

## Differences Between Act 2011-535 (HB56) and HB658 As Passed the Legislature

**31-13-3:** Provides definitions for certain words and phrases used in the bill.

- Revisions:
  - Changing the definition of “Lawful Presence or Lawfully Present” to provide that a Military ID is to be considered a valid U.S. government-issued identification document bearing a photograph or other biometric identifier.
  - Clarifying the definition of “State-Funded Entity” to mean an entity that receives any monies from the state or a political subdivision, provided that an entity that merely provides a service or a product to a governmental entity, and receives compensation for the same, shall not be considered a “State-Funded Entity.”
  - Clarifying that “Employee” does not include any inmate in the legal custody of the state, a county, or a municipality.
  - Clarifying that a “policy or practice” does not necessarily have to be sanctioned by an agency or the head of an agency.
  - Clarifying that a “Subcontractor” is a “person, business entity, or employer who is awarded a portion of an existing contract by a contractor, regardless of its tier.”

**31-13-5 and 31-13-6:** 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, a chief of police, or head of a law enforcement agency.
  - Clarifying that “officer of the court” shall not be interpreted to interfere with the relationship between an attorney and his or her client.

**31-13-8:** 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.

**31-13-9:** Requires contractors doing business with public entities to enroll in “E-Verify” and prohibits them from employing an illegal worker.

- Revisions:
  - Clarifying that the provisions of this section apply to employees working within the State of Alabama.
  - Removes the requirement that business entity or employers have to attest by affidavit that they will now knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama.

- Clarifying that the provisions of this section applicable to subcontractors shall only apply to subcontractors performing work on a project subject to the provisions of this section and not to collateral persons or business entities hired by the subcontractor.
- Providing that a contractor would not be liable for his direct subcontractor unless it is shown that the contractor knew or should have known (instead of had actual knowledge) that the direct subcontractor violated the section.
- Clarifying that any compliance verification can be performed by either the contracting authority or any state or local law enforcement agency (instead of by the Attorney General) at any time.
- Implementing a three-tier penalty scheme, with the second penalty provisions being triggered only if the offenses fall within ten years of the previous offense. The penalty provision for a third violation will apply on the third violation, regardless of how many years had lapsed between the first, second, and/or third violations. The penalties would include terminating employees, terminating a contract, subjecting the business entity to probation, and suspending the licenses or permits of the business. For the first two offenses, businesses would be penalized only at the location where the unauthorized work took place. (For a more detailed comparison of the penalties in this section, see below sheet labeled “Section 9”).
- 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.
- Providing that any business entity or employer found in violation of this section that has had their business license or permit suspended shall not, for the duration of the suspension, be allowed, directly or indirectly, to procure or execute a license or permit similar to those that have been suspended.
- Providing that all contracts or agreements to which the state, a political subdivision thereof, or a state-funded entity are a party shall include a clause stating that the parties agree to not violate federal immigration law or knowingly employ, hire, or continue to employ an unauthorized alien, that violating this provision will be a breach of the agreement, and that the breaching party will be responsible for all damages resulting therefrom.
- Clarifying that “contract” means a contract awarded by the state, any political subdivision thereof, or any state-funded entity that was competitively bid or would, if entered into by the state or an agency thereof, be required to be submitted to the Contract Review Committee.
- Providing that all actions brought under this section shall be brought in circuit court.
- Clarifying that all procedural mechanisms or legal defenses included in the E-Verify program can still be used by anyone who allegedly violates this section, and that any entity that has enrolled in and properly uses the E-Verify program shall not be liable for violations of this section.
- Clarifies that any business penalized under this section shall file appropriate documentation with the Department of Industrial Relations rather than the appropriate local district attorney.

**31-13-13:** 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 from this section, and relocating this language to its own separate section.
- Adding language that exempts church or church-affiliated organizations from this section, language that is needed to align the section with federal law.
- Clarifying that the first four subsections of this section will be interpreted in the same manner that federal courts interpret parallel federal provisions.
- Establishing heightened penalties for situations involving five or more aliens (the legislation currently heightens certain penalties when there are ten or more aliens involved).

**32-6-9:** 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 be arrested and shall have their citizenship determined as soon as possible, but not later than within 48 hours, if the arresting officer is unable to determine by any other means that the person has a valid driver's license or has ever obtained a driver's license in Alabama.

**31-13-19:** 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 the Department of Corrections, the “agency legally responsible for custody” at the time a person is transferred must maintain custody during transfer.

**31-13-20:** 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 biological parents or legal guardians of a victim of a crime or a critical witness of a crime, if the victim or the witness is a minor.

**31-13-23:** 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, on the progress being made regarding the enforcement of this chapter and the status of the progress being made in the effort to reduce the number of illegal aliens in the State of Alabama.
  - Requiring the department to create a mechanism for the purpose of receiving tips from the general public regarding possible violations of this act, including the unlawful enforcement of the chapter.

**31-13-26:** 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.

**31-13-28:** 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.”
  - Ensuring that a voter registration applicant who has been denied the right to vote because a county board of registrars deemed his or her citizenship verification documents to be inadequate may appeal such an adverse decision under 8 U.S.C. § 1503

**31-13-29:** Prohibits business transactions between the state and an unlawful alien.

- Revisions:
  - Renaming “business transaction” to “public records transaction” and clarifying that “public records transaction” means applying for or renewing a license plate, driver’s license, identification card, commercial license, professional license, or business license after the effective date of this act.
  - Clarifying that “public records transaction” does not mean transactions relating to housing, the ownership of real property, the payment of property or other taxes, or any other transaction.
  - Clarifying that the only persons who can violate this section are aliens not lawfully present or persons knowingly acting on behalf of an alien not lawfully present.
  - 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.
  - Providing that if the state or a political subdivision thereof is notified by the federal government that a person is an alien unlawfully present in the United States, the person’s motor vehicle license plate, driver’s license, nondriver identification card, business license, professional license, or commercial license shall be immediately revoked and rescinded and shall not be reinstated until the state or political subdivision thereof is notified by the federal government that the person is an alien lawfully present in the United States.
  - Providing that a citizen, or an alien demonstrating lawful permanent resident in the United States, shall not be required to demonstrate citizenship or lawful status for subsequent public records transactions after an initial verification is made.

**Effective Date:** Provides for effective dates of the various sections of the act.

- Revision: Providing that the act, in its entirety, become effective immediately 60 days after passage and approval by the Governor.

**NEW SECTIONS** (All language below was added on the Senate floor)

**Section 3:** Amends 32-6-10.1 to define, for driver’s licensing purposes, the term “foreign national” as a person who is not a citizen or lawful permanent resident of the United States. (These changes are similar to those first proposed by Rep. Hammon’s HB693.)

- Revisions:
  - Defining “foreign national” as a person who is not a citizen of the United States. This change has been requested by the Alabama Department of Public Safety so that our driver’s license designations can conform to federal law.
  - Requiring the designation to distinguish between foreign nationals with lawful permanent residence in the United States and foreign nationals whose authorized period of stay in the United States is temporary. This change is important because it will impact who has to continually renew any “public records transactions” under Section 31-13-29.

**Section 4:** Requires the Attorney General to defend an Alabama law enforcement officer who is personally sued by the Department of Justice if the Attorney General deems that the officer performed his or her duties enforcing Act 2011-535 according to accepted standards of Alabama law enforcement. (These changes were first proposed by Senator Beason in Section 1 of SB541.)

**Section 5:** Requires the Administrative Office of Courts to submit a quarterly report to the Alabama Department of Homeland Security that summarizes the number of cases in which an unlawfully present alien was detained by law enforcement and appeared in court for any violation of state law. The report shall include the alien's name, the violation the alien allegedly committed, the name of the presiding judge, and the final disposition of the case. The report shall also be posted by the department on their website. (These changes were first proposed by Senator Beason in Section 2 of SB541.)

**Section 6:** Provides that it shall be unlawful for a person to harbor an alien unlawfully present in the United States by entering into a rental agreement, as defined by Section 35-9A-141, with an alien to provide accommodations, if the person knows or recklessly disregards the fact that the alien is unlawfully present in the United States. (This provision was included in Section 13 of House Bill 56).

**Section 7:** Provides that any law enforcement agency of the state or any law enforcement agency of a political subdivision of the state shall have the authority to enforce the provisions of this chapter. Further, provides that the Attorney General and a district attorney investigating or prosecuting any violation of this chapter shall have the power to issue subpoenas to compel the production of relevant documents and other evidence necessary to enforce the provisions of this chapter.

**Section 8:** Provides that the Department of Revenue shall conduct annual searches of its records to determine if multiple individuals have filed tax returns under the same Social Security number or the same individual tax identification number. If the department determines that multiple individuals have filed tax returns under the same Social Security number or the same individual tax identification number, the department shall further investigate the use of the Social Security numbers or individual tax identification numbers. After its investigation, if the department determines that a Social Security Number or an individual tax identification number has been stolen or misused by another individual, the department shall report the violation to the Attorney General or the appropriate district attorney.

## Section 9

<b>Violation</b>	<b>HB56</b>	<b>HB658</b>
First – contractor	<ul style="list-style-type: none"> <li>▪ Option by contracting entity to terminate contract; and</li> <li>▪ Option by AG to suspend licenses, permits for 60 days.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Option by contracting entity to terminate contract.</li> <li>▪ Business entity must terminate employment of every unauthorized alien.</li> <li>▪ Business entity must be subjected to a three-year probationary period.</li> <li>▪ Business entity must file affidavit stating that they’ve terminated the employment of unauthorized aliens.</li> <li>▪ If the court determines that the business entity or employer has a “policy or practice” that violates this section, the court shall direct applicable body to suspend the entity’s business license and permit for a period not to exceed 60 days specific to the location(s) where the unauthorized work took place.</li> </ul>
Second – contractor	<ul style="list-style-type: none"> <li>▪ Contracting entity must terminate contract; and</li> <li>▪ Option by AG to permanently revoke licenses, permits.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Contracting entity must terminate contract.</li> <li>▪ Business entity must terminate employment of every unauthorized alien.</li> <li>▪ Business entity must be subjected to a three-year probationary period.</li> <li>▪ Business entity must file affidavit stating that they’ve terminated the employment of unauthorized aliens.</li> <li>▪ If the court determines that the business entity or employer has a “policy or practice” that violates this section, the court shall direct applicable body to suspend the entity’s business license and permit for a period not less than 60 days and not to exceed 120 days specific to the location(s) where the unauthorized work took place.</li> </ul>
Subsequent – contractor	<ul style="list-style-type: none"> <li>▪ Same as second violation by contractor</li> </ul>	<ul style="list-style-type: none"> <li>▪ Contracting entity must terminate contract.</li> <li>▪ The court shall direct applicable body to permanently revoke all business licenses or permits.</li> </ul>
First – sub-contractor	<ul style="list-style-type: none"> <li>▪ Same as first violation by contractor</li> </ul>	<ul style="list-style-type: none"> <li>▪ Same as first violation by contractor</li> </ul>
Second – sub-contractor	<ul style="list-style-type: none"> <li>▪ Option by AG to permanently revoke licenses, permits</li> </ul>	<ul style="list-style-type: none"> <li>▪ Same as second violation by contractor</li> </ul>
Subsequent – sub-contractor	<ul style="list-style-type: none"> <li>▪ Same as second violation by subcontractor</li> </ul>	<ul style="list-style-type: none"> <li>▪ Same as subsequent violation by contractor</li> </ul>