



## **Legislative Update 5-21-12**

# **What Alabama's immigration law looks like after HB 658**

*By Stephen Stetson, ACPP policy analyst*

Despite Gov. Robert Bentley's stated desire for further changes to Alabama's 2011 immigration law, he abandoned efforts on Friday to achieve those changes in the current special session and signed into law minor revisions passed during the 2012 regular session. What does this mean? Well, for one, it means a long legislative battle is finally over for the year. Though the Alabama Legislature remains in a special session working on budget-related issues and redistricting, immigration is done for the year, locking the state into at least another year of life under HB 56, as slightly modified by HB 658. As you may remember from previous updates, the version of HB 658 signed into law last week does very little to modify or improve Alabama's anti-immigration law. Among other tweaks, the new law that Bentley signed:

- Slightly weakens the Section 5 and 6 enforcement provisions of HB 56, replacing the "private right of action" lawsuit component with a complicated system requiring someone to petition the attorney general (AG) or local district attorney if they think the law is being violated.
- Allows someone to present a military ID to create a presumption of lawful presence in the United States.
- Creates a carve-out to protect attorney-client privilege, though it fails to define bailiffs, judges, court interpreters and others as "officers of the court," meaning some people in court proceedings may feel compelled to report to the federal government on the undocumented status of people they encounter.
- Makes it easier for Alabama to defend in court the section of the law banning undocumented immigrants from attending postsecondary educational institutions.
- Slightly weakens the penalties for businesses that employ undocumented immigrants.
- Leaves in place provisions making it a crime for 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." It also leaves in place the provision making it a crime to solicit work in a roadway.
- Leaves in place the controversial Section 12 "cop stop" provisions.
- Very slightly modifies the controversial "harboring, transporting and shielding" provisions by adding an exemption for immigrant missionaries. It also makes HB 56 harsher by lowering the number of immigrants triggering the law's felony provisions. Where HB 56 made it a felony to conceal, harbor or transport more than 10 undocumented immigrants (or to encourage or induce them to come to Alabama), HB 658 lowers that number to five. It also leaves in place the provision forbidding entering into a rental agreement with an undocumented immigrant if you "know or recklessly disregard the fact that" the renter is unlawfully present in the United States.

- Eliminates the requirement that those arrested for driving without a license be taken in and presented before a magistrate, in perhaps HB 658's biggest improvement to current law. On the down side, the new law alters the verification procedure to provide that when people are found driving without a license, "a reasonable effort shall be made as soon as possible, but not later than within 48 hours," to verify their immigration status. The law is silent on whether law enforcement officials must detain people while their status is being verified, though this seems likely. It also makes HB 56 harsher by lengthening the time they can be held from 24 hours to 48.
- Makes a tiny change to the section governing crime victims and witnesses. Under HB 56, the law will hold off on deporting undocumented immigrants if they are needed because they have witnessed a crime or been a crime victim. The new tweak extends this protection to the parents of children who witness or are victims of crime, but the incentive to testify in trials and participate in investigations is still minimized, because the law only delays deportation proceedings until the conclusion of the related legal proceedings.
- Leaves in place the current law's controversial Section 28 provisions, the parts requiring K-12 public schools to determine the immigration status of newly enrolling students.
- Changes the phrase "business transactions" to "public records transactions," defined as "applying for or renewing" a motor vehicle license plate, a driver's license (or non-driver ID card), a business license, a commercial license or a professional license. It excludes "applying for a marriage license, any transaction relating to housing or the ownership of real property, including the payment of property taxes, or the payment of any other tax to the state or a political subdivision, or any other transaction."
- Makes the legislative finding that the "United States Department of Justice has *unnecessarily* and *recklessly* threatened Alabama law enforcement officers with personal lawsuits" and requires the state AG's office to "defend Alabama law enforcement officers against federal overreach" by defending officers in court against any DOJ lawsuit.
- Requires the Administrative Office of the Courts to submit a quarterly report to the Department of Homeland Security (DHS) "summarizing the number of cases in which an unlawfully present person was detained by law enforcement and appeared in court for any violation of state law." They must include names, the charge, the presiding judge and the case's final disposition, including whether the person was released, remained in detention or transferred to federal immigration authorities. DHS is required to publish this information on its public website and make it searchable by county and presiding judge.

Many of the tweaks were designed to minimize the business community's concerns about the law, and, of course, to make it easier to defend in court. The legal battles continue in the judiciary, and not all issues are expected to be resolved, even when the U.S. Supreme Court issues its opinion in *Arizona v. U.S.*, likely in June. The political question in Alabama is whether the Legislature will have any appetite for further revisions to the immigration law during the next legislative session, or whether lawmakers think the changes in HB 658 are sufficient.