



Ogletree, Deakins, Nash,  
Smoak & Stewart, P.C.  
National Client Services  
191 Peachtree Street, N.E.  
Suite 4800  
Atlanta, GA 30303  
Telephone: 404.881.1300  
Facsimile: 404.870.1732  
clientservices@odnss.com  
www.ogletreedeakins.com

## Alabama eAuthority

September 29, 2011

---

### **Federal Court Blocks Enforcement of Several Provisions of the Alabama Immigration Law**

by [Alysonne O. Hatfield](#) and [J. Richard Carrigan](#)

As promised, an Alabama federal court issued orders on September 28, ruling on efforts by the U.S. Department of Justice, the leaders of three different religious organizations, and a group of plaintiffs (including the Hispanic Interest Coalition of Alabama) to prevent enforcement of several provisions of Alabama's controversial immigration law while the overall constitutionality of the law is being litigated.

*Importantly, the ruling does not affect the law's requirement that Alabama employers use the federal E-Verify program to determine whether applicants are eligible for hire. The E-Verify requirement will go into effect on January 1, 2012, for employers doing business with the state, and on April 1, 2012, for all other Alabama employers.*

The court held that the following provisions of the law may not be enforced pending a final judgment on the overall constitutionality of the law:

- Section 8, which prohibits unauthorized aliens from enrolling in Alabama public postsecondary education institutions, and requires any alien attending such an institution to possess lawful permanent residence or an appropriate nonimmigrant visa under U.S. immigration law;
- Sections 10(e), 11(e) and 13(h), to the extent that those sections limit the evidence that a defendant might use to determine whether the defendant is lawfully present in the United States;
- Section 11(a), which criminalizes the application for, solicitation for, or performance of work by an unauthorized alien;

- Sections 11(f) and (g), which prohibit occupants of motor vehicles who are stopped on any roadway from hiring, attempting to hire, or picking up passengers to perform work at another location, and prohibit any person from entering a motor vehicle stopped on a roadway for the purpose of being transported to work at another location;
- Section 13, which makes it unlawful for a person to 1) conceal, harbor or shield an alien unlawfully present in the United States, or attempt or conspire to do so; 2) encourage an unlawful alien to come to the State of Alabama; or 3) transport (or attempt or conspire to transport) an unlawful alien;
- Section 16, which forbids employers from claiming as business tax deductions any wages paid to an unauthorized alien; and
- Section 17, which establishes a civil cause of action against an employer that fails to hire or discharges a U.S. citizen or an alien who is authorized to work while hiring, or retaining, an unauthorized alien.

Of the remaining provisions of H.B. 56 that will be enforced, employers may be particularly interested to know that the law's requirements that public elementary and secondary schools determine whether enrolling students were born outside the United States or are the children of unlawfully present aliens are enforceable effective September 29, 2011.

Other important provisions that become enforceable effective September 29 are the law's requirements that Alabama courts refrain from enforcing contracts made knowingly between a party and an unauthorized alien, as well as that it is a felony for an unauthorized alien to enter into a "business transaction" with the State of Alabama or any of its political subdivisions.

#### **Additional Information**

Should you have any questions about the new law or its enforcement, contact the Ogletree Deakins attorney with whom you normally work or the Client Services Department by phone at (866) 287-2576 or via email at [clientservices@ogletreedeakins.com](mailto:clientservices@ogletreedeakins.com).