert to identify any grants or incentives to which this rule may apply. Any entity that employs one or more employees within Alabama that receives a grant or incentive from a municipality must provide documentation of enrollment with E-Verify.

### **Subcontractors**

Act 2012-491 eliminates the requirement that contractors obtain affidavits of compliance from their sub-contractors in order to avoid liability for their violations. However, it imposes a new “constructive knowledge” standard for contractor liability for the violations of sub-contractors assigned any portion of a government contract.

Any subcontractors who work with general contractors who have been awarded contracts by the City must be enrolled in E-Verify. The general contractor should be aware of this requirement and have a system for assuring compliance. However, the City is not responsible for assuring a subcontractors’ compliance.

### **Business Transactions/Business Licensing**

Section 30 of the Beason-Hammon Alabama Taxpayer and Citizen Protection Act found at Section 31-13-29, Code of Alabama 1975, was one of the sections of the originally passed immigration law that was enjoined by the 11<sup>th</sup> Circuit Court of Appeals. As such, it is currently not enforceable by the State of Alabama. However, it was one of the provisions of the prior law that was amended in Act 2012-491 by the Alabama Legislature. The amendment redefined “business transactions” as “public records transactions” and clarifies that it is only applicable to efforts to secure a driver’s license, motor vehicle license plate, non-driver ID, commercial license or professional license applications. This would include municipal business licenses.

Under this section, applicants for a municipal business license will still be required to prove either citizenship or lawful presence in the United States for all initial applications for a business license, but citizens and permanent residents will be exempt from proving lawful status for subsequent renewals after the initial verification is made.

The amended law expanded the forms of identification that are acceptable under the Act to demonstrate citizenship. A person’s citizenship can be demonstrated by using any one of the following documents:

(1) A driver’s license or nondriver’s identification card issued by the Alabama Department of Public Safety or the equivalent governmental agency of another state within the United States, provided that the governmental agency of another state within the United States requires proof of lawful presence in the United States as a condition of issuance of the driver’s license or nondriver’s identification card.

(2) A birth certificate.

(3) Pertinent pages of a United States valid or expired

passport identifying the person and the person’s passport number, or the persons United States passport.

(4) United States naturalization documents or the number of the certificate of naturalization.

(5) Other documents or methods of proof of United States citizenship issued by the federal government pursuant to the Immigration and Nationality Act of 1952, as amended.

(6) Bureau of Indian Affairs card number, tribal treaty card number or tribal enrollment number.

(7) A consular report of birth abroad of a citizen of the United States of America.

(8) A certificate of citizenship issued by the United States Citizenship and Immigration Services.

(9) A certification of report of birth issued by the United States Department of State.

(10) An American Indian card, with KIC classification, issued by the United States Department of Homeland Security.

(11) Final adoption decree showing the person’s name and United States birthplace.

(12) An official United States military record of service showing the applicant’s place of birth in the United States.

(13) An extract from a United States hospital record of birth created at the time of the person’s birth indicating the place of birth in the United States.

(14) AL-verify.

(15) A valid Uniformed Services Privileges and Identification Card.

(16) Any other form of identification that the Alabama Department of Revenue authorizes, through an administrative rule promulgated pursuant to the Alabama Administrative Procedure Act, to be used to demonstrate or confirm a person’s United States citizenship, provided that the identification requires proof of lawful presence in the United States as a condition of issuance.

A legible photocopy or a copy in digital or other electronic formats of any of the above forms of identification are acceptable under this section of law.

For anyone not able to demonstrate citizenship by one of the above methods, the law provides that an alien’s immigration status must be verified through the US Department of Homeland Security in accordance with 8 USC §1373(c).

### **Conclusion**

Questions remain as to whether or not the stay of this provision in its originally passed form will carry over to the changes passed by the Legislature this session. The League will continue to monitor this and provide information as it becomes available. Because so many questions remain regarding the constitutionality of Alabama’s immigration law, the League recommends that you contact your municipal attorney for guidance before taking any action on matters relating to the application of these laws. ■