Beason-Hammon
Alabama Taxpayer &
Citizen Protection Act
(HB56 & HB658)

An Overview of Alabama’s Immigration Law

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HB 658

Background

- June 9, 2011: HB56
- Authored in large part by Kris Kobach
  - Law Prof at Mizzou
  - A.G. Ashcroft’s Immigration advisor
  - Arizona law
  - Hazelton, PA law
  - Harvard/Yale/Oxford
  - Secretary of State (MO)
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Background (HB 56 Enacted)

- **September 1, 2011**: (Effective Date)
  - Actually Effective Dates extending into June ‘12
- **August 29, 2011**: Suits filed by U.S. govt and various other groups against Alabama/Bentley.
- **September 28, 2011**: Judge Blackburn opinions
  - 2 Separate Opinions (each 100+ pages)
  - Mixed Bag
- **October 7, 2011**: Both sides appeal the mixed bag to the Eleventh Circuit.
- **October 27, 2011**: Homeland Security Secretary Napolitano say the Feds won’t enforce any portion of HB56.
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Background (cont’d):

- …MEANWHILE
  - **December 1, 2011:** General Strange sends a letter to Senator Del Marsh and Speaker Mike Hubbard (yikes!)
  - **End of 2011/Early 2012:** ADAA, Builders Associations and other professional organizations lobby the legislature.
    - Issues in HB56 are addressed.
  - **April 25, 2012:** SCOTUS heard Oral Arguments on Arizona Immigration Bill.
  - **May 18, 2012:** HB 658 signed by Governor Bentley!
    - Ala. Code Section 31-13-1, et seq.
    - HB658 Amended twelve (12) Sections of HB56.
  - **End of June 2012:** Decision on Arizona Immigration Bill is expected from SCOTUS.
HB 658: The Respective Sections
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- **Sections 1 & 2**: Title and Findings
- **Section 3: Definitions**
  - New law retooled definitions of:
    - “Subcontractor”
    - “Policy or Practice”
    - “State-funded entity”
    - “Lawfully present” (ID cards)
    - “Benefits” *NOT* Defined
Section 4: MOA

“[Enforcement of HB56 in Alabama] is not within our priorities.”

-- Secretary of Homeland Security Janet Napolitano, October 27, 2011 before the House Judiciary Committee

Problem: AG and DHS needed an MOA to remove detained aliens from our jails!!

Important – Sections 18 & 19 “flight risk” provisions.
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Sections 5 & 6: Sanctuary City Provisions

-- Prohibits a “Policy or Practice” of not enforcing HB658.

Consequences of Violation:

- **5(d) & 6(d) Lawsuits:** A person may file a petition with DA or AG for that official to bring an action in Circuit Court to challenge a public official on their enforcement efforts.
  - Pass-through Provision vs HB56
  - $1000-$5000 per day!
  - Public Office still bears costs for the litigation in “official capacity.”

ACTION/NO ACTION:

- **90 Days for Action:** DA/AG must give a public explanation within 90 days of the resulting action from date the petition was filed with DA/AG;
- **30 Days Notice:** DA/AG must give Public Official who is the subject of the suit a notice of at least 30 days that a suit will be allowed/filed.
- Explanation is made under the penalties and pains of PERJURY
  - (13A-10-100, et. seq.).
Sections 5 & 6: Sanctuary City Provisions

(Continued)

- 5(f) & 6(f) Prosecutions:
  - Every person working for the State of Alabama or a Political Subdivision has a “duty to report” a “sanctuary policy or practice.
    - Failure to Report = Guilty of Obstructing Governmental Operations (Section 13A-10-2)
    - Class A Misdemeanor (1 Year in Jail & $6000 Fine)
  - “Direct Knowledge” AND “Duty to Report” Requirement???
    - “Any person who willfully fails to report any violation of this section shall be guilty of obstructing governmental operations....”
    - HB56 vs HB658... disjunctive differences?
Section 7: Public Benefits for Aliens

7(h) Prosecutions:

- An application for state/local benefits must be accompanied by a declaration that the applicant is a U.S. citizen.
- Anyone who makes a materially false, fictitious or fraudulent statement/representation in a citizenship declaration is guilty of Perjury in the Second Degree (13A-10-102 – Class A Misd.).
- Anyone who receives a public benefit based on a false declaration is guilty of Perjury in the Second Degree (13A-10-102).

  NOTE: Each time the benefit is received MUST be a separate count.

- Workers Compensation a BENEFIT?? Undefined.

E-Verify: No State official may verify an alien’s lawful status (must use E-Verify).
Section 8: Restrictions on Public Post-Secondary Education

- An unlawfully present alien may not attend state colleges or public post-secondary educational institutions.

- Post-Secondary Education = Public Benefit

*NOTE*: Violation of this section could result in a 7(h) prosecution.
Section 9: No Contracts For Employers with Unlawfully Present Aliens

- **Standard of Care:** Knew/Should have known.
- **One Employee Rule:** Only applies to employers, *et.al.*, who have at least ONE EMPLOYEE IN ALABAMA!
- **Note:** Violation of Section 9 could result in prosecution for Perjury in the Second Degree (Class A Misd.).

Every employer, contractor, subcontractor or business entity dealing with State monies (with at least one employee in Alabama) must:

- Not hire unlawfully present aliens in Alabama;
  - They can *OUTSIDE* of Alabama.
- Verify all employees through E-Verify.

OR…
Section 9 (Three Strikes)

First Violation – Courts must:
1) State **MAY** breach contract;
2) Terminate ALL unauthorized aliens;
3) 3 Year Probationary Period;
4) Affidavit of Compliance (within 3 days);
5) 60 Day Suspension of Business License.

Second Violation – Courts must:
1) State **MUST** breach contract;
2) Terminate ALL unauthorized aliens;
3) 5 Year Probationary Period;
4) Affidavit of Compliance (within 3 days);
5) 60-120 Day Suspension of Business License.

Third Violation – Courts must:
1) State **MUST** breach contract;
2) **PERMANANT** Suspension of Business License.
Section 10: Unlawful Status is...well...Unlawful

- Simply being an unlawfully present alien in Alabama is a Class C Misdemeanor (Section 10(f)).
  - 30 Days Confinement
  - $100 Fine
  - Works neatly in conjunction with Sections 18 & 19!
    - No Bail/Flight Risk provisions.

- Enjoined by Eleventh Circuit
  - Not addressed by Alabama Legislature in new bill!
  - Similar provision in Arizona law at SCOTUS.

- Note: Many other Sections conjoin with this Section, making some or all of the “teeth” of those other Sections moot if this Section is permanently enjoined.
Section 11: No Work for Unlawful Aliens

This section made it a Class C Misdemeanor:

- For an unlawfully present alien to work in any capacity in the public or private sector in Alabama;
- To pick up any person in a motor vehicle for the purposes of work at a different location;
- To enter a motor vehicle for the purposes of work at a different location.

Enjoined by the Northern District of Alabama.

- Only Subsections (a), (e), (f) and (g) were enjoined.
- Renders the remainder of the Section moot.
Section 12: Stops, Arrests & Verifications

- If upon a lawful STOP, DETENTION OR ARREST an officer has reasonable suspicion that a person is unlawfully present in the United States then a determination of that subject’s status is mandatory (when practicable).
  - 60-90 Minutes is “reasonable amount of time” under totality.
- Verification + Unlawful = Arrest under Section 10!
  - Verification can take 24 hours = Temporary Custody
    - §1983 Alert!! (42 USC §1983)
- 12(d) Inartful: “A person is presumed to not be an alien who is unlawfully present…”
- Directly Interconnected to Sections 10, 18 & 19.
- Challenged and Upheld.
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Section 13: Conceal, Induce & Transport

- Unlawful to *Knowingly* or *Recklessly Disregard* to:
  - Conceal, Harbor or Shield from Detection an unlawfully present alien;
  - Encourage/Induce an unlawfully present alien to come to/remain in the United States;
  - Transport an unlawfully present alien in furtherance of that unlawful presence.
    - Includes a Forfeiture provisions (vessel, vehicle, aircraft, *et. al.*).

- **Less than 5 Aliens:** Class A Misdemeanor (1 year/$6000 Fine)
  - Section 13(b)

- **5 or More Aliens:** Class C Felony (10 years/$15,000)
  - Section 13(c)

- Admissibility of Status Documents: *JUST MARK IT!!*

- Enjoined on the “Religious Organization” grounds by the Northern District of Alabama.
  - HB658 (post-injunction) to allow for religious organizations to perform normal functions for any person, regardless of “status” and moot injunction.
Section 14: Dealing in Fake I.D.’s

*Fake ID Law:* Reproducing/selling a Fake ID is a violation of Ala. Code Section 13A-10-14 (Class A Misd.)

*HB56 Enhancement:* Violating 13A-10-14 in “furtherance” of violating the Alabama Immigration Act is a Class C Felony.

- Mandatory $1000 Fine for every Fake I.D. uncovered!
- Use of the Great Seal of Alabama is already a Class C Felony (13A-10-13).

*Exceptions:* Using Fake I.D. to buy alcohol, tobacco, rent porn, *etc.*, does not violate Section 14.
Section 15: Employment of Aliens

- Mandatory enrollment of E-Verify for “every business entity or employer in [Alabama]” to verify ALL employees status.
- First Violation (Similar to Section 9 Violations):
  - Employer must Terminate unlawfully present alien;
    - Civil immunity from any lawsuit by terminated employee.
  - 3 Year Probation;
  - Affidavits of Compliance;
  - 10-day Business License & Permit Suspension.

- Second Violation:
  - Permanent Suspension of Business License and Permits for specific location where violation took place.

- Subsequent Violation:
  - “Forever suspend the business licenses and permits” for that business at all offices located within the State of Alabama.

**NOTE**: Potential for Perjury prosecutions any time there is an affidavit!
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Section 16: Aliens, Business Expenses & Taxes

- Wages, benefits, compensation, or employer-provided services of ANY kind are NOT deductible as a business expense for tax purposes.

- Violation: Civil Penalty of 10x the amount of the unlawful business expense claimed.

- ENJOINED by the Northern District of Alabama
Section 17: Illegal to Hire Illegal Aliens

Makes it a “discriminatory hiring practice” to hire an unlawfully present alien over a U.S. citizen or lawfully present alien.

Civil Employment Claims

- Compensatory Damages ONLY.
- Losing party pays prevailing party’s legal fees.

ENJOINED by the Northern District of Alabama.
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- **Section 18: Drivers License Requirement**
  - Modifies Ala. Code 32-6-9 which already states that every motorist in Alabama must be in possession of a valid DL.
    - Note: Certified Immigration Records are admissible without foundation or exception.
    - “Transport to Magistrate” requirement in 32-6-9 (and original HB56) deleted.
  - Add Section 10 “Status” Charge (was intended).
    - Note Section 19’s No Bond requirement as well.
  - No DL = Flight Risk = No Bond
    - Stress on the already overcrowded jails.
  - **Challenged and Upheld.**
Section 19: Bailable Offenses & No Bail???

- Apparently Deleted despite lack of reference in HB658.
- HB56: Required a “No Bond” for any unlawfully present alien arrested for a “bailable offense” under the Alabama Code (including Section 10).
- HB658 a modification of HB56 Section 19?
  - 30 Day Post-Conviction Rule: The confining agency responsible for an unlawfully present alien, who is 30 days or less from release, must notify DHS for transfer to federal custody…”The ICE Hold”
  - They left the original Section 19 out of the law entirely…or did they.
    - Nothing in HB658 repeals Section 19 yet they legislature did renumber the ensuing sections (Section 20 became Section 19).
    - Flight Risk/No Bond language for “bailable offenses” is apparently out.
Section 20: Victims, Families & Airports

Stay of Alabama Immigration Law Requirements: Any victim, or their legal guardians, may “stay” any immigration proceedings while they await due process.

- Unclear about waiting for final appeals.
- Upon completion of trial/plea/process, the State must then comply with Sections 5, 6, 7, 10, 12 & 18 and call DHS for deportation.
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Sections 21 to 24: ADHS has Broader Authority

- Alabama DHS gets police officers whose primary duty as law enforcement is to enforce this Act;
- File Annual Reports with Legislature on progress of enforcement of Immigration Law;
- Creates a Tip Line.
Section 25: Inchoate Applicability

- Solicitation, Attempts and Conspiracy carry the same punishments as direct violation when the object of such is to violate HB56/HB658.
- Not the “step down” offense typical of an inchoate offense (attempts, solicitation, conspiracy).
  - E.G., when the object of a conspiracy is to commit a Class A felony the punishment is normally as a Class B felony.
Section 26: Court Prohibitions on Contracts

Courts may NOT enforce otherwise valid contracts where a party is an unlawfully present alien.

Exceptions:
- Room and Board for ONE NIGHT;
- Health Care;
- Transportation OUT of Alabama;
- Legal Counsel (new language);
  - U.S. Constitution, 6th Amendment
- Contracts that Pre-Date HB56 (new language).
  - U.S. Constitution, Contracts Clause: Article 1, Section 10, Clause 1

Challenged and Upheld.
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Section 27: Schools & Illegal Immigrants

- Requires annual “Financial Impact” analysis for K-12 schools;
- Requires schools to determine “lawful presence” of each student;
- Requires State Board of Education to compile a report for the legislature based on the reporting made by the schools:
  - Must include analysis of fiscal costs to schools to educate illegal immigrants, develop baselines for other “quality of education” impacts on U.S. citizens, and keep a running tally of illegal immigrants in Alabama schools.

ENJOINED by Eleventh Circuit.

- Not addressed by HB658 to correct deficiencies.
- (E.G., financial impact analysis might be constitutional but denial of education might not be.)
Section 28: Voter Registration (U.S. Only)

Applications for voter registration must contain voter eligibility requirements (e.g., proof of citizenship).

Examples
- Birth Certificates;
  - No fee for applicant if the request is to satisfy this requirement.
- DL or ID (which requires proof of U.S. citizenship);
- Valid U.S. Passport;
- Naturalization documents;
- Affidavit of applicant.
  - Perjury if false.

County Board of Registrars is responsible for a background check on each voter applicant.

Process begins for applications received AFTER September 1, 2011 (effective date of HB56).
Section 29: License Plates, Nuptials & Stuff

Prohibited: Unlawfully present aliens (or persons on their behalf) may not enter into a public records transaction with the State of Alabama.

Defines “Public records transaction” as applying for a license plate, DL/CDL or ID card (limited to Section 29 only).

- Requires proof of U.S. citizenship (e.g., DL).
- Does NOT include:
  - Marriage License;
  - Rental Agreements;
  - Titles to Real Property;

Violation: Class C Felony (10 years/$15,000 fine)

Challenged and Upheld.
Section 30: Business Transactions

- Similar to Section 29…but out of sequence.
- HB658 says that Section 30 was modified in the bill. However…it does not appear anywhere in the bill!!

**NOTE:** The numbering of Sections 19 through 34 changed inexplicably without deletion of any section in HB658.
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- Sections 31 to 34: Miscellaneous
  - Conflict of laws provision;
  - Unfunded mandate;
  - Severability clause;
  - Effective dates.
Changes to Title 32: Miscellaneous Examples

32-1-4: Appearance Upon Misdemeanor Traffic Arrest
- DELETED

32-6-9: Possession of DL at All Times
- Works in conjunction with Section
- Deletes “transport to magistrate” requirement.
- State will defend LEO’s that enforce this provision.

32-6-10.1: DL’s for “Foreign Nationals”
- Distinguishes between permanently and temporarily “lawfully present” foreign nationals (anyone not a U.S. citizen).
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QUESTIONS???